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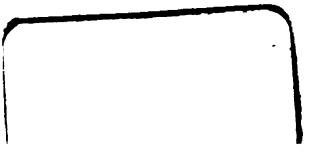
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OFFICIAL REPORT

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OF THE

PROCEEDINGS AND DEBATES

OF THE

FIRST CONSTITUTIONAL CONVENTION

1889

OF NORTH DAKOTA,

ASSEMBLED IN THE CITY OF BISMARCK,

JULY 4th TO AUG. 17th, 1889.

R. M. TUTTLE, OFFICIAL STENOGRAPHER.

BISMARCK, NORTH DAKOTA.:
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1889.

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MAY 15 1942

NAVAL POSTGRADUATE SCHOOL

MEMBERS AND OFFICERS

OF THE

NORTH DAKOTA CONSTITUTIONAL CONVENTION

1889.

NAME.	County.	Postoffice.	Occupat'n.	Born.
ALLIN, ROGER, *r*.....	Walsh,	Grafton,	Farmer,	Dec. 18, 1848
ALMEN, JOHN MAGNUS, *r*.....	Walsh,	Grafton,	Farmer,	Apl. 13, 1850
APPLETON, ALBERT FRANCIS, *d*...	Pembina,	Crystal,	Farmer,	Jan. 14, 1850
BEAN, THEROW W., *r*.....	Nelson,	Michigan City	Lawyer,	Oct. 17, 1859
BELL, JAMES, *d*.....	Walsh,	Minto,	Farmer,	Aug. 24, 1850
BENNETT, RICHARD, *r*.....	Grand Forks,	Grand Forks,	Lawyer,	Dec. 4, 1851
BARTLETT, LORENZO D., *d*.....	Dickey,	Ellendale,	Farmer,	Oct. 19, 1829
BARTLETT, DAVID, *r*.....	Griggs,	Cooperstown,	Lawyer,	Oct. 23, 1855
BEST, WILLIAM D., *d*.....	Pembina,	Bay Centre,	Farmer,	Aug. 23, 1853
BROWN, CHARLES V., *r*.....	Wells,	Sykeston,	Publisher,	Nov. 28, 1859
BLEWETT, ANDREW, *d*.....	Stutsman,	Jamestown,	Merchant,	Sept. 13, 1857
BUDGE, WILLIAM, *r*.....	Grand Forks,	Grand Forks,	Merchant,	Oct. 11, 1852
CAMP, EDGAR WHITTLESEY, *r*....	Stutsman,	Jamestown,	Lawyer,	Feb. 27, 1860
CHAFFEE, EBEN WHITNEY, *r*.....	Cass,	Amenia,	Farmer,	Jan. 19, 1824
CARLAND, JOHN EMMET, *d*.....	Burleigh,	Bismarck,	Lawyer,	Dec. 11, 1854
CAROTHERS, CHARLES, *r*.....	Grand Forks,	Emerado,	Farmer,	Aug. 22, 1863
CLARK, HORACE M., *r*.....	Eddy,	New Rockf'd,	Farmer,	Sept. 6, 1850
CLAPP, WILLIAM J., *r*.....	Cass,	Tower City,	Lawyer,	Nov. 28, 1857
COLTON, JOSEPH L., *r*.....	Ward,	Burlington,	Merchant,	Mar. 24, 1840
DOUGLAS, JAMES A., *d*.....	Walsh,	Park River,	Farmer,	Feb. 13, 1847
ELLIOTT, ELMER E., *r*.....	Barnes,	Sanborn,	Merchant,	Dec. 25, 1861
FANCHER, FREDERICK B., *r*.....	Stutsman,	Jamestown,	Farmer,	Apl. 2, 1852
FAY, GEORGE H., *r*.....	McIntosh,	Ashlev,	Lawyer,	Feb. 24, 1842
FLEMINGTON, ALEXANDER D., *r*...	Dickey,	Ellendale,	Lawyer,	Apl. 7, 1856
GAYTON, JAMES BENNETT, *r*.....	Emmons,	Hampton,	Farmer,	Nov. 10, 1833
GLICK, BENJAMIN RUSH, *d*.....	Cavalier,	Langdon,	Merchant,	Mar. 29, 1856
GRAY, ENOS, *d*.....	Cass,	Embden,	Farmer,	Feb. 4, 1829
GRIGGS, ALEXANDER, *d*.....	Grand Forks,	Grand Forks,	Banker,	Oct. 27, 1838
HAUGEN, ARNE P., *r*.....	Grand Forks,	Reynolds,	Farmer,	June 7, 1845
HEGGE, MARTHINUS F., *d*.....	Traill,	Hatton,	Merchant,	Nov. 27, 1856
HOLMES, HERBERT L., *r*.....	Pembina,	Neche,	Banker,	May 29, 1853
HARRIS, HARVEY, *r*.....	Burleigh,	Bismarck,	R'l Estate,	Dec. 12, 1852
HOYT, ALBERT W., *r*.....	Morton,	Mandan,	R'l Estate,	July 5, 1846
JOHNSON, MARTIN N., *r*.....	Nelson,	Lakota,	Lawyer,	Mar. 3, 1850
LAUDER, WILLIAM S., *r*.....	Richland,	Wahpeton,	Lawyer,	Feb. 9, 1856
LEECH, ADDISON, *r*.....	[illegible]s,	Davenport,	Farmer,	Feb. 20, 1824
LOWELL, JACOB, *d*.....	Cass,	Fargo,	Lawyer,	May 7, 1843
LINWELL, MARTIN V., *r*.....	Frand Forks,	Northwood,	Lawyer,	Apl. 2, 1857
LOHNES, EDWARD H., *r*.....	Ramsey,	Devils Lake,	Farmer,	Apl. 22, 1844
MARRINAN, MICHAEL KENYON, *d*..	Walsh,	Grafton,	Lawyer,	Nov. 4, 1853

MEMBERS AND OFFICERS—*Continued.*

NAME.	County.	Postoffice.	Occupat'n.	Born.
MATHEWS, J. H., *r*.....	Grand Forks,	Larimore,	Farmer,	Oct. 10, 1846
MEACHAM, OLNEY G., *r*.....	Foster,	Carrington,	Banker,	Apl. 12, 1847
MCBRIDE, JOHN, *d*.....	Cavalier,	Alma,	Farmer,	May 22, 1850
MILLER, HENRY FOSTER, *r*.....	Cass,	Fargo,	Lawyer,	Sept. 13, 1846
MOER, SAMUEL H., *r*.....	LaMoure,	LaMoure,	Lawyer,	June 21, 1856
MCKENZIE, JAMES D., *r*.....	Sargent,	Milnor,	Doctor,	Mar. 28, 1840
MCHUGH, PATRICK, *r*.....	Cavalier,	Langdon,	Banker,	Sept. 23, 1846
NOBLE, VIRGIL B., *d*.....	Bottineau,	Bottineau,	Lawyer,	Dec. 7, 1859
NOMLAND, KNUD J., *r*	Traill,	Caledonia,	Farmer,	Oct. 16, 1852
O'BRIEN, JAMES F., *d*.....	Ramsey,	Devils Lake,	Lawyer,	July 6, 1853
PARSONS, CURTIS P., *r*.....	Rolette,	Rolla,	Publisher,	May 6, 1853
PARSONS, ALBERT SAMUEL, *r*.....	Morton,	Mandan,	Railroad'g	Aug. 16, 1856
PAULSON, ENGEBRET M., *r*.....	Traill,	Mayville,	Farmer,	May 15, 1855
PETERSON, HENRY M., *r*.....	Cass,	Horace,	Farmer,	July 11, 1857
POLLOCK, ROBERT M., *r*.....	Cass,	Casselton,	Lawyer,	Dec. 16, 1854
POWERS, JOHN, *d*.....	Sargent,	Havana,	Farmer,	Nov. 4, 1852
POWLES, JOSEPH, *r*.....	Cavalier,	Milton,	Farmer,	Dec. 6, 1850
PURCELL, WILLIAM E., *d*.....	Richland,	Wahpeton,	Lawyer,	Aug. 3, 1858
RAY, WILLIAM, *d*.....	Stark,	Dickinson,	R'l Estate,	Sept. —, 1852
RICHARDSON, ROBERT B., *r*.....	Pembina,	Drayton,	Farmer,	Apl. 20, 1840
ROBERTSON, ALEXANDER D., *r*.....	Walsh,	Minto,	Merchant,	July 27, 1833
ROLFE, EUGENE STRONG, *r*.....	Benson,	Minnewaukan,	Lawyer,	Dec. 15, 1854
ROWE, WILLIAM H., *r*.....	Dickey,	Monango,	Merchant,	Oct. 26, 1853
SANDAGER, ANDREW, *r*.....	Ransom,	Lisbon,	Merchant,	Oct. 31, 1862
SHUMAN, JOHN, *r*.....	Sargent,	Rutland,	Farmer,	July 13, 1836
SCOTT, JOHN W., *r*.....	Barnes,	Valley City,	Lawyer,	Mar. 13, 1853
SELBY, JOHN F., *r*.....	Traill,	Hillsboro,	Lawyer,	Dec. 24, 1849
SLOTTEN, ANDREW, *r*.....	Richland,	Wahpeton,	Farmer,	Sept. 16, 1840
SPALDING, BURLEIGH FOLSOM, *r*..	Cass,	Fargo,	Lawyer,	Dec. 3, 1853
STEVENS, REUBEN N., *r*..... ...	Ransom,	Lisbon,	Lawyer,	Aug. 10, 1853
TURNER, EZRA, *r*.....	Bottineau,	Bottineau,	Farmer,	Dec. 17, 1835
WALLACE, ELMER D., *r*.....	Steele,	Hope,	Farmer,	July 5, 1844
WHIPPLE, ABRAM OLIN, *r*.....	Ramsey,	Devils Lake,	Banker,	Apl. 1, 1845
WELLWOOD, JAY, *r*	Barnes,	Minnie Lake,	Farmer,	Nov. 11, 1858
WILLIAMS, ERASTUS A., *r*.....	Burleigh,	Bismarck,	Lawyer,	Oct. 13, 1851

r Republican; *d* Democrat.

OFFICERS.

NAME.	Office.	County.	Postoffice.
F. B. FANCHER.....	President,	Stutsman,	Jamestown.
J. G. HAMILTON.....	Chief Clerk,	Grand Forks,	Grand Forks.
C. C. BOWSFIELD.....	Enrolling and Engrossing Clerk,	Dickey,	Ellendale.
FRED FALLEY.....	Sergeant-at-Arms,	Richland,	Wahpeton.
J. S. WEISER.....	Watchman,	Barnes,	Valley City.
E. W. KNIGHT.....	Messenger,	Cass,	Fargo.
GEO. KLINE.....	Chaplain,	Burleigh,	Bismarck.
R. M. TUTTLE.....	Official Stenographer,	Morton,	Mandan.

POLITICAL COMPLEXION AND NATIVITY.

Republicans, 56; Democrats, 19. Born in United States, 52—Wisconsin, 13; New York, 10; Iowa, 5; Ohio, 4; Maine, 3; Pennsylvania, 3; Illinois, 2; Connecticut, 2; Indiana, 2; Minnesota, 2; Vermont, 2; Massachusetts, 1; New Hampshire, 1; New Jersey, 1; Michigan, 1. Born in other countries, 23—Canada, 9; Norway and Sweden, 5; England, 3; Scotland, 3; Ireland, 2; New Brunswick, 1. Ancestry—American, 22; English, 15; Irish, 12; Norwegian, Scandinavian and Swede, 10; Scotch, 6; Irish and Scotch, 3; Scotch-American, 2; Scotch and Danish, 1; English-German, 1; Dutch, 1; German-Irish, 1; Irish and Welsh, 1.

THE ENABLING ACT.

AN ACT, To Provide for the Division of Dakota into Two States, and to Enable the People of North Dakota, South Dakota, Montana and Washington to Form Constitutions and State Governments, and to be Admitted into the Union on an Equal Footing with the Original States, and to Make Donations of Public Lands to Such States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the area of the United States now constituting the territories of Dakota, Montana and Washington, as at present described, may become the states of North Dakota, South Dakota, Montana and Washington respectively, as hereinafter provided.

SEC. 2. The area comprising the Territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said territory; and the delegates elected as hereinafter provided to the Constitutional Convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the City of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time, assemble in convention at the City of Sioux Falls.

SEC. 3. That all persons who are qualified by the laws of said territories to vote for representatives to the legislative assemblies thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed states; and the qualifications for delegates to such conventions shall be such as by the laws of said territories, respectively, persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed states in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be

ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionments shall be made by the governor, the chief justice and the secretary of said territories; and the governors of said territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed states, to be held on the Tuesday after the second Monday in May, 1889, which proclamation shall be issued on the 15th day of April, 1889; and such election shall be conducted, the returns ma le, the result ascertained and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the said territories regulating elections therein for delegates to congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively, shall be seventy-five; and all persons resident in said proposed states who are qualified voters of said territories as herein provided shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe not in conflict with this act, upon the ratification or rejection of the constitutions.

SEC. 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the Fourth day of July, 1889, and, after organization, shall declare on behalf of the people of said proposed states that they adopt the constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and state governments for said proposed states, respectively. The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not to be repugnant to the constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide by ordinances irrevocable without the consent of the United States and the people of said states:

First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such act of Congress may prescribe.

Third. That the debts and liabilities of said territories shall be assumed and paid by said states respectively.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control.

SEC. 5. That the Convention which shall assemble at Bismarck shall form a constitution and state government for a state to be known as North Dakota, and the Convention which shall assemble at Sioux Falls shall form a constitution and state government for a state to be known as South Dakota; *Provided*, That at the election for delegates to the Constitutional Convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot, the words, "For the Sioux Falls Constitution," or the words, "Against the Sioux Falls Constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section three of this act; and if a majority of all votes cast on this question shall be "For

the Sioux Falls Constitution" it shall be the duty of the Convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection at the election hereinafter provided for in this act, the Constitution framed at Sioux Falls, and adopted November 3, 1885, and also the articles and propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed state, to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the Constitution shall be for the Constitution irrespective of the articles separately submitted, the State of South Dakota shall be admitted as a state in the Union under said Constitution as hereinafter provided, but the archives, records and books of the Territory of Dakota shall remain at Bismarck, the Capital of North Dakota, until an agreement in reference thereto is reached by said states. But if at the election for delegates to the Constitutional Convention in South Dakota a majority of all the votes cast at that election shall be "Against the Sioux Falls Constitution," then, and in that event, it shall be the duty of the Convention which will assemble at the City of Sioux Falls on the fourth day of July, 1889, to proceed to form a Constitution and state government as provided in this act the same as if that question had not beem submitted to a vote of the people of South Dakota.

SEC. 6. It shall be the duty of the Constitutional Conventions of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said territory, and agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records and also adjust and agree upon the amount of the debts and liabilities of the territory, which shall be assumed and paid by each of the proposed States of North Dakota and South Dakota; and the agreement reached respecting the territorial debts and liabilities shall be incorporated in the respective Constitutions, and each of said states shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such states respectively.

SEC. 7. If the Constitutions formed for both North Dakota and

South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective Constitutions as provided for in this act, the territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the Constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the territory so rejecting its proposed Constitution shall continue under the territorial government of the present Territory of Dakota, but shall, after the state adopting its Constitution is admitted into the Union, be called by the name of the Territory of North Dakota or South Dakota, as the case may be; *Provided*, That if either of the proposed states provided for in this act shall reject the Constitution which may be submitted for ratification or rejection at the election provided therefor, the Governor of the territory in which such proposed Constitution was rejected shall issue his proclamation reconvening the delegates elected to the Convention which formed such rejected Constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another Constitution or to amend the rejected Constitution, and shall submit such new Constitution or amended Constitution to the people of the proposed state for ratification or rejection, at such time as said Convention may determine; and all the provisions of this act, so far as applicable, shall apply to such Convention so reassembled and to the Constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

SEC. 8. That the Constitutional Convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls Constitution of 1885, after having amended the same as provided in section five of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, 1889; but if said Constitutional Convention is authorized and required to form a new Constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said proposed state on the said first Tuesday in October. And the Constitutional Conventions which may assemble in North Dakota, Montana and Washington, shall provide in like manner for submitting the Constitutions formed by them to the people of said proposed states respectively, for ratification or rejection, at elections to be held in

said proposed states on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed Constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the Secretary of each of said territories, who, with the Governor and Chief Justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the Constitution, the Governor shall certify the result to the President of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said Constitution, articles, propositions and ordinances. And if the Constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted Constitutions and formed state governments, as herein provided, shall be deemed admitted by Congress into the Union, under and by virtue of this act, on an equal footing with the original states from and after the date of said proclamation.

SEC. 9. That until the next general census, or until otherwise provided by law, said states shall be entitled to one Representative in the House of Representatives of the United States, except South Dakota, which shall be entitled to two; and the Representatives to the Fifty-first Congress, together with the Governors and other officers provided for in said Constitutions, may be elected on the same day of the election for the ratification or rejection of the Constitutions; and until said state officers are elected and qualified under the provisions of each Constitution and the states, respectively, are admitted into the Union, the territorial officers shall continue to discharge the duties of their respective offices in each of said territories.

SEC. 10. That upon the admission of each of said states into the Union sections numbered 16 and 36 in every township of said proposed states, and where such sections or any parts thereof have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are

hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the Legislature may provide, with the approval of the Secretary of the Interior; *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character, be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain.

SEC. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than $10 per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the Legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

SEC. 12. That upon the admission of each of said states into the Union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said states, to be selected and located in legal subdivisions as provided in section ten of this act, shall be, and are hereby, granted to said states for the purpose of erecting public buildings at the capital of said states for legislative, executive and judicial purposes.

SEC. 13. That five per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said states into the Union, after deducting all the expenses incident to the same, shall be paid to the said states, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said states, respectively.

SEC. 14. That the lands granted to the Territories of Dakota and Montana by the act of February 18, 1881, entitled "An Act to Grant Lands to Dakota, Montana, Arizona, Idaho and Wyoming for University Purposes," are hereby vested in the states of South Dakota, North Dakota and Montana, respectively, if such states

are admitted into the Union as provided in this act, to the extent of the full quantity of seventy-two sections to each of said states, and any portion of said lands that may not have been selected by either of said Territories of Dakota or Montana may be selected by the respective states aforesaid; but said act of February 18, 1881, shall be so amended as to provide that none of said lands shall be sold for less than $10 per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said states severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July 17, 1854, to be reserved for university purposes in the Territory of Washington, as, together with the lands confirmed to the vendees of the territory by the act of March 14, 1864, will make the full quantity of seventy-two entire sections, are hereby granted in the like manner to the State of Washington for the purposes of a university in said state. None of the lands granted in this section shall be sold at less than $10 per acre; but said lands may be leased in the same manner as provided in section eleven of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said states, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university. The section of land granted by the act of June 16, 1880, to the Territory of Dakota, for an asylum for the insane, shall upon the admission of said state of South Dakota into the Union, become the property of said state.

SEC. 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the Territory of Dakota," approved March 2, 1881, together with the buildings thereon, be, and the same is hereby granted, together with any unexpended balances of the moneys appropriated therefor by said act, to said State of South Dakota, for the purposes therein designated, and the States of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March 2, 1881, for the Territory of Dakota, The penitentiary at Deer Lodge City, Montana, and all lands

connected therewith and set apart and reserved therefor, are hereby granted to the State of Montana.

SEC. 16. That 90,000 acres of land to be selected and located as provided in section ten of this act, are hereby granted to each of said states except to the State of South Dakota, to which 120,000 acres are granted for the use and support of agricultural colleges in said states, as provided in the acts of Congress making donations of lands for such purpose.

SEC. 17. That in lieu of the grant of land for purposes of internal improvement made to new states by the eighth section of the act of September 4, 1841, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of September 28, 1850, and section 2479 of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to-wit:

To the State of South Dakota: For the School of Mines, 40,000 acres; for the Reform school, 40,000 acres; for the Deaf and Dumb asylum, 40,000 acres; for the Agricultural College, 40,000 acres; for the University, 40,000 acres; for State Normal schools, 80,000 acres; for public buildings at the Capital of said state, 50,000 acres, and for such other educational and charitable purposes as the Legislature of said state may determine, 170,000 acres; in all, 500,000 acres.

To the State of North Dakota a like quantity of land as is in this section granted to the State of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the State of Montana: For the establishment and maintenance of a School of Mines, 100,000 acres; for State Normal schools, 100,000 acres; for Agricultural Colleges, in addition to the grant hereinbefore made for that purpose, 50,000 acres; for the establishment of a State Reform school, 50,000 acres; for the establishment of a Deaf and Dumb asylum, 50,000 acres; for public buildings at the Capital of the state in addition to the grant hereinbefore made for that purpose, 150,000 acres.

To the State of Washington: For the establishment and maintenance of a Scientific school, 100,000 acres; for State Normal schools, 100,000 acres; for public buildings at the State Capital in addition to the grant hereinbefore made for that purpose, 100,000

acres; for state charitable, educational, penal and reformatory institutions, 200,000 acres.

That the states provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated and disposed of exclusively for the purposes herein mentioned, in such manner as the Legislatures of the respective states may severally provide.

SEC. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections 16 and 36, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said states, in lieu thereof, for the use and the benefit of the common schools of said states.

SEC. 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved and unappropriated public lands of the United States within the limits of the respective states entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said states the number of acres in each heretofore donated by Congress to said territories for similar objects.

SEC. 20. That the sum of $20,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to each of said territories for defraying the expenses of the said Conventions, except to Dakota, for which the sum of $40,000 is so appropriated, $20,000 each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the Territorial Legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the Treasury of the United States.

SEC. 21. That each of said states when admitted as aforesaid shall constitute one judicial district, the names thereof to be the same as the names of the states, respectively; and the Circuit and District Courts therefor shall be held at the Capital of such state for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the Eighth ju-

dicial circuit, except Washington and Montana, which shall be attached to the Ninth judicial circuit. There shall be appointed for each of said districts one District Judge, one United States Attorney and one United States Marshal. The Judge of each of said districts shall receive a yearly salary of $3,500, payable in four equal installments, on the first days of January, April, July and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the Capital of said state. The regular terms of said courts shall be held in each district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said Circuit and District Courts. The Circuit and District Courts for each of said districts and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other Circuit and District Courts and judges of the United States, and shall be governed by the same laws and regulations. The Marshal, District Attorney and clerks of the Circuit and District Courts of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the State of Nebraska.

SEC. 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the Supreme Court of either of the territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts, may be heard and determined by said Supreme Court of the United States. And the mandate of execution or of further proceedings shall be directed by the Supreme Court of the United States to the Circuit or District Court hereby established within the state succeeding the territory from which such record is or may be pending, or to the Supreme Court of such state, as the nature of the case may require; *Provided*, That the mandate of execution or of further proceedings shall, in cases arising in the Territory of Dakota, be

directed by the Supreme Court of the United States to the Circuit or District Court of the district of South Dakota, or to the Supreme Court of the State of South Dakota, or to the Circuit or District Court of the District of North Dakota, or to the Supreme Court of the State of North Dakota, or to the Supreme Court of the Territory of North Dakota, as the nature of the case may require. And each of the Circuit, District and State Courts, herein named, shall, respectively, be the successor of the Supreme court of the territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the Supreme Court of either of the territories mentioned in this act, in any case arising within the limits of any of the proposed states prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by law prior to the admission of said state into the Union.

SEC. 23. That in respect to all cases, proceedings and matters now pending in the Supreme or District Courts of either of the territories mentioned in this act at the time of the admission into the Union of either of the states mentioned in this act, and arising within the limits of any such state, whereof the Circuit or District Courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said Circuit and District Courts, respectively, shall be the successors of said Supreme and District Courts of said territory; and in respect to all other cases, proceedings and matters pending in the Supreme or District Courts of any of the territories mentioned in this act at the time of the admission of such territory into the Union, arising within the limits of said proposed state, the courts established by such state shall, respectively, be the successors of said Supreme and District Territorial Courts; and all the files, records, indictments and proceedings relating to any such cases, shall be transferred to such Circuit, District and State Courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the states mentioned in this act, shall be pending in any territorial court in any of the territories mentioned in this act shall abate by the admission of any such

state into the Uuion, but the same shall be transferred and proceeded within the proper United States Circuit, District or State Court, as the case may be; *Provided, however*, That in all civil actions, causes and proceedings, in which the United States is not a party, transfers shall not be made to the Circuit, and District Courts of the United States except upon written request of one of the parties to such action or proceeding filed in the proper court; and in the absence of such request, such cases shall be proceeded with within the proper State Courts.

SEC. 24. That the Constitutional Conventions may, by ordinance, provide for the election of officers for full state governments, including members of the Legislatures and Representatives in the Fifty-first Congress; but said state governments shall remain in abeyance until the states shall be admitted into the Union, respectively, as provided in this act. In case the Constitution of any of said proposed states shall be ratified by the people, but not otherwise, the Legislature thereof may assemble, organize and elect two Senators of the United States; and the Governor and Secretary of State of such proposed state shall certify the election of the Senators and Representatives in the manner required by law; and when such state is admitted into the Union, the Senators and Representatives shall be entitled to be admitted to seats in Congress, and to all the rights and privileges of Senators and Representatives of other states in the Congress of the United States; and the officers of the state governments formed in pursuance of said constitutions, as provided by the Constitutional Conventions, shall proceed to exercise all the functions of such state officers; and all laws in force made by said territories, at the time of their admission into the Union, shall be in force in said states, except as modified or changed by this act, or by the constitutions of the states, respectively.

SEC. 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the Legislatures of said territories or by Congress, are hereby repealed.

Approved February 22, 1889.

DEBATES AND PROCEEDINGS

OF THE

NORTH DAKOTA CONSTITUTIONAL CONVENTION

BISMARCK, *Thursday, July 4, 1889.*

The members elected on May 14, 1889, to frame a Constitution for the State of North Dakota, assembled this day at 12 o'clock, noon, in the hall of the House of Representatives in the Territorial Capitol in the City of Bismarck, under and by virtue of the provisions of the Enabling Act of Congress.

TEMPORARY ORGANIZATION.

Secretary of the Territory, Mr. RICHARDSON. The Convention will come to order and listen to prayer by the Rev. Mr. Anderson of Bismarck.

Prayer was then offered by Mr. Anderson.

Secretary RICHARDSON then said: GENTLEMEN OF THE CONVENTION. I shall not detain you with any very extended remarks, but I desire to say that you have met to perform the highest duty possible to devolve on an American citizen. You have come together to form the organic law for the great sovereign State of North Dakota, about to be admitted into the Union with an independent municipal government. I need not remind you of the fundamental principals of a wise government which I conceive to be economy and purity. This, gentlemen, is distinctively an agricultural state, and this is an industry to be fostered. Your laws should be so adjusted that the producer will be protected and encouraged to build up the country. It is not the purpose of wisdom to foster dissension between the agricultural producers and the transportation companies, but to so adjust things, that each shall receive equal justice and bear their just part of all public burdens.

It is important that there shall be peace and not war between them. The country cannot prosper without railroads, neither can the farmer prosper without justice. Let this matter be amicably discussed and you will have performed a service to the people of this State which you are about to build, and which will ever be remembered with gratitude by a grateful people. Gentlemen, what is the pleasure of this Convention?

Mr. PARSONS of Morton. Inasmuch as a record of the proceedings is necessary, I make a motion that the Honorable JOHN A. REA be made the temporary Secretary.

Adopted.

Mr. HARRIS. The delibertions of this Convention should be taken down, and I therefore move that R. M. TUTTLE of Mandan, be made temporary Stenographer.

Seconded and adopted.

Mr. PARSONS of Morton. Mr. SECRETARY: I would move that we proceed to the election of a permanent Chairman of this Convention.

Seconded by Mr. COLTON.

Mr. WILLIAMS. I would inquire if the roll has been prepared. It would be proper to call the roll before we proceed to the election of a permanent Chairman.

Secretary RICHARDSON. There has been no roll call prepared by the Secretary. It would seem to devolve upon the Convention to take such action as it sees fit in regard to the calling of the roll.

Mr. WILLIAMS. I move to amend the motion to read that we proceed to elect a Chairman *pro tem.*

Amendment was seconded.

Secretary RICHADSON. The Chair understands that there was a motion before the House that has not been acted upon.

Mr. PURCELL. Mr. CHAIRMAN: As I understand it Mr. WILLIAMS has moved an amendment to the motion of Mr. PARSONS.

Mr. WILLIAMS. I should think that the gentleman from Morton would accept my amendment.

Mr. PARSONS of Morton. I object to the amendment, but if desired I will withdraw my motion and move that the Secretary appoint a committee of three on Credentials to report. Otherwise I object to the amendment.

Mr. WILLIAMS. Let us vote on the amendment.

Secretary RICHARDSON. Are there any further remarks? You have heard the amendment.

The amendment was then put to a vote and carried.

The original motion as amended was then put and carried.

Mr. MOER moved that F. B. FANCHER be elected temporary Chairman.

Seconded by Mr. LAUDER, and carried unanimously.

Mr. WILLIAMS and Mr. JOHNSON were appointed as a committee to escort Mr. FANCHER to the Chair.

Mr. FANCHER. GENTLEMEN OF THE CONVENTION: I thank you heartily for conferring upon me the honor of this temporary chairmanship. What is the further pleasure of the Convention?

Mr. SCOTT. I think it would now be in order for the Chair to appoint a Committee on Credentials. I make a motion to that effect—a committee of three.

Seconded by Mr. HARRIS and carried.

Mr. STEVENS. I move that there be a committee of five appointed on Rules and Permanent Organization.

Mr. PARSONS of Morton. I second the motion.

Mr. MOER amended the motion to read ten instead of five, and the amendment was accepted.

The Committee on Credentials was appointed as follows: Messrs. ROWE of Dickey, MILLER of Cass and MEACHAM of Foster.

The Committee on Rules was appointed as follows: Messrs. STEVENS of Ransom, COLTON of Ward, SCOTT of Barnes, BENNETT of Grand Forks, TURNER of Bottineau, CAMP of Stutsman, SLOTTEN of Richland, ALLIN of Walsh, CLARK of Eddy and APPLETON of Pembina.

Adjourned until 10 o'clock a. m., July 5th.

SECOND DAY.

BISMARCK, *Friday, July 5, 1889.*

Convention called to order at 10 a. m. by President *pro tem* FANCHER.

Prayer was offered by the Rev. Mr. KLINE of Bismarck.

Mr. JOHNSON in the Chair.

CONGRATULATORY TELEGRAMS.

The following telegrams were read:

SIOUX FALLS, S. DAK., July 4, 1889.

To the President of the Constitutional Convention:

The South Dakota Constitutional Convention sends greeting to North Dakota Constitutional Convention.

A. J. EDGERTON, President.

OLYMPIA, WASH. TER., July 4, 1889.

To F. B. Fancher, President North Dakota Convention:

The Constitutional Convention of Washington appreciates your patriotic greeting. We shall endeavor, that of the four new stars emblazoned on our National flag, the one bearing the honored name of Washington shall not be less brilliant by reason of our labors. May the garden lands of Dakota fulfill all the bright expectations of their friends and wear the chaplet of citizenship with distinction and honor.

JAMES F. MOORE.

Chairman JOHNSON. In the absence of any order of business the Chair would entertain the report from the Committee on Credentials.

Mr. MILLER. Mr. CHAIRMAN: I think that Committee is not quite ready to report yet.

Mr. HARRIS. I move you this resolution:

Resolved, That the privileges of the floor be extended to ex-Governor Gilbert A. Pierce and ex-Governor N. G. Ordway during the sessions of this Convention.

Seconded by Mr. SCOTT.

Mr. WALLACE. If it is not too late I would like to amend so that the resolution will read that all ex-federal appointees that

have been connected with our territorial organization be granted the privileges of the floor.

Mr. MILLER. I would amend by moving that all ex-territorial officers who have been elected by the people be entitled to the same privilege. I see no reason why federal appointees alone should have this privilege.

Seconded, and the original resolution with the varied amendments was adopted.

Mr. SPALDING. I move that the Auditor of the Territory be requested by the President of this Convention to furnish the Convention for its use, a statement of the cost of construction and repairs of all public institutions within the Territory.

Seconded by Mr. FANCHER.

Mr. STEVENS. We have no business of this kind until we are permanently organized. The Committee on Credentials have not yet reported, and no resolution of this kind can be passed until we know who are entitled to seats in this body.

Mr. PARSONS of Morton. I move that we take an informal recess and await the report of the Committee on Credentials.

Mr. SPALDING'S motion was withdrawn, and a recess taken.

Seats were drawn for, and the report was read from the Committee on Credentials after the recess.

The Committee on Credentials reported the following as entitled to seats in the Convention, which report was adopted:

First District—H. L. Holmes, R. B. Richardson, W. D. Best.

Second District—Joseph Powles, John McBride, A. F. Appleton.

Third District—C. P. Parsons, P. McHugh, B. R. Glick.

Fourth District—V. B. Noble, J. L. Colton, Ezra Turner.

Fifth District—E. A. Williams, Harvey Harris, John E. Carland.

Sixth District—A. W. Hoyt, A. S. Parsons, Wm. Ray.

Seventh District—J. B. Gayton, G. H. Fay, C. V. Brown.

Eighth District—W. H. Rowe, A. D. Flemington, L. D. Bartlett.

Ninth District—S. H. Moer, R. N. Stevens, Andrew Sandager.

Tenth District—John Shuman, J. D. McKenzie, John Powers.

Eleventh District—W. S. Lauder, Andrew Slotten, W. E. Purcell.

Twelfth District—H. F. Miller, B. F. Spalding, J. Lowell.

Thirteenth District—Addison Leach, R. M. Pollock, H. M. Peterson.

Fourteenth District—E. W. Chaffee, Wm. J. Clapp, Enos Gray,
Fifteenth District—Elmer E. Elliott, J. W. Scott, J. Wellwood.
Sixteenth District—E. W. Camp, F. B. Fancher, Andrew Blewett.
Seventeenth District—E. S. Rolfe, H. M. Clark, O. G. Meacham.
Eighteenth District—David Bartlett, E. D. Wallace, E. M. Paulson.
Nineteenth District—J. F. Selby, M. F. Hegge, Knud J. Nomland.
Twentieth District—Wm. Budge, Richard Bennett, Alexander Griggs.
Twenty-first District—A. P. Haugen, J. H. Mathews, Chas. Carothers.
Twenty-second District—M. N. Johnson, M. V. Linwell, T. W. Bean.
Twenty-third District—A. O. Whipple, Edward H. Lohnes, J. F. O'Brien.
Twenty-fourth District—A. D. Robertson, M. K. Marrinan, James Bell.
Twenty-fifth District—Roger Allin, John M. Almen, James A. Douglas.

PERMANENT ORGANIZATION.

Mr. WILLIAMS. I move that we now proceed to the election of a permanent President.

Seconded and adopted.

Mr. CAMP. Mr. PRESIDENT: I nominate Mr. F. B. FANCHER of Stutsman, for permanent President of this Convention.

Seconded.

Mr. PURCELL. Mr. PRESIDENT: It might be well in making this selection of presiding officer of this Convention, to look about and see who it is that possesses those qualifications which are necessary for the proper discharge of those duties. This is an important Convention for the people of this Territory, because of the supposed benefits to result therefrom. The duties are such that they require those qualities in a man which can only be acquired by experience. It seems to me, Mr. PRESIDENT, that we have a man here who is fully competent to discharge those duties—a man who is not a stranger to public office—one who has occupied the position of United States Attorney in this Territory, and one who having faithfully performed the duties of that

position was called to a higher position—namely, to be Judge of the Fourth District of this Territory. There is no man living who can point the finger of scorn at him and say that he has ever done anything but what was best and right. He has by virtue of his experience necessarily acquired knowledge which will be of benefit in the deliberations of this assembly. The presiding officer of this body needs such knowledge, that when matters are presented for the consideration of this Convention he will be able to see at once whether or not they conflict with the Constitution of the United States. It is supposed that no law, or method or resolution will be enacted here that is in conflict with that document. I nominate the Honorable JOHN E. CARLAND for permanent President of this body.

Mr. NOBLE seconded the nomination of Mr. CARLAND.

Mr. LAUDER. I move the roll be called and each delegate answer to his name as it is called.

Seconded.

Mr. McHUGH. Would it not be well for the members to be sworn in before they proceed to the election of a President?

Mr. CARLAND. I understand that one of the Justices of the Supreme Court of this Territory has been invited here to administer this oath. As a matter of law, I don't suppose there is any law requiring us to take an oath, but it has been the usual custom, and I think it is a very proper proceeding, and as we have invited Judge Rose here to administer this oath, I think it should be done as soon as possible.

The oath was then administered by the Hon. Roderick Rose, Judge of the Sixth Judicial District.

The voting then took place on the matter of permanent President, with the following result:

Those voting for Mr. FANCHER were—

Messrs. Allin, Almen, Bartlett of Dickey, Bartlett of Griggs, Bean, Bennett, Brown, Budge, Camp, Carland, Carothers, Chaffee, Clapp, Clark, Colton, Elliott, Flemington, Gayton, Harris, Haugen, Holmes, Hoyt, Johnson, Lauder, Leach, Linwell, Mathews, McHugh, McKenzie, Meacham, Miller, Moer, Nomland, Parsons of Morton, Parsons of Rolette, Paulson, Peterson, Powles, Pollock, Richardson, Robertson, Rolfe, Rowe, Sandager, Scott, Selby, Shuman, Slotten, Spaulding, Stevens, Turner Wallace, Wellwood, Williams—54.

Those voting for Mr. CARLAND were—

Messrs. Appleton, Bell, Best, Blewett, Douglas, Fancher, Glick, Gray, Griggs, Lowell, Marrinan, McBride, Noble, O'Brien, Powers, Purcell—16.

Absent and not voting—

Messrs. Fay, Lohens, Hegge and Whipple—4.

Mr. JOHNSON. GENTLEMEN OF THE CONVENTION: I have the honor to present to you your permanent President.

Mr. FANCHER. GENTLEMEN OF THE CONVENTION: I hardly know how to find words in which to express my thanks for the honor you have conferred on me, in electing me the President of this magnificent Convention. When I look around I see so many abler men, who could certainly preside over your deliberations much more brilliantly; nevertheless, for some considerable time we are told man has earned his bread by the sweat of his brow, and I have some reason to believe this. Certainly I do not expect to enjoy the distinction and advantage to be derived from presiding over this Convention, without endeavoring by all legitimate means to promote and advance its usefulness and efficiency. As a presiding officer I cannot promise you much. I am not very well versed in parliamentary rules, but I think I will venture to promise to do my best to please you, to endeavor to carry out your wishes, and to assist you to embody in this Constitution for North Dakota, the sound judgment and the level-headedness of the whole people of North Dakota, and not to foster the interests of any man or particular class of men. My experience as a presiding officer has been exceedingly limited, and I therefore pray your patience and kind indulgence during the first days of the session. The expert parliamentarians on the floor will remember that there was a time when they, too, were fresh and green in the knowledge of parliamentary forms. If, after some experience, I shall succeed in meeting your approval, the end attained will have justified you in your action here to-day. If I shall be so unfortunate as to fail, I do most solemly assure you it shall not have been my fault but my misfortune, for I will make the effort. And now gentlemen, not according to custom and due form, but in simple truth and sincerity, again I thank you.

Mr. WILLIAMS moved that a committee of seven be appointed on rules.

Seconded by Mr. LAUDER, and carried.

The committee was appointed as follows: WILLIAMS of Burleigh, PARSONS of Morton, TURNER of Bottineau, CARLAND of Bur-

leigh, ALLIN of Walsh, STEVENS of Ransom and JOHNSON of Nelson.

Adjourned to 2 o'clock p. m., July 6th.

THIRD DAY.

BISMARCK, *Saturday, July 6, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

A QUESTION OF PRIVILEGE.

Mr. JOHNSON said: Mr. PRESIDENT AND GENTLEMEN OF THE CONVENTION. Yesterday we extended the privileges of the floor of this House to the representatives of the press. Certain representatives of the press availed themselves of that privilege to appear on this floor and lay copies of their papers before every member of the Convention. I hold in my hand a paper called the Devils Lake Capital, published in Devils Lake. It is on the table of every member here. This paper is published by one Marshall McClure. Turning to the editorial page, the first article in the first column casts a slur on the PRESIDENT of this body, and on other persons connected and unconnected with this Convention. Now gentlemen, we owe something to the dignity of the State of North Dakota. It was a great privilege—something to be treated with proper respect—the invitation to the floor of this House. That article laid before our faces is not in accordance with my idea of proper courtesy. I hold that the press should be perfectly free and untramelled, and I hold that representatives of the press on this floor have the privilege of writing and sending to their papers and publishing anything which their judgment dictates as proper. We should not wince under the lash of proper criticism. I have been criticised many times, and I have been flattered also by the press. I cannot say that I have ever derived any benefit from the flattery I have received, but I can think of a great many instances where I was benefitted by criticism, for criticisms have

usually some foundation of truth. Almost always the criticism of the newspapers of the political party opposed to that to which I belong, has been true and I have endeavored with proper humility to study the weaknesses pointed out and improve upon them. But when it comes to abusing the courtesy which we have extended to the press, by members of the press coming before the Convention and laying on the desk of every member an article which is unkind and false, reflecting upon a member of this House, I say that it is a blow at the dignity and respect which this Convention should maintain. There was no excuse at the time it was laid before us. The elevation of Mr. FANCHER to the Chair should place him beyond such criticism. He was entitled then to respect. My own bitter disappointment should entitle me to silence and sympathy. As to the charge about my brother, I have a brother in Fargo who is an honor to the Republican party and the profession of law. A report went out some time ago when they were engaged in one of their bitter factional fights, to the St. Paul Globe, characterizing my brother as an anarchist. In the meantime he wrote to the proprietors of the paper and demanded first a retraction of the article, or second the name of the correspondent or third to stand a libel suit. As fast as the mails could carry it the name of the author of the article came—that of Major Edwards. My brother thought that the probabilities of getting a judgment were good, but the probabilities of realizing on it were not worth the paper on which it would be written, and he dropped the matter there. I have prepared this resolution, and I move its adoption:

Resolved, That the privileges of the floor heretofore extended to all representatives of the press be withdrawn from one Marshall McClure.

Mr. MCHUGH. I move that the resolution be laid on the table. This paper is dated July 2d and the criticism came before the Convention was organized.

Mr. WALLACE seconded Mr. JOHNSON'S resolution, and Mr. MOER seconded Mr. MCHUGH'S.

The motion to lay on the table was carried.

Mr. TURNER. I move that we do now adopt the Constitution of the United States.

Seconded.

Mr. PURCELL. Before we do that we want a proper organization. I think it is proper first to proceed to the election of officers.

Decided by the Chair that the point of order raised by Mr. PURCELL was well taken.

THE RULES OF THE HOUSE.

Mr. CARLAND. I am directed by the Committee on Rules to submit the report of that committee.

The rules were read.

Mr. WALLACE. It seems to me that we should adopt that part of the rules which refers to committees, so that the President may appoint his committees. It will save time if nothing else for us to do that. I move that the report be adopted so far as it refers to the committees.

Motion seconded by Mr. POLLOCK.

Mr. SCOTT. It seems to me that the amendment should not prevail. The report is lenghty and we shall need to give it a good deal of attention. I see no reason for adopting the most important part of the report—a part which will require more consideration of the individual members of the convention than any other part.

Mr. WILLIAMS. It seems to me that it would be proper to lay the report over till Monday and act on it as a whole.

Mr. PURCELL. I think that we might adopt that part of the report which refers to the officers of this body. A certain part of the rules refers to officers that we shall have. It must be apparent to all present that we must have these officers and we can act in regard to this matter now. If it would be in order I would move that that portion of the rules which refers to officers be adopted.

Seconded.

Mr. PARSONS of Morton. Mr. PRESIDENT: I hope that both the amendments will prevail. A good deal more than these amendments include might be adopted without doing any harm. Perhaps three-fourths of the matter in these proposed rules is unobjectionable, and if the Secretary will read the report over rule by rule, and if any one objects to any rule it can be marked and held over for discussion, and what is not objected to can be adopted. If there are rules here that there is no objection to, why not expedite matters by settling them now?

Mr. CAMP called for a division of the question.

Mr. WALLACE. There is a certain element here who are willing to go before the people as obstructionists. If they can see any good reason why we should delay our business in order that a

certain faction may inaugurate what, as regards the interests of that faction, I regard as very insignificant, I cannot. Can the Convention do this with propriety and dignity? We have been confronted with an attempt by some to delay matters a half day. By a motion made yesterday we have lost this morning's session. By a motion now before the house we are in danger of loosing still more time, and if this course of procedure goes on we shall see snow flying before we get out of business. I think it is time to call a halt in this business.

Mr. MILLER. I am just as anxious to get through with this work as anyone else can be. But I can't carry in my mind that lenghty report and know if I want to vote for it. I shall undoubtedly be glad to vote for a large portion of it. But I cannot carry it in my mind. We will have ten times the delay during this session if we don't print that report before it is acted on. It is a saving of time to have it printed before we act on it. I dislike to see it passed in fragments. We want to know what the rules and the committees are, and we can do that more expeditiously and save time if the amendments are lost.

Mr. SPALDING. In regard to the adoption of any part of the report it seems to me that the foundation of our work is the committees. The work of the Constitutional Conventions in the past has been done by the committees. In some there have been twenty or thirty or forty committees and we must scan these constitutions and determine what committees are wanted. It is true that the committee that has handed in this report has done so, but it is our duty to do it likewise. We may decide that it is not policy to have a committee on a certain subject and the only time to discuss that is when the committees are to be decided upon. I should be in favor of taking this up committee by committee and thus lay the foundation for the work that is before us. These committees and their character will determine our work, and it is most important that the foundation should be well laid. There should not be two committees on the same subject which will conflict with each other.

Mr. PARSONS of Morton. I heartily agree with the gentleman from Cass, and the only difference between us is the question as to the time when we shall discuss these committees. I don't know that it would take any longer to discuss this this afternoon than on Monday or Tuesday. The Secretary can read out each committee, one at a time, and if you have any objection to the

committee, vote it down. Let us have just as full a consideration of this matter now as we can have at any other time. I don't think there is a gentleman here but can understand one committee at a time, and I can't see how anyone can be misled. The President of the Convention then can be working on the committees and we can get to work much sooner.

Mr. CLAPP. I would suggest that the gentleman who has just spoken has the advantage of the majority of us, but if as he has just suggested we take the committees one by one, we might allow one committee to pass and forget that it had been provided for. Unless we have them before us we can't remember what has gone before.

Mr. STEVENS. As one of the members of the Committee on Rules it would be gratifying to me at least, if this Convention would adopt the original resolution. First, so that each member might have an opportunity to thoroughly study each rule and all the committes provided for. The committee, while it has provided for certain officers of this Convention, has not provided for any clerkships of committees. The Convention after having studied the rules may deem it necessary to do so, and it might be put into the report and adopted at the same time with the balance, and it would be a part of the question to be considered.

The original resolution was adopted with the amendment that that part of the report be adopted which refers to officers of the Convention.

Adjourned until 2 o'clock p. m., July 8th.

FIFTH DAY.

BISMARCK, *Monday, July 8, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. WILLIAMS. I move that we proceed to the perfection of the permanent organization by the election of officers.

Seconded by Mr. STEVENS, and carried.

The officers were then elected as follows:

Chief Clerk—J. G. HAMILTON.

Sargeant-at-Arms—FRED FALLEY.

Enrolling and Engrossing Clerk—C. C. BOWSFIELD.

Messenger—E. W. KNIGHT.

Door Keeper—GEORGE WENTZ.

Watchman—J. S. WEISER.

Stenographer—R. M. TUTTLE.

Chaplain—GEORGE KLINE.

Pages—ARTHUR LINN, HARRY G. WARD, CHARLES W. CONROY and CHARLES LAUDER.

Mr. SELBY. I wish to introduce the following resolution.

WHEREAS, The organization of the Constitutional Convention duly assembled for the purpose of framing a Constitution for the proposed State of North Dakota is now perfected, therefore

Resolved, That we, the delegates of said Convention, for and on behalf of the people of said proposed State of North Dakota do hereby declare that we hereby adopt the Constitution of the United States.

Seconded and adopted.

JOINT COMMISSION.

Mr. SPALDING. In view of the fact that South Dakota has provided for a Joint Commission of seven on their part to meet with a like committee from North Dakota, which committee I understand is now on the way here, I move that when the committee is appointed as provided for in the Enabling Act to meet with

the South Dakota committee, it consist of seven members, and that they be instructed to employ such clerical assistance as is necessary.

Seconded and carried.

Mr. CARLAND. Do I understand that the resolution just passed fixed the number of the committee?

Mr. PRESIDENT. Yes, sir.

Mr. CARLAND. Then I offer the following resolution:

Resolved, That the President of this Convention appoint seven members to act as members of the Joint Commission to be appointed by the Constitutional Conventions of North and South Dakota for the purpose of making an equitable division of the property belonging to the Territory of Dakota, and to agree on the debts and liabilities of the said territory which shall be assumed and paid by the said States of North and South Dakota.

Seconded by Mr. BUDGE and carried.

Mr. MILLER called to the Chair.

Mr. WILLIAMS. I move that we proceed to consider the report of the Committee on Rules.

Seconded and carried.

The Convention then resolved itself into a Committee of the Whole for the purpose of considering the motion.

Mr. SCOTT called to the Chair.

Mr. FANCHER. I would like that some gentleman of the committee explain to the Convention why it should be required that not less than ten must rise before the previous question can be put.

Mr. CARLAND. I don't know that there is any particular reason why the number ten should be inserted in the rule. It was thought that that would be a sufficient number of delegates without whom the previous question should not be called, so that the business of the Convention should not be interrupted continually by persons calling the previous question. The committee thought that fixing the number at ten would about answer the purpose of this body.

The rules were adopted.

Mr. MILLER. May I ask the Chair about how long the President will take to make up the committees?

Mr. FANCHER. The President desires to take as much time as may be necessary to make good committees, and while I hope to be able to announce the committees within a couple of days, it may take a little longer.

Mr. MILLER. I move that when this Convention adjourn this afternoon it adjourns till next Thursday afternoon. I do this for the reason that I think there is nothing to be accomplished during the interval when the committees are being made up. Of course we might introduce proposed clauses into the Constitution, but they would have to be laid on the table because there would be no committees to refer them to. I move that when this Convention adjourns it adjourns to next Thursday at 2 p. m.

Seconded and carried.

On invitation HENRY B. BLACKWELL of Boston, then addressed the Convention as follows:

GENTLEMEN OF THE CONVENTION: I thank you very much for your invitation to address you on a matter of the greatest importance to the people of this new State. I should not venture to do so if I did not come credited as the Secretary of the Woman Suffrage Association of the United States, and besides that I bring with me letters from distinguished statesmen whom you all respect, written for the purpose of presenting the matter to this Convention. I have with me letters introducing me to your consideration from Senator Davis of Minnesota, and United States Senator Hoar of Massachussetts. I bring with me letters which I will lay before you in printed form when you re-assemble, from the Governor of Wyoming, and the United States Delegate of Wyoming. You are all aware that Wyoming has had full Woman Suffrage for twenty years, and these gentlemen, Governor Warren who has been reappointed Governor, and has grown up with the Territory, and is not a man imported from the east for political purposes, but a man who is identified with the Territory—and Judge Cary, who was the Representative in Congress for a number of years—certify that Woman Suffrage, full Woman Suffrage, existing for twenty years in the Territory of Wyoming, has commended itself to the favor of both parties. When the Territory of Wyoming presents its Constitution to Congress, the Convention for framing that Constitution being called for next September, it will present a Woman Suffrage Constitution and ask to be admitted as a Woman Suffrage State. I have with me letters that I will lay before you, letters from the Governor of Kansas, from the Attorney General of Kansas, and from the three Supreme Court Judges of the State, certifying to the good results of three years of Woman Suffrage in Kansas—to its approval by men of both parties, and to their belief that public sentiment has ripened for the extension of full suffrage to women as a result of three years experience of partial suffrage. I will place before you a letter expressing the earnest wish of Governor Ames of Massachuessetts, based on the voting of women in the municipal elections, that the suffrage will be extended there. I have also a letter from United States Senator Hoar expressing his earnest hope that if public opinion is ripe these four Territories will insert a provision in their Constitutions, each and all guaranteing impartial suffrage without regard to sex, or that if public sentiment is not thus ripe, that at least they will provide that the Legislature may hereafter at its discretion extend the suffrage to all citizens without regard to sex, so that the

female citizens of North Dakota may not be deprived in your new Constitution of the right which they have possessed hitherto to appeal to the Legislature for their right to equal political representation with men. I have also a letter from the son of the great anti-slavery leader of the United States—the man who originated and led to victory that great movement which emancipated millions of slaves—William Lloyd Garrison—expressing the earnest hope that these new territories would give woman the right to vote.

I am not here to advocate a movement which is either new or strange. We have been urging this movement for fifty years. As a result of this agitation, fifteen states to-day have extended school suffrage to women on terms more or less restricted. Your own territory has given women a school suffrage. As a result of our agitation we have obtained full municipal suffrage in Kansas, and municipal suffrage in Kansas means in all towns containing over two hundred inhabitants. So you see there has already been a movement in the shape of actual legislation. Not only so, but you know that in the Territory of Utah and Washington, women have had full suffrage. In Utah a large majority of the women were Mormons, and believed in polygamy as a religious rite. For the purpose of crippling polygamy a bill was introduced in Congress repealing or prohibiting woman suffrage in that territory. It was an exceptional case of woman suffrage extinguished by Congress in that territory. But it was prohibited not because the women had failed to give satisfaction as voters to the community in which they lived, but because they voted in the direction that Congress regarded as being a pernicious religious doctrine. Governor Ames in his letter refers to the recent municipal election in Boston where twenty thousand women went up, paid their poll tax to qualify themselves, and then voted in the worst storm of last winter. A large proportion of the men stayed away from the polls, but 95 per cent. of the 20,000 women that registered went to the polls and voted, and received the utmost respect in every polling place in the city. Then when we cross the border we find women, unmarried women and widows, in the Canadian provinces—unmarried women and widows alone who have been enfranchised in school matters and in all municipal matters, in the Territories of New Brunswick, Ontario and Manitoba, and one other of the British territories. In England women have had municipal suffrage since 1869, and we have the testimony of the leaders of both political parties that it has been a great public benefit. Mr. Gladstone says women have exercised the franchise with great advantage. Mr. Disraeli was the hearty supporter of woman suffrage, and Lord Salisbury testifies that he hopes the day will soon come when the full parliamentary suffrage will extend to the women of Great Britain. It is not a mere theory that I am here to advocate. Here are four great territories extending from the Missouri river to the Pacific ocean, about to come in as states. Then there are two other territories preparing. It is going to be a great revolution in the political and social affairs of the country, and it seems to the friends of universal suffrage that it is a crisis in which it is desirable that you should give your most careful consideration to this question—whether it is possible for you to make a Constitution in accordance with the principles of the Declaration of Independence without giving women a vote. We argue that it is right under the Declaration of Independence for women to be voters. "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their

Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights governments are instituted by men, deriving their just powers from the consent of the governed." Is there anyone here who will doubt that a woman has the same right to life, liberty and the pursuit of happiness as a man? But, said our fathers, to secure those rights, the rights of women equally with men, governments are instituted, which derive their just rights from the governed. One-half of the governed citizens are women, and it seems to me that the principles of the Declaration of Independence are not fully complied with so long as women are excluded from political representation.

But it may be said that women have not been represented under this declaration. I grant it. There have been other exceptions too. Look with me at the history of suffrage in this country. In the beginning of political society, which is a state of barbarism, we find no such thing as voting. The strongest man or the wisest woman, as has often happened, is recognized as the sole source of political power, and the whole community obey the laws and regulations made by the sovereign power, the one man power. But it was found very early in history that human nature is not to be trusted with unlimited power, and so the despot, instead of becoming the protector, tends to become the oppressor of the people. Very soon in the history of civilization, in order to guard against that, a class of educated men come forward and are given some political power rs a counterpoise to the one man power, or the second stage has been to supplant the absolute monarch of one by an aristocracy of birth. Any form of government is better than none, for order is heaven's first law, and despotism is better than barbarism. Under the aristocracy of birth the movement of society goes on, and gradually the political circle widens, and the aristocracy of birth gives place to the aristocracy of wealth. That is to say, a political society where a great many rich men do all the work and the rest of the men have nothing to do, but obey. The foremost nations of the world had only got along as far as the aristocracy of wealth. England and Holland were aristocracies of wealth—rich men's governments, and you know that we are the creatures of habit and because we have not seen a thing we think it is not practicable. But when our fathers took up arms it was because they found they were oppressed by the British parliament. In the beginning the great monarchies claimed to own this country, and they divided it out among their own retainers, and they intended to build up here an aristocracy of wealth and birth just as they had at home. But fortunately for the world, this country was so destined that its rich nobility could not make it profitable to hold it, and it rapidly passed into the hands of men who cultivated it, and for the first time in American history the soil came into the possession of the farmers, and when these farmers, accustomed to self government independent, knowing their own land and homes, when they found the British Government hostile to the interests of this country, they set up a standard of revolution and demanded independence, and put forth this Declaration of Independence as the principle upon which their government should be founded. I have already stated that principle. Those who obey the laws should have a voice in their enactment. Those who pay taxes should have a voice in stating what the amount of the taxes shall be. But when the war of the revolution ended, and they undertook to organize their State Governments, they did not

carry out the principles of the Declaration of Independence, and they organized their State Governments on the basis of excluding from political power the great body of men through whom their independence had been obtained. A majority of the men who had fought the battles found themselves deprived of political power, but scarcely had the guns of the revolution ceased firing when the old Democratic party demanded suffrage for every white man under the Declaration of Independence. They said that a man may be poor, but honest, and intelligent and virtuous. He has a right, and it is for his interest to have the ballot. The Federal party which had carried the war to a conclusion, said "No; suffrage is for gentlemen, scholars, college graduates. The hard-handed sons of toil have no right to it," and so the battle raged. Old Benjamin Franklin took a hearty interest in property qualification in voting. The fine sense of justice in the minds of the people rallied to the Democratic party, and when the war of slavery broke out, only two states in the Union retained this property qualification—the State of South Carolina and the State of Rhode Island, and within the past year the State of Rhode Island has wiped it out.

Our fathers said that this was a white man's government. Why? Because in every state but one negroes were held as slaves, and it is impossible that a slave should be a voter, for he is property himself; but scarcely had the ballot been put in the hands of every white man, when good men began to work for the emancipation of slaves, and the South, taking alarm at what they conceived to be a blow at the rights of property, set up the standard of rebellion. The Democratic party obtained the control of the government, because it had the sagacity to put the ballot in the hands of the workingmen, but they sided with the south. Then the great Republican party came forward within the recollection of many of the older men of this Convention. They undertook to extend freedom to the negroes. The Republican party fought out the battle of the Union, emancipated the slaves and wrought into the Constitution a provision that hereafter no man shall be deprived of his ballot on account of race or color or previous condition of servitude. So they put the ballot in the hands of 800,000 emancipated slaves. They did it as a necessity, for they were the only class of citizens in the south who were loyal to the flag. First we were a monarchy governed by George; then an aristocracy of wealth under the old Federal party; then an aristocracy of race under the old Democratic party, and in your own recollection we have taken another step, and become an aristocracy of sex, where every man is a man, and every woman a subject. You North Dakota men know by your own hard experience that we have not yet attained to a perfect political condition—that there are wrongs to be remedied and rights to be secured, and I believe you will agree with me that no government can be considered perfectly Republican or Democratic so long as one-half of its citizens are governed without their consent in violation of the principles of the Declaration of Independence. I deem suffrage for women as their right, and I appeal to these new Territories, just going into the sisterhood of States, to have the courage of their convictions and set the example and lead the way in the political progress of this country. I want to say to you, in the words of Johnson, "that in all time and through all human story, the path of justice is the way to glory." If you put into your Cotstitution suffrage for all citizens of sound mind and mature age, and not convicted

of crime, without regard to sex, a hundred thousand intelligent citizens will come here who will select your State in place of South Dakota—in place of every other State, because they know you respect women. When I say this I say what I think I know, for all over the eastern States we have a large number of male and female citizens who are looking to your action with the most earnest solicitude, and in whose behalf I am addressing you. They are waiting to see which of these new States will have the courage and the wisdom to plant itself on the principle of true democracy, and put the ballot into the hands of all of its educated and intelligent men and women.

But, gentlemen, it is the highest argument in the world, that it is right. Political justice always pays. I remind you that in the great future, as has been well said, you have to watch the movements of these great corporations, not with hostility, but with caution, and I want to remind you that the power of money is a great and terrible danger to American politics. I want to remind you that it is a fact in history that the power of money in elections has been in proportion to the limitation of the suffrage. Two generations ago in England only rich men could vote, and the maxim of Sir Richard Walpole was that every man has his price. Thank God that in this country, with the widely extended suffrage which we owe to the two great parties of the country, it is no longer true that a man can only occupy his seat in our Legislative halls by buying the electors. I don't believe that there is a man in this hall who has used one dollar corruptly, but there will be struggles here as elsewhere where money can be corruptly used, and if you want to guard against that you should extend the franchise to women, for they are the class who are the most secluded from the corrupt influences of the politicians. They are in your homes, not subject to the influences of professional and corrupt agencies, and they will strengthen your power to get the highest expression of the sentiment of the community. You never can get that fully and thoroughly unless you have the votes of women as well as men. Woman Suffrage does not mean to antagonize the sexes—God forbid. It does not mean to make women masculine. Woman Suffrage means the co-operation of the good man and woman for the highest interests of both and of all. It means full representation of the home—the virtuous American home—in politics and in the councils of the nation, and we never can have that and a full and adequate representation of the people's will until you have the united suffrage of men and women. But some want to be sure that it is safe—they want to know if the bad women won't vote? Women and men are made by God unlike in character and in social position for wise and good purposes, and they cannot act and do not act alike in any relation. The woman will represent the woman's view—the view that a woman naturally takes as a wife, of the matter; the man will represent the man's view and the two will together have the full view. Women have a better instinctive view of character. They are better judges of character on the average than men, and the Bible says that when the righteous rule the people rejoice. I have the testimony of the Supreme Court Judges of Kansas that the women have aided the men in selecting the best candidates for office in that State.

I want to prove to you that Woman's Suffrage is not only right but safe, and it is a great political reform. It is a fact known to all political students that every class that votes makes itself felt in the government. For instance, a cer-

tain district in New York City sent to Congress the honorable John Morrissey. He was a gambler and a prize fighter. He was sent to Congress for that reason. He was the representative of the male roughs who were like himself and who lived in that district. He was there to see to it that Congress made and enforced no law against gambling. Even gamblers make themselves felt in the government. When I was in Cincinnati in business, I used to travel in the Wabash valley—then the frontier of civilization, and I found that horse stealing was a fashionable vice. The horse thieves had united, combined and contrived to elect the judge and sheriff and pack the jury, and when the honest farmer caught a rascal in the act of stealing his horse, nine times out of ten the jailor forgot to look the door of the jail. Sometimes the thief would be brought before the court, and the judge would charge upon some technicality in favor of the prisoner, and the jury would bring in a verdict of not guilty. There was no justice for the farmers, and they were forced to organize bands of regulators and hang horse thieves in order to put down the fashionable vice of horse stealing. I am not here to advocate the giving of suffrage to gamblers and horse thieves. They have it already, and they vote early and often if they have a chance. I am here to advocate the extension of suffrage to the women of the country. What are the peculiarities in which women differ from men? You have a masculine government, and it possesses all the virtues and qualities that are masculine. You have none of the distinctively feminine qualities in that government. In the first place the women are more peaceable than men; of course there are quarrelsome women and peaceable men. Do you wonder that there are wars between nations—that there is a bitterness of strife between political parties? You have brought into your government only the masculine element. Woman Suffrage means peace, for the women are the peace-loving members of the community. They are more temperate than men. I am not here to discuss high-license or prohibition—I am not here to advocate either. I don't care what your views are on this subject. Every good man is in favor of temperance—every good man desires such a policy as is calculated to diminish intemperance. When you remember that only one woman in fifty drinks, and every other man drinks more or less, you will see that you cannot have good, sensible, honest laws on this matter, unless you bring in the temperate class which comprise the women of the land. I found in Massachusetts a strict prohibitory law. I had not been in Boston a month when I found liquor sold in every street in the city. The Chief of Police was making a fortune—the police were notoriously bribed until the scandal became repugnant, and the people established a license law. That law provided for a great many restrictions; it said that no saloon must keep open on a Sunday; the screens shall not be up; the liquor shall not be sold to minors; and yet every one of these provisions is violated to-day, and the license law is no more fully or faithfully enforced than the old prohibition law was. So in Massachusetts prohibition did not prohibit, and restriction does not restrict. It is to the interest of the authorities to wink at the violation of the law. I am like General Grant in this—I believe that the best way to secure the repeal of a bad law is to enforce it. Put the women behind the temperance laws, no matter what they are. If the law does not work well repeal it or change it until you find what is the best way to handle it. You will never do away with the

terrible vice of intemperance that degrades our homes until the woman has a vote as well as the man.

The highest argument in their favor is that women are law-abiding citizens. I quote the figures from the police records of the United States, north and south, east and west, when I say that you will find on examination that more than nine out of ten of the convictions that are had for the violation of law are the convictions of men, and less than one out of ten are women. These are undisputed facts. If you have Woman Suffrage you will bring into the government that class of voters who are instinctively on the side of good government, and when I have said that I have said the greatest thing that can be said for Woman Suffrage. Women are more peaceable, more temperate, more just, more economical and more law-abiding than men. Talk about the economy of men—see what privation and suffering the women have endured, coming to Dakota with small means, living on these bleak prairies—how they have kept their children and their homes together, and helped to build up this State to be great and prosperous hereafter. Is it possible that the men of Dakota who have had women by their sides during the frontier period of their lives will go back on the women to-day—put them below the negro, by saying that every man shall be the political superior of the noblest and most intelligent women? I won't believe it until I see it. I come here believing fully that you will put in this Constitution this provision—that the people of North Dakota—that citizens of sound mind and mature age, not convicted of crime, without regard to sex, shall be the voters of this commonwealth, and when you have done it you will have differentiated yourselves from South Dakota—perhaps from the other territories that may not do it; and if you do it will bring into your borders the very class of people which you desire and need, to make this wilderness blossom as the rose. It is a great opportunity—it comes only once. You will never go back into a territorial condition; you will become a state forever, and in building up this commonwealth, for the sake of all humanity build it on the principles of the Declaration of Independence, and give the ballot to women. I trust that North Dakota may come into the Union leading Wyoming, so that Wyoming may not be the first Woman Suffrage State, as it is bound to be if you don't anticipate her. Wyoming has lived for twenty years on the glory and prominence she has gained in this matter. She would have died out before this if it had not been for this feature of her government.

I have talked to you too long. I desire that if there are any difficulties or objections which are in your minds, that you will ask me any question that you may wish, and give me a chance to explain. In a great subject like this there is always a great deal that I forget to say, and that I have not time to say. I desire to express a hope that you will not submit this as a separate measure to be voted upon. You will probably submit a prohibition amendment. Now these are two distinct matters, and I don't want them to be submitted together. If you put the word "male" into the Constitution and then submit it to the voters, it is very likely to be voted down. It will not receive that consideration which its importance demands. If you do not want to put full female suffrage in the Constitution, put in as much as Kansas has—put in municipal suffrage for women, and at least put in a provision empowering the Legislature hereafter at its discretion to extend the suffrage without regard to sex. Three years

ago the Legislature of Dakota passed a woman suffrage law, carrying it through both houses, but it was vetoed by Governor Pierce. He was appointed to exercise his judgment and conscience, and doubtless he did what he thought was right. Give us Woman Suffrage in the body of the Constitution or a clause empowering the Legislature to take that step when the judgement of the public will sustain it. I thank you for the honor of addressing this historic assembly on this historic occasion, and I trust you will give Woman Suffrage candid and earnest and enthusiastic support. When we have organized on these great plains the leading communities of America, we can all exclaim with Longfellow in his apostrophe to the Union:

Thou, too, sail on, O Ship of State!
Sail on O UNION, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate!
We know what Master laid thy keel,
What Workmen wrought thy ribs of steel,
Who made each mast, and sail, and rope,
What anvils rang, what hammers beat,
In what a forge and what a heat
Were shaped the anchors of thy hope!
Fear not each sudden sound and shock,
'Tis of the wave and not the rock;
'Tis but the flapping of the sail,
And not a rent made by the gale!
In spite of rock and tempest's roar,
In spite of false lights on the shore,
Sail on, nor fear to breast the sea!
Our hearts, our hopes, are all with thee,
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee,—are all with thee!

Mr. STEVENS. I move to adjourn.

The motion prevailed and the Convention adjourned.

EIGHTH DAY.

BISMARCK, *Thursday, July 11, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. PRESIDENT announced the committees which he had appointed, as follows:

Printing—Roger Allin, chairman, Walsh; C. P. Parsons, Rolette; C. V. Brown, Wells; J. B. Gayton, Emmons; W. J. Clapp, Cass.

Reporting and Publication—J. F. Selby, chairman, Traill; Andrew Blewett, Stutsman; J. Wellwood, Barnes; O. G. Meacham, Foster, A. S. Parsons, Morton.

Accounts and Expenses—O. G. Meacham, chairman, Foster; E. W. Paulson, Traill; A. W. Hoyt, Morton; B. R. Glick, Cavalier; M. F. Hegge, Traill; Edward Lohnes, Ramsey; Elmer Elliott, Barnes.

Preamble and Bill of Rights—R. N. Stevens, chairman, Ransom; Elmer Elliott, Barnes; A. D. Flemington, Dickey; S. H. Moer, LaMoure; Joseph Powles, Cavalier: M. V. Linwell, Nelson; J. E. Carland, Burleigh; E. W. Chaffee, Cass; Ezra Turner, Bottineau.

Legislative Department—E. A. Williams, chairman, Burleigh; Roger Allin, Walsh; W. E. Purcell, Richland; Addison Leach, Cass; E. S. Rolfe, Benson; R. B. Richardson, Pembina; R. N. Stevens, Ransom; Andrew Slotten, Richland; J. W. Scott, Barnes; Knud Nomland, Traill; A. F. Appleton, Pembina; William Budge, Grand Forks; W. H. Rowe, Dickey.

Executive—W. H. Rowe, chairman, Dickey; John Shuman, Sargent; J. H. Mathews, Grand Forks; H. F. Miller, Cass; Alexander Griggs, Grand Forks; David Bartlett, Griggs; J. A. Douglass, Walsh; J. L. Colton, Ward; William Ray, Stark.

Judicial Department—John E. Carland, chairman, Burleigh; W. S. Lauder, Richland; David Bartlett, Griggs; J. F. Selby, Traill; R. M. Pollock, Cass; J. F. O'Brien, Ramsey; B. F. Spalding, Cass; M. K. Marrinan, Walsh; Richard Bennett, Grand Forks; S. H. Moer, LaMoure; V. B. Noble, Bottineau; R. N. Stevens, Ransom; A. D. Robertson, Walsh; M. N. Johnson, Nelson; W. H. Rowe, Dickey.

Elective Franchise—A. S. Parsons, chairman, Morton; Charles Carothers, Grand Forks; Ezra Turner, Bottineau; R. M. Pollock, Cass; H. M. Clark, Eddy; James Bell, Walsh; J. Wellwood, Barnes; G. H. Fay, McIntosh; M. F. Hegge, Traill; O. G. Meacham, Foster; W. B. Best, Pembina; William Ray, Stark; V. B. Noble, Bottineau.

Education—J. D. McKenzie, chairman, Sargent; H. M. Clark, Eddy; W. J. Clapp, Cass; Elmer Elliott, Barnes; Charles Carothers, Grand Forks; J. McBride, Cavalier; J. A. Douglas, Walsh.

Public Institutions and Buildings—H. F. Miller, chairman, Cass; A. O. Whipple, Ramsey; Richard Bennett, Grand Forks; Joseph Powers, Sargent; M. K. Marrinan, Walsh; J. W. Scott, Barnes; E. A. Williams, Burleigh; E. W. Camp, Stutsman; A. W. Hoyt. Morton.

Public Debt and Public Works—E. D. Wallace, chairman, Steele; T. W. Bean, Nelson; Knud Nomland, Traill; J. Lowell, Cass; H. L. Holmes, Pembina; Alexander Griggs, Grand Forks; B. R. Glick, Cavalier; J. Powers, Sargent; G. H. Fay, McIntosh.

Militia—P. McHugh, chairman, Cavalier; G. H. Fay, McIntosh; John Almen, Walsh; Andrew Blewett, Stutsman; J. H. Mathews, Grand Forks.

County and Township Organizations—A. F. Appleton, chairman; Pembina; T. W. Bean, Nelson: Enos Gray, Cass; E. S. Rolfe, Benson; J. McBride, Cavalier; A. Sandager, Ransom; John Shuman, Sargent; E. W. Chaffee, Cass; M. V. Linwell, Grand Forks.

Apportionment and Representation—Andrew Slotten, chairman, Richland; H. L. Holmes, Pembina; A. F. Appleton, Pembina; P. McHugh, Cav-

alier; J. L. Colton, Ward; Harvey Harris, Burleigh; A. S. Parsons, Morton; C. V. Brown, Wells; L. D. Bartlett, Dickey; A. Sandager, Ransom; John Shuman, Sargent; H. F. Miller, Cass; H. M. Peterson, Cass; W. J. Clapp, Cass; J. Wellwood, Barnes; Andrew Blewett, Stutsman; E. S. Rolfe, Benson; E. D. Wallace, Steele; Knud Nomland, Traill; William Budge, Grand Forks; J. H. Mathews, Grand Forks; M. N. Johnson, Nelson; Edward Lohnes, Ramsey; James Bell, Walsh; John Almen, Walsh.

Revenue and Taxation—J. L. Colton, chairman. Ward; W. S. Lauder, Richland; M. F. Hegge, Traill; E. D. Wallace, Steele; Enos Gray, Cass; Harvey Harris, Burleigh; W. B. Best, Pembina; A. D. Robertson, Walsh; J. McBride, Cavalier; E. M. Paulson, Traill; S. H. Moer, LaMoure; H. M. Peterson, Cass; Joseph Powles, Cavalier; David Bartlett, Griggs; A. O. Whipple, Ramsey.

Municipal Corporations—Richard Bennett, chairman, Grand Forks; J. Lowell, Cass; J. F. O'Brien, Ramsey; C. P. Parsons, Rolette; A. D. Flemington, Dickey; John Powers, Sargent; Addison Leach, Cass; J. F. Selby, Traill; P. McHugh, Cavalier.

Corporations Other than Municipal—M. N. Johnson, chairman, Nelson; W. E. Purcell, Richland; E. D. Wallace, Steele; Jacob Lowell, Cass; L. D. Bartlett, Dickey; S. H. Moer, LaMoure; James Bell, Walsh; J. L. Colton, Ward; A. S. Parsons, Morton.

Miscellaneous Subjects—W. E. Purcell, chairman, Richland; J. E. Carland, Burleigh; A. W. Hoyt, Morton; C. V. Brown, Wells; E. W. Chaffee, Cass; A. P. Haugen, Grand Forks; M. K. Marrinan, Walsh.

Schedule—W. S. Lauder, chairman, Richland; H. F. Miller, Cass; J. B. Gayton, Emmons; John Almen, Walsh; V. B. Noble, Bottineau; E. A. Williams, Burleigh; J. D. McKenzie, Sargent.

School and Public Lands—H. M. Clark, chairman, Eddy; B. F. Spalding, Cass; T. W. Bean, Nelson; William Budge, Grand Forks; W. B. Best, Pembina; William Ray, Stark; J. A. Douglas, Walsh; R. B. Richardson, Pembina; Addison Leach, Cass; A. D. Robertson, Walsh; J. D. McKenzie, Sargent; Roger Allin, Walsh; L. D. Bartlett, Dickey.

Temperance—A. P. Haugen, chairman, Grand Forks; L. D. Bartlett, Dickey; R. M. Pollock, Cass; A. Blewett, Stutsman; Ezra Turner, Bottineau.

Revision and Adjustment—David Bartlett, chairman, Griggs; O. G. Meacham, Foster; J. E. Carland, Burleigh; E. W. Camp, Stutsman; V. B. Noble, Bottineau.

Impeachment and Removal from Office—Ezra Turner, chairman, Bottineau; M. V. Linwell, Nelson; R. B. Richardson, Pembina; E. W. Paulson, Traill; A. D. Flemington, Dickey; C. V. Brown, Wells; J. F. O'Brien, Ramsey.

Mr. WILLIAMS. I cannot see as that there is anything likely to come up under our order of business this afternoon, and it seems to me that it would be the proper thing for us to recognize that Dakota has a Governor. Thus far we have not recognized our territorial executive at all, and while he comes from South Dakota I believe the people of North Dakota have the highest respect for

him, and therefore I move that Governor Mellette be requested to address us at this time.

Seconded by Mr. BARTLETT of Dickey, and carried.

A committee consisting of Messrs. ROBERTSON, STEVENS and MOER was appointed to notify Governor MELLETTE of the resolution.

THE GOVERNOR'S REMARKS.

On Governor MELLETTE'S arrival, President FANCHER said: A pleasant duty devolves upon me. I have the pleasure of presenting to you the gentleman who enjoys undoubtedly the distinction of being the last Governor of united Dakota. He needs no eulogy from me. I have simply to mention his name—the Honorable A. C. MELLETTE of Watertown.

Governor MELLETTE said:

MR. PRESIDENT AND GENTLEMEN OF THE CONVENTION: I assure you that I esteem it an honor to be invited to appear before you upon this occasion. I regret exceedingly that I have not some communication to make to you that might possibly aid you in your labors. To be called upon at a moment's notice to appear before a body of gentlemen of this character, is to me embarrassing. The business of a legislator is under any circumstances, the most honorable duty to which a citizen can be called, especially in a republican form of government where the laws are made absolutely by the legislators. But the duty of creating the fundamental law of the state—the law which is not easily set aside—which is to be the basis of all legislation in the future, until it is changed by the people, is a high honor indeed, and that is the work which you, gentlemen of this Convention, have to perform. Being called forth from the body of the various constituencies which you represent, you are engaged in the work of establishing a municipal government. It is your prerogative to lay the foundations of future legislation of the state, and after it shall have been ratified by the people it will be the law of the state until again changed by a similar body, or by the people themselves. It is as you have doubtless considered before this time, an important trust. Your work is not to be set aside by each succeeding Legislature. The people alone can undo it after they have once sanctioned your work. Your work will probably be sanctioned. That fact adds to the importance of your duties. The short time that will be left for investigation of your work, and the fact that your constituents are anxious to assume the duties of citizens of the State of North Dakota, will render it almost certain that your work will be adopted as the organic law of your State. Hence the importance of making it what you will desire to have it after you go home, and what your people desire, in order that they may remember you with pleasure in the future, and that you may be satisfied with the work that you now have to do. You have in this body, doubtless, representatives of all political bodies and political ideas. While I will admit that at times I may be blinded to the necessity of political assistance outside of my own ideas and beliefs, yet there is one body, and that the one which you comprise, in which it is proper and absolutely necessary that all the different ideas on the subject of

Legislation should be embraced. Here you meet and present your different ideas. You will, while discussing them find them almost as varied as are the men in this Convention. You will be astonished to find when you assert a proposition, how few will endorse it clear through. During your discussions you will find out the reasons for the differences which exist among the people upon political questions. These discussions may perhaps tend to weaken your confidence in your own opinions. If you are men of breadth and listen to all the gentlemen who oppose you, after the discussions are over you will determine what is the proper thing to do upon the questions that have been discussed. I feel, gentlemen, that there are two distinct policies to be pursued by you in the formation of your Constitution. The one is to embody in it as little legislation as possible; to embody nothing but fundamental principles, glittering generalities, declaring the law of the land on the different propositions which are to be legislated on in future. That was the original idea and theory of what a constitution should contain in our early states. But as years have gone by; as the interests of the people have become more and more complex; as our commercial relations have extended and the entire government has assumed that wonderful complexity which is a wonder to ourselves and an astonishment to the world; as it becomes more complicated and our legislation more difficult in every direction, the states have adopted the idea of embracing in their fundamental law as much legislation as they can with safety, instead of as little as they can. And still you will say that it is better to err on the side of generalities than on the side of legislation, because once embodyed therein it is very difficult to get rid of it and effect a change. But if it is right, if you know what is the proper thing to embrace in your legislation, the more there is in the constitution the better for the people. One of the greatest evils is excessive legislation—the constant change every two years of the laws, and the squabbles and debates over the different questions that constantly arise. It is wise in my judgment, after the people have decided in which direction their interests lie, to embody them in the fundamental law of the land and make it permanent. Here is one of the great evils from which we have suffered as a territory. Every Legislature had the power to undo what all the Legislatures had done before. It seemed that they enjoyed the privilege during the many years that have passed. They attempted to do as much of it as possible, and they succeeded in obtaining for us a great confusion in our laws. You will see as you come to study the question and study the history of constitutional legislation, that the modern tendency is to embrace in the Constitution as much of the necessary legislation of the State as can be done with perfect safety. That has been the tendency for many years. Many of the old states have had much difficulty in this matter, and have found it impossible to have peace and harmony in their borders until they have settled many questions in this way. The question of taxation, or corporate power, and the question of the method of exercising the franchise and all those similar very important questions are embodied in this schedule. I need not advise you, for you are intelligent gentlemen. and have lived in this country until you know its wants and necessities—and you have given your thoughts to the subject of legislation, or you would not have been selected to come to this important body.

There is one question which in my mind should receive special attention, and that is the question of securing the purity of the franchise. I know not

what may be the best thing to secure this desirable result. It is to my mind a query as to the proper method to be adopted in order to purify the ballot—whether the secret ballot or an entirely open ballot is the best. Both have been tried. There is one point on which we are all agreed, and that is that the ballot of America needs purification, and unless it is purified this great government on which it rests will sink away in the near future, and we shall cease to be a self governing nation. I do not pretend to say to you, gentlemen, what the necessary and proper requisties of safety are that should be drawn around the ballot box, but there is one fact to which we cannot shut our eyes—and that is that the world moves forward. There have been important advances made in this department of experience of Legislative wisdom, and in my judgment what this country will have to adopt will be the secret ballot. It perhaps has its evils, but the evils which are to be overcome we are certain can be removed to a large extent in that way—that is to say, the evils which arise largely from the open ballot. The man who can deliberately walk up to the ballot box and deposit a ballot which has been purchased and paid for, either as a citizen at the polls in his precinct or in the Legislative halls, should never be allowed to exercise the prerogative of an American citizen in casting another ballot. It occurs to me that that would be a wise provision to start out with, and I should propose the same penalty on the man purchased as on the man who offered to purchase. Of course it is difficult to enforce such a penalty; so it is difficult to enforce any penalty under our penal code, but that appears to me to be simple justice. If a man does not regard his ballot of more value than to sell it, take it away from him. Let those only have it who regard it as being of more consequence. It has been suggested in one of the public prints of your state, recently, that the cost of this new system of voting is more than you can afford—that it will cost several thousands of dollars extra to adopt the system of secret voting that has been adopted by some other countries and found satisfactory. In my judgment the purity of the ballot cannot be obtained at too high a price. You cannot pay too much for it. If in your judgment you can by this method place restraint about the ballot which will make it more sacred; which will preserve it in its purity, you should not stop to count the cost, for the purity of the ballot is everything to this country. During the war the question arose whether or not a million dollars a day should be expended to maintain the nation. It was necessary to make this great expenditure in order to save the whole; and so it is on the question of the ballot. If you can secure it, it will not be obtained at too high a cost. In this country, it is in the new states that the ideas are being formed which may be necessary in order to the success of our government. It is here that these ideas are being originated. I believe that the people of the Mississippi valley are to become in the future the arbitrators of this nation, and the great questions that will arise. They are neither in the east or the west, the north or the south. They are in the centre of the country, occupying and lying on the great artery from which the pulsations go out to the entire nation. It will be your duty to judge and settle the questions that may arise among the different sections of this country, and determine them with justice. You can observe that spirit in our political conventions; you can observe it in all politics of the day. You are a homogeneous people, and your judgment will naturally be supposed to be righteous Mr. President

and gentlemen of the Convention, I thank you again for the honor you have conferred on me in inviting me to address you. Any assistance that I can give you, or suggestions that I can make in your deliberations I shall gladly furnish. I must say on this occasion that while I feel and recognize the fact that I am a foreigner among you, especially at this particular time when there is considerable political activity going on in our country, I want to be considered as such so far as your political questions proper are concerned among individuals; still there are questions which I think we can all discuss together with profit—questions which affect our general welfare and future as citizens of the Northwest and Dakota. I wish, gentlemen, through you, to return my thanks to the people of North Dakota for the extreme courtesy that has been shown to me through the very difficult task which I have assumed of closing up the territorial department of our government. It has been to me a very embarrassing task, and I can only say that the people of North Dakota have more than surprised me in the generosity and charity which they have shown to me in my efforts. They perhaps did not expect very many favors from me, and I perhaps did not expect to grant them very many of a personal character, but the very fact of their kindness and magnanimity has caused me to reach as far in their direction as possible, and what I have done in this way has been an exceeding pleasure in every way. Our relations will soon cease, but the past history of our territory cannot be forgotten by those who have participated in it. Our interests will lean common in the future as two states, pointing in the same direction both in a national and local sense. There should be no clashing. I shall expect our delegations in Congress in both the upper and the lower houses, to harmonize on the general questions of the day which will arise. I thank you again, gentlemen, for your courtesy.

A BOUNDARY DISCREPANCY.

Mr. PURCELL. It has been rumored that there is some discrepancy in the location of the line dividing North and South Dakota. It is liable to give rise to a good deal of trouble to those counties bordering on the line. I understand that this matter has been called to the attention of the Convention in South Dakota. I therefore move the following:

Resolved, That the delegates appointed by this Convention to form a part of the Joint Commission to settle and adjust the indebtedness and divide the property, be also empowered to settle and adjust the boundary line between North and South Dakota, and that the line so fixed by the Commission be the dividing line between said States until changed by the Legislatures thereof.

Mr. CAMP. Mr. PRESIDENT: This is a very important matter, and before passing upon it, would it not be well for the Convention to consider whether we shall not be exceeding our powers in doing so? The Omnibus Bill provides that the southern boundary of North Dakota shall be the Seventh Standard Parallel. That parallel must be fixed by the general government. I don't know how we or the Joint Commission can fix that parallel.

Mr. PURCELL. It is true that the Omnibus Bill provides that the Seventh Standard Parallel shall be the dividing line, but that parallel is in dispute. The people adjoining the line in Richland county, Sargent and Dickey claim that it is located at a certain point, and the counties south claim that it is located a mile and a half further north. I do not state that this committee has the power to do this, but for the purpose of saving litigation and of agreeing where the line shall be, I have offered this resolution so that this Commission appointed from North Dakota may agree with the Commission from South Dakota where the line shall be declared to be temporarily. If we were to set out to determine now just where the Seventh Standard Parallel is it might take more of our time than it would take to make a Constitution. If some agreement can be arrived at it will save a good deal of litigation to these counties.

Mr. STEVENS. I am satisfied from reading the Organic and the Enabling Acts that we would be exceeding our authority to pass this resolution, but in order that we may be thoroughly satisfied on this point I believe it would be best to defer action on this resolution till to-morrow when we would be better prepared to vote one way or the other on it. I move that action on the resolution now pending be deferred till to-morrow's session.

By agreement the resolution was made a special order for to-morrow's session.

An address was then delivered by the Rev. R. C. Wiley of Indiana, as follows:

CIVIL AND RELIGIOUS RIGHTS.

The Rev. R. C. Wiley of Indiana, of the National Reform Association, was invited to address the Convention. He said:

MR. PRESIDENT AND GENTLEMEN OF THE CONVENTION: I heartily thank you for the favor you have granted me in allowing me to address you on what we deem a very important subject. I would not venture to appear before you and address you were it not for the importance of the principles and the aims of the association that I represent—an association composed of learned men, judges, lawyers and statesmen from all parts of the American Union. The association discusses the prevailing questions of political science without being partisan. It aims to maintain the christian features of our political life without the union of church and state. Allow me, then, briefly to mention the principles of a fundamental character which we believe should be engrafted in the constitution of a state as a basis for legislation. We hold first of all that there are certain principles with which we have to do in public life. It will not do for us to say about any question that comes up, that because it is a moral

one, therefore we will have nothing to do with it in politics. There are some questions that are moral on the one side and political on the other. Our association aims for example to maintain what we may call a civil Sabbath, and we hold that there should be a basis for legislation on that question, and we therefore propose that in the bill of rights there be something like this—"The right of all the people to one day in seven, free from any labor, for the purpose of rest and worship shall forever be maintained in the laws of this commonwealth." It may be said by some that the Sabbath question is a purely religious one. But I observe that last Saturday you adjourned till Monday. You did not say how your members should spend the Sabbath, but you said in substance that it would not be proper for them to meet in convention. You gave every one an opportunity to attend public worship without conflicting with their rights as members of this convention. I suppose you will continue in that line throughout your sessions. Every legislative assembly and every department of government will come face to face in this practicable manner with the Sabbath question, and I presume will settle it for itself in the same way, substantially. But in addition to this all the people have a right to one day in seven. As civil government is retained for the purpose of protecting us in our rights, here is a right which it ought to protect us in just as well as in the enjoyment of other rights. It is as much a right as our right to our property, but there are two millions of our American citizens who labor every Sabbath day. They practically have no Sabbath. The most of them would not work were it not that there is a sort of a compulsion. They know that they would have to give up their positions if they were to refuse to labor on the Sabbath. Now in behalf of our laboring classes—on behalf of these two millions of citizens, and North Dakota's quota of those two millions—we want to see something done that will protect them in their rights to a day of rest. We hold that any state can make a law that will require none to perform an irreligious act. We maintain that there should be some law that will secure them in their right to a day of rest. There should be a provision made for it in the fundamental law of the commonwealth.

It is proposed, again, that there be some such action as this taken in the legislative department. The Legislature should also regulate marriage and divorce by laws not inconsistent with Christian morality. It would be impossible for us to over-estimate the importance of the family relation in the civil government. Where the family relation is pure, there you will find a strong people. Where it is impure you will find a people that will rapidly decay. The glory of our Anglo-Saxon race has consisted largely in this—whatever its other vices might be it has guarded safely the martial relation. But we find today that we are on the down grade. Even the American Congress has been impelled to appoint a committee to investigate the divorce question, and the report has been recently submitted, and we find this statement made—that during the last twenty years divorce has increased in this country 156 per cent., while our population has increased only 60 per cent. Divorce has multiplied nearly three times as fast as our population has increased. When we look at certain typical states and cities in our Union, we find that in some states there is one divorce for every twelve marriages—in another, one for every ten, and in Chicago one for

every nine. In Denver there is one divorce for every four marriages. When we look at our statute laws we shall not be at a loss to know the reason why. In Massachusetts we will find five or six causes for divorce, and in some other States ten or twelve. Sometimes the statutes in the different states, after enumerating some three or four reasons will go on and say: "Divorce may be granted for these or any other reason that may be deemed sufficient by the court."

We hold that there should be a tightning up in regard to this matter. Here is where the very foundation of our national life is contaminated. Citizens going from such families are not the ones to make citizens to carry on the government of a free country like this. We hold that there should be some provision made so that the Legislature, when it comes to enact laws on this subject will regard the moral sentiment of the people of this great State. Then again the Legislature will have to deal with the school question, and this Convention will be required to deal with the school question. While there should be no sectarian instruction in the public schools—while the Enabling Act states that—there should be some provision like this—that the Legislature shall establish and maintain a system of public schools in which instruction shall be given to all the children between the age of six and sixteen or eighteen, in the common branches of knowledge, and in the principles of virtue and Christian morality, but no sectarian instruction shall be given, and the public funds shall never be appropriated to any sectarian purpose. In Cincinnati the Bible was put out of the schools because there was no provision made in the Constitution that the court would deem sufficient to retain the Bible in the schools. I have been informed that they have attempted to substitute something for the Bible—Shakespeare, etc., but they found the experiment an utter failure. Every day moral questions will come up in the school room—in the definition of words—in the teaching of history. Let there be some provision made that will serve as a basis for Legislation on questions like this. We desire that there shall be in the preamble a recognition of Almighty God as the source of authority; of the Lord Jesus Christ as the rightful ruler of nations, and of His will as the supreme authority on all those moral issues that arise in the political sphere. I presume that you will recognize Almighty God in the preamble. Nearly every state in the Union does that, and I think you will belong to the majority side in doing that. It is important to observe that without the idea of God there can be no government. Even Voltaire said that if there were no God it would be necessary to invent one. There can be no civil government without the idea of a divine government enlightening it. The anarchists of this and every other country are mostly atheists. You will never find a believer in a divine government who is an anarchist.

Should there be any recognition of the Lord Jesus Christ in the Constitution? The first constitution of Rhode Island recognized Him as the rightful king of nations. Through our late civil war the Congress of the United States passed resolutions in the darkest days of that war calling on the President to appoint a fast day for the confession of national sin and to seek forgiveness. Lincoln did so, recognizing the fact, too, in that proclamation, not only that God but that the Son of God, is the ruler of nations. Then in our legislative halls we have chaplains appointed who offer prayer in the name of Christ, because it is through Him that national blessings come as well as individual

blessings. And now, just one word further in favor of the points I have presented. We are certainly, historically a Christian nation. We are known as one of the great nations of the earth. Our civilization is christian—our customs are Christian. We have annual thanksgiving days appointed by the President and the state Governors. We have prayers offered in Congress and all Legislative Assemblies, chaplains in our army and navy, reform schools and penal institutions, and all these grow out of our christian ideas. Certainly we are a Christian people. Our civilization is not heathen Mohammedan or Atheistic. It is christian or it is nothing. This being the case, why should not there be an expression of the fact in the fundamental law of this commonwealth? In one sense the Constitution of North Dakota is already made. There is an unwritten Constitution of North Dakota in the minds of the people, and you are the officers, representing the people, charged with the duty of putting the Constitution into form. When it goes to the people to vote on they will say yes or no to the question as to whether or not you have correctly interpreted their ideas on this matter of government. And, inasmuch as our civilization is Christian, this part of the unwritten Constitution is all ready. Suppose it should be said that this would not be fair to those who are not in harmony with the idea of Christianity. But my friends, those who are not regarded as being altogether orthodox from the standpoint of the Christian church, certainly realize the fact that our civilization is Christian—our customs and usages are Christian, and if the fact does them no harm, the expression of the fact would not do them any harm either. Now see what our great statesmen have said in regard to this. Daniel Webster declares that our ancestors founded their government on morality and religious sentiment. They were brought here by their high veneration of the Christian religion; they journeyed in its light and labored in its home; they sought to incorporate it with the elements of their society and to diffuse its influences through all their institutions, civil, political, social and educational. It has even been declared by very high authorities that Christianity is a part of the common law of our land, and we cite especially the decision of the Supreme Court of Pennsylvania, in a certain very important case, in which the whole court agreed that Christianity, general Christianity, has always been a part of the common law of Pennsylvania

We presume that the people of this territory have the same ancestors, the same historic past as the people of other commonwealths, and we presume that its common law embraces the same Christian principles and moral ideas. We have one moral standard—that recognized by Christianity, and we maintain that there should be something that will bind us to regulate our conduct in compliance with this high moral standard. For these reasons, and a great many others that I will not take time to enumerate, the National Reform Association desires to see incorporated in every constitution, the recognition of divine authority, of divine law, because when we make constitutions we have no authority except what comes to us from God. We say that power inheres in the people. They do not create it; it is a gift bestowed on them by the sovereign ruler. While we recognize the authority of the people, let us recognize the divine source from which that authority comes, and the Divine Ruler with whom we have to do, and the supreme law that is over us. You dare not violate the Enabling Act, but there is another enabling act which comes to us

from the throne of God, Himself. I thank you for your kindness and your patience.

Mr. WILLIAMS. I move the Convention adjourn.

The motion prevailed, and the Convention adjourned.

NINTH DAY.

BISMARCK, *Friday, July 12, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

THE BOUNDARY QUESTION.

The resolution of Mr. PURCELL which was made the special order for the day was then read as follows, slightly amended:

Resolved, That the delegates appointed by this Convention to form a part of the Joint Commission to settle and adjust the indebtedness and divide the property, be also empowered to temporarily settle and fix what shall be the seventh standard parallel, until such time as the true line shall be ascertained.

Mr. LAUDER. I would ask for information whether or not a Commission has not been appointed by the South Dakota Constitutional Convention to confer with us on this matter of the boundary of the two states? I am of the opinion that a committee for that purpose has been appointed. If this is so, it seems to me that the Convention should appoint a committee to meet them, and this matter should not be referred to the Commission for the division of property.

Mr. PRESIDENT. The Chair has no information of any such committee. The Secretary says he understands that the matter has been referred to the Commission of seven.

Mr. LAUDER. I have no definite information on the subject, but I thought I saw that there was a separate and distinct committee.

Mr. ROLFE. Is it a fact that in the mind of the general government there is no dispute in regard to where this Seventh Standard Parallel runs? Is it not a fact that in the land department the United States Government knows where this line runs? If

not, must there not be considerable confusion in the department itself in regard to the adjustment of section lines that are supposed to run on this seventh standard parallel?

Mr. HARRIS. If I understand the situation it is this: Before Dakota was surveyed by the United States authorities the Sisseton reservation had been surveyed without reference to the regular surveys. The survey of that reservation placed this parallel about four and a half miles north of what the regular survey of the land department placed it. The seventh standard parallel is produced due west by the land department surveys, beginning at a point on the Minnesota line outside of the Sisseton reservation west, clear through Dakota. The only question is in regard to that point of the Sisseton reservation which runs across this line. There is no question, as I understand it in regard to any other part, except that which runs through this reservation, a distance of about twenty-four miles.

Mr. LAUDER. That is as I understand the matter, but we have no information as to when the Sisseton reservation will be opened for settlement, or when the line will be established. The people living along that line should know in which state they live and where they are to pay their taxes. That matter is now, and has been for some time in confusion. In view of the fact that we don't know when the survey will be made, it seems to me that the Convention should take some action that will settle that line.

Mr. PURCELL. I understand that the line is also in dispute between the counties of Sargent and Marshall—in fact, clear through to the Missouri river. My intention in introducing this resolution was that some committee might be appointed that could, in conjunction with a committee appointed by the South Dakota Convention, come to some temporary understanding. They might for the time being fix the line which would for the time be recognized as the line between the two states. There is a a mile and a half in dispute. The people living in Roberts county claim that we have a mile and a half of land that belongs to them, and the people in that vicinity are undecided where they live—whether in North or South Dakota. It is giving considerable trouble, and for the purpose of getting out of all this trouble and vexation I have introduced this resolution.

The substitute motion was carried.

A QUESTION OF PRINTING.

A number of resolutions and articles were introduced and

Mr. PURCELL said: It seems to me that it is unnecessary to print these resolutions till they are reported by the committee. The appropriation being limited, it seems to me that a great deal of it will be eaten up by printing. I would move that no resolution be printed till it is reported by the committee.

Mr. WILLIAMS. It seems to me that that would hardly be a wise provision. Every member would like to be posted as to what articles are pending, and how are we to know the substance of those articles unless they are printed? I think every member of the Convention should have a knowledge of the provisions that are pending in committee before they are reported.

Mr. STEVENS. If we were not to print these, but were simply to act in accordance with the resolution that is offered, it would be unnecessary to have these articles offered at all. We might better adopt a rule at once that when any member has any resolution or article to offer, he should hand it to a committee. The object of introducing them in the Convention is that the members may know the subject that is to be acted on by the committee, and then after having seen the different resolutions that have been handed in, they will be better posted as to whether or no they are what they want. Otherwise, the members not having given the various matters the attention that the committees have, they would be likely to at once adopt a committee's report, when it would not, if proper attention had been given to the subjects, be the desire of a majority of the members. If the resolutions are printed, each member will be permitted to study and decide upon which of these measures he would rather adopt when it comes to final action. I think it would be the best course as a means of education of the members to allow all resolutions that are offered here to be printed, that they may study them over at their leisure.

Mr. PURCELL. When I made this motion I was under the impression that every resolution that is offered here goes into the Journal, and when the Journal is distributed it contains a copy of the resolutions offered on that day. If that is true it seems to me to be unnecessary for us to have printed these resolution on a separate piece of paper, for this matter of printing is going to amount to a good deal of money. But if the Journal contains every resolution offered, that would be sufficient information for the members of this Convention.

Mr. PRESIDENT. The Chief Clerk says that the Journal will necessarily contain all resolutions proposed for adoption in the Constitution.

Mr. PURCELL. Then I will ask that my motion simply refer to resolutions and does not include articles of the Constitution.

Mr. STEVENS. I move that the Journal shall also in addition to the resolutions include articles proposed for the Constitution.

Mr. STEVENS' amendment was adopted.

COUNTY OFFICERS.

Mr. RICHARDSON moved that this Convention do order that all county officers now holding office in the proposed State of North Dakota remain in office and draw their salary until the end of the term for which they were elected, and that their bonds hold good for the same period.

Mr. SCOTT. I move that the matter be referred to the Committee on Schedule.

Mr. ROLFE. I move that the article be referred to the Committee on County and Township Organization. The Committee on Schedule does not appertain necessarily to counties and townships, and can have nothing to do with this subject.

Mr. SCOTT. If it is not the purpose of the Committee on Schedule to deal with such a resolution as this, then I would like to know what the Committee on Schedule is for. We have to decide whether or not we shall have a general election this fall, or whether for the purpose of changing our form of government from that of a territory to that of a state we shall allow the officers now elected to hold over. All the provisions for their holding over, if we decide to make such provisions, will, I suppose, be contained in the Schedule. We cannot put it in and have it a part of the permanent Constitution. All matters of a merely temporary nature go into the Schedule.

Mr. SPALDING. It seems to me that we should instruct the Committee on Schedule to incorporate such an article in their report.

Mr. LAUDER. The report of the Committee on Schedule may be amended if it does not contain this provision.

Referred to the Committee on Schedule.

Mr. CARLAND. I move to adjourn.

The motion prevailed and the Convention adjourned.

TENTH DAY.

BISMARCK, *Saturday, July 13, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. PURCELL. The members of the South Dakota Commission are here, and I move that the privilege of the floor be extended to them.

Seconded and carried.

A QUESTION OF METHOD.

Mr. STEVENS offered the following:

Resolved, That all matter to be incorporated in the Constitution shall be first introduced in the Convention by resolution, be read a first time and on second reading shall be referred to the appropriate committee without debate, and no matter shall be incorporated in the Constitution until the subject to which it relates shall have first been considered and reported upon by the Committee of the Whole. Each article or resolution so introduced shall be printed, giving its consecutive number of introduction, and a copy thereof furnished to each member before its second reading.

This resolution was seconded by Mr. TURNER of Bottineau.

Mr. CARLAND. I understand that this resolution will prohibit any standing committee from originating articles for the Constitution. Anything to get into this Constitution has got to be introduced here first and then referred to a committee before it can get into the Constitution.

Mr. STEVENS. I don't understand it to be so at all. I understand that if the committee see fit to originate anything, after they have originated it, it shall be first brought here, read, printed and distributed, so that the members may know what original matter has been originated by the committee, as well as the original matter that may have originated with any member. It would take exactly the same course as matter that came from a member, and does not in any way interfere with the right of any committee to

originate matter. This resolution is simply for the purpose of apprising every member of this Convention as to all the matter which it desires to have incorporated in this Constitution. It is that each member may be able to turn to his files when a question comes up on the report of the committee, and there determine whether he is in favor of the report of the committee or not, or whether he would prefer some resolution on the same subject that has been introduced by some member. This is my first experience in a legislative body, and that resolution was drawn largely from the information I received from the honorable gentleman from Burleigh, than whom there is none more capable of instructing me in these matters. On reflecting over what he said to me I came to the conclusion that persons who are not particularly conversant with these matters would find it impossible to determine on the best thing to do without having before them all the matter that is to be considered by this Convention. We have been sent here by our constituents, not to consider and act upon the matters which may originate with the particular committees to which we may individually belong, but also to pass our judgment on the report of every committee, and unless these matters are printed and distributed among the members, so that they may at their leisure be enabled to consider what is best to be adopted, they will be at sea when it comes to the question of the consideration of the report. A report is made by a committee and referred to the Committee of the Whole. When the question comes up in the Committee of the whole nothing is before the member but the report of the committee, and the person who might disagree with the report has got to explain to each member his standing, and why his resolution is better than the report. But if these reports are published in conformity with this resolution, it will allow each and every member when he is not employed in committee work to consider what matter he would prefer to have incorporated rather than the report of the committee. It will also aid the committee in this—each committee when it shall have reported will have had these matters before them and it may be that some resolution will be offered that would assist the committee as well as the members, and for these reasons and for the purpose of expediting the business I have offered, and now urge the passage of this resolution. I believe that if these matters are published so that we can consider them at our leisure, many of us will be engaged only about half the time at our committee work, and we will have leisure to devote

to these resolutions. It would be a farce to say that a man who has to build a foundation for his house shall not have all the access to knowledge that a man has who has to build the superstructure. In a legislative body this is the invariable course for them to pursue.

Mr. CARLAND. If I understand the first few lines of the resolution, it would prevent the introduction of any matter into this Convention that was not in the first place introduced and referred to a committee. I would like to have the resolution read again.

The resolution was again read by the Chief Clerk.

Mr. STEVENS. It is the intention of the resolution to prevent a committee from coming in here and making a report, incorporating new matter and matter that has not been before this body without first having had it printed. A report might be made which might be entirely new. If a committee desires to incorporate new matter or originate a new and independent theory it should report it by a resolution and let it take the same course as others, and we will then have the same opportunity to consider the reports of committees as we have to consider the resolutions of members. Otherwise a committee will be given a great advantage over members.

Mr. PARSONS of Morton. I heartily agree with the gentleman from Burleigh in his remarks on the resolution before the House, and it seems to me that were it to pass as it now stands we had better dispose of all committees and go into a Committee of the Whole. With pleasure would I support an amendment or another resolution subjecting every report of a committee to the Printing Committee's hands. Let it be printed before it is offered here, but that any committee in their report should be obliged to first come before this house and have every little trival change printed, seems to me to be the height of folly. It would be impossible to do any committee work except to simply collect the resolutions that had been offered here, and arrange them as we see fit and report them back. We could put no new matter in, nor could we amend anything, for such an amendment would be new matter. It seems to me that a resolution would be right which required that all matter brought before this House in the shape of a resolution should be printed, and submitted. Then any matter which the committees report upon should be referred to the Printing Committee and copies printed before it is brought up for dis-

cussion, or before the Committee of the Whole consider the matter. It seems to me that if it is arranged that way it will be all right, but as the resolution now stands it will kill the usefulness of any committee in the House. Let it read so that any resolution shall be printed first and then referred to the committee, and that its report shall be printed before we go into the Committee of the Whole on the report of the committee. In that way there will be no muzzle placed upon any committee, and each will have an opportunity to work for the best.

Mr. JOHNSON. I would ask the gentleman from Ransom if he would have any objection to striking out the words "by resolution." It must be evident to the gentleman from Ransom that it will often be awkward and useless to introduce these articles or new matter in the shape of a resolution. We are not particular about the form. Many of the articles will be copied *verbatim* from other constitutions.

Mr. STEVENS. Mr. HARRIS has suggested an amendment which I think will be an advantage.

Mr. HARRIS. I move an amendment to be added to the resolution as follows:

Providing, That nothing in this resolution shall prevent a committee from presenting original matter as a proposition, and let it take the same course as other resolutions.

Mr. SPALDING. We have now had this resolution read three times and yet there are some of us who do not understand it. It is a matter of great importance, and I don't know but what it will swamp us in printing, and I would therefore move that in order that we may all understand it, that it lie over till Monday and be made a special order for 3 o'clock on that day and be printed in the meantime.

Seconded and adopted.

Mr. STEVENS. I move that the Committee on Printing be instructed to ascertain what will be the cost of carrying out the provisions of the resolution if adopted.

Mr. PURCELL. Would not that be a very difficult matter, considering that no one knows how much matter will be introduced here?

Mr. FANCHER. I think that all the articles introduced here would not embody more than ten or twelve of the largest bills introduced by the Legislature.

Mr. STEVENS. The reason for making this motion is that I have had a talk with some of the printers and they proved to my satisfaction that the cost will be very little. We cannot tell how many resolutions will be offered it is true, but we know about how many subjects are to be considered, and from looking at other constitutions we may be able to arrive at a reasonably fair idea as to what will probably be proposed here, so that we can get a reasonable view of the expense. I move this because I have become satisfied that the expense will be a matter that will not be taken into consideration when the report of that committee shall have been made.

Mr. LAUDER moved that a select committee of five be appointed by the President, to whom all matters shall be referred on the question of the seat of government.

Mr. JOHNSON. When the Committee on Rules made its report the intention was to provide a committee for each of the great subjects that we knew had to come before this Convention for consideration. The Convention committed itself to the course laid down by the committee by adopting its report. There was an attempt made to add three other committees, and afterwards it was decided that the subject matter which it was proposed to be diverted from the regular standing committees should not be so diverted. The same argument applies in this case. We have a committee here on Public Buildings and Institutions, which evidently was intended to have charge of the work planned for this new committee. If this work be taken from the committee which has already been made, a good part of its occupation will be gone. There is no question coming before that committee so important, which will attract so much public attention as the location of the seat of government. I am not on that committee, but I say what I do as I would in justice to any committee from which it was proposed to take the work for which it was mainly created. If you create another committee, as proposed, you will give an advantage, or place at a disadvantage, this institution over other institutions, and therefore I hope the delegates will be consistent, and vote on this subject the same way they did when it was proposed to create a Committee on Railroads, thus dividing the subject of railroads from the Committee on Corporations other than Municipal.

Mr. HARRIS. I agree with the gentleman from Nelson. If we are going to have a select committee for this purpose, why

may we not have a select committee for each institution in the Territory? If we doubt the ability of the Committee on Public Buildings and Institutions to handle this subject, are we able to form another committee that can do it in any better manner? If we are to have another on this subject, why not another on the Jamestown Asylum, one on the Bismarck Penitentiary, one on the University at Grand Forks and every public building we have got or that we are to have? I think that the Committee on Public Buildings and Institutions is perfectly competent to handle this question, and I hope the delegates in this Convention will look on this question in the same light that I do.

Mr. MOER. It seems to me that the position of the gentleman from Nelson is well taken. We have a Committee on Public Buildings and Institutions. Certainly the seat of government is a public institution, and comes within the province of this committee, and I can see no good reason why a select committee of five or any other number should be appointed on this question. I therefore move that the consideration of the motion be indifinately postponed.

Seconded by Mr. PARSONS of Morton.

Mr. LAUDER. In offering this resolution I had no intention whatever of reflecting upon the integrity or the ability of the Committee on Public Institutions and Buildings. But in all constitutions that I have examined I find a separate article covering this question, and it seems to me only fit that inasmuch as there is to be a separate article on that question in our Constitution, there should be a separate committee for the purpose of formulating that article. It strikes me that there might be a vast difference between the work which would naturally be assigned to this committee, and the work which naturally would come to the Committee on Public Institutions and Buildings. It seems to me that there is nothing in the character of the Committee on Public Institutions, either its name or designation, to which would naturally be referred the question of the location of the Capital of this State. The Committee on Public Buildings and Institutions does not locate any institution. They simply provide those which shall exist, and perhaps the manner in which they shall be supported, but I don't understand this committee has the power to locate any building.

The motion to indefinitely postpone was carried.

Mr. SELBY. I move to adjourn.

The motion prevailed, and the Convention adjourned.

TWELFTH DAY.

BISMARCK, *Monday, July 15, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. STEVENS. After the action on my resolution had been postponed till to-day, the Committee on Printing made a report which was adopted, and it covers all the matter contained in that resolution. Therefore I withdraw the resolution.

Adjourned.

THIRTEENTH DAY.

BISMARCK, *Tuesday, July 16, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

THE PRINTING QUESTION.

A discussion arose on the question of the adoption of the report of the Committee on Printing. Mr. CLAPP moved to reconsider the report.

Mr. STEVENS was in favor of the report.

Mr. CLAPP said: It was claimed that the Files and the Journals would be set in the same type, and that the extra cost of having the two would be very slight. I see that they are set in different type, and the Committee on Printing desire to be relieved of responsibility in the premises. The expense will be twice as

much as it was intimated it would be when this matter was discussed before.

Mr. PARSONS of Morton. I move that all matters submitted under the several heads of order of business, which matter is printed in the Files, be referred to in the Journal by File and name only.

Mr. STEVENS. If the work of this Convention is to be perpetuated—if we are to get a record of the transactions of this Convention, it is of more importance that it appear in the Journal than that the members have the Files. This Constitution has got to be adopted by the people and the people want to know, not only what is going into the Constitution, but what propositions are being made to go into that Constitution. They want to consider whether that Constitution is such as it should be, and in order to properly consider that subject they must have all the matter in the Journal, which will be distributed at least twenty times as much throughout the Territory as if it is simply printed in the Files. The Files are of no use to anybody except for our convenience in debating in this Convention. But the Journal is of use, not only to us here but to the voters of the Territory, in the consideration of this Constitution; and also for the guidance of the people who may be called on hereafter to form another Constitution here or elsewhere. We want to know ourselves, and we want that the public should know, all that is done in this Convention, and the Journal is the place to look for the information. If we must dispense with anything let us dispense with the Files. If the members are afraid that they won't receive their full $4 a day, and desire to cut off expense in order that they may receive their full pay—if that is what they desire, let us cut it off from the Files and not from that part of the proceedings which are to perpetuate the work of this Convention.

Mr. PARSONS of Morton. I don't know why the gentleman from Ransom should think that we are afraid the amount set aside for our expenses would run short. It may be the motive of some, but I think it is a slight on any member here. I don't think that there is any member here who has this consideration in his mind at all. It seems to me to be folly to have the matter contained in these Files printed twice and then submitted twice to the Convention. I don't wish to be too economical, neither do I wish to be extravagant.

Mr. STEVENS. Under the resolution under which these Jour-

nals are printed it provides for the saving of a certain number of copies for the purpose of binding and distribution, and if the plan of the gentlemen who have been speaking here, is carried out, they will no longer be printed in the Journal. This Journal is now being printed for the purpose of final distribution under the resolution that was formerly adopted.

Mr. JOHNSON. I would like some information, and there are other delegates who would also like some. The delegate from Morton evidently thinks that after the Convention has adjourned the Journal would be made up and printed. The gentlemen from Ransom has the idea that the Journal is now being made up from day to day and a certain number are being laid aside. It would make a good deal of difference which is correct—whether the Journal is now printed from day to day, or whether there will be an opportunity to correct that Journal later.

Mr. HARRIS. The Journal as now being printed is the official record of this Convention. We are correcting and adopting it day by day. No one has any authority after this Convention adjourns to insert one word in it, or take one word out. This Journal is made up from day to day as the records of this Convention, and as such is the only official record, and the bound volumes that are made up will be of this Journal.

Mr. PARSONS of Morton. The supposition was that these Files would be incorporated at the close of the volume. But I would say here if it was the desire to destroy the Files and have only the record of the minutes of the Convention I would withdraw my motion, for I believe the Files are essential to their thorough understanding here, and for the convenience of debate.

Mr. PARSONS withdrew his motion, and the report of the committee authorizing the Bismarck Tribune to do the printing for the Convention prevailed.

Mr. FLEMINGTON. I move to adjourn.

The motion prevailed, and the Convention adjourned.

FOURTEENTH DAY.

BISMARCK, *Wednesday, July 17, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. CAMP. Inasmuch as the Honorable Judge Cooley is with us to-day, and several members of this Convention have known him at Ann Arbor, and a much larger number have been readers and admirers of his books, and all are interested in his special work, I move that the Convention take a recess in order that the members of this Convention may have an opportunity of meeting him. As one of those appointed to confer with Judge Cooley, I would say that he kindly consents to address us at some time when this Convention desires.

Recess was taken.

JUDGE COOLEY'S ADDRESS.

After the recess President FANCHER said. GENTLEMEN OF THE CONVENTION: It affords me much pleasure to introduce to you a gentleman who by reputation at least, is well known to all of you —Judge Thomas M. Cooley of Michigan, Chairman of the Interstate Commerce Commission.

Judge Cooley said:

MR. PRESIDENT AND GENTLEMEN OF THE CONVENTION: We have heard in the east that sometimes when a man gets lost on the boundless praries of the west, he is liable to be called on to stand and deliver, but I think that when that happens, as a general thing, they are more careful in the selection of the victims than you have been to-day, to make sure that he has something to deliver. I am glad to meet you here. I am glad to look out on a body of representative men of the new settled State of North Dakota. I always feel, in the presence of such a Convention, the dignity of the great work in which you are engaged—the making of a Commonwealth; the marking out of the landmarks that are to be the guiding landmarks of that Commonwealth probably for all time. There rise up before me, at such times, the names of men of old, of whom we have heard—the builders of Grecian and Roman states—the Solons

and Lycurguses, who made themselves a name for all time, because to them was committed a similar work. And yet, after all, the work, in its magnitude and in its intricacy in those prominent states was nothing in comparison to the work you have here to-day, for the building of the laws of the Commonwealth that was founded two thousand years ago was simple as compared with your work. As civilization has advanced—as the wants of mankind have increased, as the methods of transacting business have multiplied; as men have invented new ways, not only whereby they may transact business, but circumvent others, the intricacy of Constitution-building has gone on in proportion—perhaps even more than in proportion—and it becomes necessary to do many things now that were not important then, that would even have been irrelevant. Gentlemen, the men who created the Constitution of the United States—that charter of government which has no parallel in the history of mankind—would find many new problems with which to deal to-day, if they were called on to create a Constitution for North Dakota.

Well, the Anglo-Saxon is a natural constitution-builder. He is born to the business. In many of the articles which have been read before us to-day, there are a great many things of vital importance, in respect to which there would not arise among you here to-day a single word of controversy, because in your very blood from your ancestors you have come to take correct opinions in regard to such things. There is no one here to-day who proposes to dispense with the executive, or who proposes that the executive and legislative powers shall be united, or that there shall be no judiciary, or that any one of these shall be dependent on the other. In regard to these things we have instinctively determined; we put them aside as matters that no longer are subjects of controversy. But there are other matters that are in controversy. The vital things; the most important things—the great land-marks are decided instantly—settled before the Convention meets, but there are a thousand matters of detail that it becomes necessary to deal with. In respect to a great many, it will be found that they are matters which come now almost for the first time before a deliberative body like this.

I take up your proposed Article on Corporations. Even there you find many things on the subject, upon which I would hardly anticipate there would be any controversy. You all agree that you shall no longer grant charters as special favors. Corporations have the right to corporate powers only under proper restrictions. But as to what corporations may be empowered to do—as to the restrictions that shall be put on them, as to what shall constitute a forfeiture of the corporate power—these things are problems that are altogether new, and which a Hamilton and a Jefferson would have been as unable to grapple with—even more unable than are any of the members of this Convention, for they had not the experience which showed the necessity for imposing these restraints. But, gentlemen, it is entirely out of the question that I should undertake to be your advisor in regard to these matters. My present duties call me aside from all labors of this kind, but if I were to drop a single word of advice—although I scarcely feel that it is within my province to do that—it would be simply this: In your Constitution-making remember that times change, that men change, that new things are invented, new devices, new schemes, new plans, new uses of corporate power. And that thing is going to go on hereafter for all time, and if that period should ever come which we

speak of as the millenium, I still expect that the same thing will continue to go on there, and even in the millenium people will be studying ways whereby, by means of corporate power, they can circumvent their neighbors. Don't, in your constitution-making, legislate too much. In your Constitution you are tying the hands of the people. Don't do that to any such extent as to prevent the Legislature hereafter from meeting all evils that may be within the reach of proper legislation. Leave something for them. Take care to put proper restrictions upon them, but at the same time leave what properly belongs to the field of legislation, to the Legislature of the future. You have got to trust somebody in the future and it is right and proper that each department of government should be trusted to perform its legitimate function. [Applause.]

The Convention resolved itself into Committee of the Whole with Mr. CARLAND in the Chair.

File No. 64 was under discussion as a report of the Committee on Judiciary.

COMPACT WITH THE UNITED STATES.

Mr. JOHNSON said: Mr. CHAIRMAN, AND GENTLEMEN OF THE COMMITTEE OF THE WHOLE. As the Chairman of the committee that reported this File—Compact with the United States—is in the Chair, it may be proper for me as for any other member of this committee to open the discussion on this article, from the fact that I drew the original article and submitted it to the Convention, for which this is a substitute. If members will turn to the Enabling Act, copies of which in pamphlet form have been laid on their desks, on page two we read: "And said conventions shall provide by ordinances irrevocable," etc. If they read on they will find that the provisions of this article are matters in which we have no discretion. They are just and reasonable provisions that are laid down by the Enabling Act as absolutely essential to our admission into the Union. The only choice we have is as to the form of the article—the words, language, punctuation and matters of that kind. As to the reason why a substitute was drawn by the committee, I think I can say without taking any great amount of credit to myself, that in the shuffle of the bills the Clerk separated them, and the first two pages of my article went to the Committee on Corporations, and when the mutilated article came before the committee they had no means of knowing where the other two pages were. The new article is, I think, word for word like the article introduced by me, until you get to near page three of the pamphlet, namely, where it speaks of the debts and liabilities of said territories. The article as worded in the substitute is more happily and concisely expressed than in the original. In section

four of the original the following occurs: "There shall be established and maintained a system of public schools in this state which shall be open to all the children of this state and free from sectarian control." That is omitted in the article reported from the Judiciary Committee for the reason that the general statement that the school system should be maintained would be insignificant when compared with the fuller article on free public schools which we expect to have reported from the Committee on Education. It is absolulely necessary in order that this Constitution should be approved by the President of the United States, that such a system will be provided for in our Constitution, but it is hoped the Committee on Education will provide such an article in a series of sections. With this explanation I thank you for your attention.

Mr. MILLER. I move that we adopt the report of the committee which has just been read.

Carried.

THE STENOGRAPHER.

The report of the Committee on Reporting and Publication, as to the pay of the Stenographer was read as follows:

We have had under consideration the following resolutions:

Resolved, That the compensation of the official stenographer of this Convention for reporting the debates and proceedings in full, be, and the same is hereby, fixed at $8 per diem during the session thereof. Said Official Stenographer shall also furnish to the Convention, a transcribed, fairly written and legible printer's copy of said debates and proceedings, for which he shall receive an additional compensation of 10 cents per folio; the compensation hereby provided, including the cost of all stationery and other material used by said Stenographer in making said stenographic report and transcribing the same. And said Official Stenographer is hereby made responsible for the proper execution of said work.

Resolved, That no petitions, letters, memorials or remonstrances, responses from any of the departments or other sources to resolutions of inquiry by the Convention, shall be included in said reporting or transcribed printer's copy, unles by special order of the Convention; nor shall discussions on questions of order or adjournment be included therein.

We recommend their adoption with the amendment that the pay of the Stenographer be fixed at $10 per day and 15 cents per folio for transcribing.

Mr. MILLER. I move that the report be amended to read $10 a day, and 10 cents per folio for transcribing. I do this in the belief that the compensation fixed at that rate is a very liberal

compensation, and anything in excess of that would be extravagant on the part of this body.

Seconded by Mr. LAUDER.

Mr. BARTLETT of Dickey. I would like to know how much the Stenographer now makes per day. I think the members of this Convention don't know what he makes per day now. I want to pay liberally, but I don't want to be extravagant.

Mr. PARSONS of Morton. Mr. CHAIRMAN: As one of the members of the committee I took the trouble to speak to two stenographers, one of whom is a resident of this city, and the other is from Sioux Falls, with the members of the South Dakota Commission. I have two certificates from these gentlemen—that from Mr. La Wall states that he receives $10 a day and 15 cents per folio for transcribing his notes as court reporter in this district. Mr. Goodner states that as stenographer for the South Dakota Convention he receives $10 a day and 25 cents per hundred words for transcribing his notes. It is a rare time that a person possessing the necessary talent for this work, is called on to use it straight through. In the South Dakota Convention they have two stenographers, but our Stenographer is doing all the work, thus saving the pay of one man. I don't think that there is any man in this Convention that will earn his money any better than the Stenographer. If we want an expert man we must expect to pay the price that such experts usually get.

Mr. BARTLETT of Dickey. There are a great many strange things in this life, but I won't admit but that $10 a day is enough for any man. We want to pay liberally for the work we have done, but we don't want to pay an exorbitant price. I am informed that the gentleman is now making $18 a day. Where is the man in this hall that is making that amount? I say that that is liberal pay.

Mr. BLEWETT. The Stenographer will not get his pay till the Legislature meets, and that is one reason why the committee put the price at the figure they did.

Mr. WALLACE. I would concur in the remarks of the gentleman from Dickey. Some of the gentlemen here want us to draw the inference that because some one else does something therefore we must follow them. I believe in fair compensation for the work to be done by the Stenographer. It seems to me that the figures named by the gentleman from Cass are very liberal, and I don't see that anyone else is making that money, and I don't see why we

should be extravagant in paying our employes. This money does not come out of the United States but out of the State.

Mr. STEVENS. It seems to me that a good many members as well as myself would be governed in this matter somewhat by how much the Stenographer makes per day. I don't think anyone questions that he should be paid $10 a day, and I think there is some mistake on the part of those who think he is able to transcribe the records of this Convention as he goes along. Our Stenographer is here, is one of the officers of this Convention, and I think it is only fair and right that he should explain how much he is making. I would suggest that Mr. Tuttle be requested to state for our information what he is making.

On invitation from the President the Stenographer stated:

If $10 per day is what I am to be paid, then it is $10 a day that I am making. So far I have not been able to transcribe any of my report, for the reason that I have received no instructions as to what is wanted. I see no reason why I should be paid less for this work than the figure that is usually paid to stenograpers for similar work.

Mr. POLLOCK. As I understand it this matter has been before the proper committee, and their report is unanimous, as I understand it. They have looked into the matter as thoroughly as we can. It seems to me that their report is one that should be accepted. There seems to be a regular rule as to the pay of expert stenographic work, and I don't think that this Convention should change it. I think that we should accept the report of this committee.

The report of the committee was amended to read $10 a day, and 10 cents per folio for transcribing the report, and so adopted.

Mr. STEVENS. I move to adjourn.

The motion prevailed, and the Convention adjourned.

FIFTEENTH DAY.

BISMARCK, *Thursday, July 18, 1889.*

The Convention met pursuant to adjournment, with President *pro tem* JOHNSON in the Chair.

Prayer was offered by the Rev. Mr. TURNER.

Mr. CAMP introduced the following resolution:

THE COMMITTEE ON REVISION.

Resolved, When the Committee of the Whole shall have recommended that any proposition or article be made a part of the Constitution, such proposition or article shall be referred to the Committee on Revision and Adjustment whose duty it shall be to arrange in order and revise all such propositions, so that no part of the Constitution shall conflict with any other, and to report a Constitution embracing all propositions and articles so referred, as so revised and adjusted, for final adoption as a whole by this Convention.

Mr. PARSONS of Morton. I would like to ask for information. Does this resolution refer everything to the Committee on Revision and Adjustment before its adoption or after?

Mr. CAMP. I would say that I understand it is the usual course of a Constitutional Convention that after they have decided that a certain article shall be a part of the Constitution, they don't take final action on that, but refer all the articles to a Committee on Revision and Adjustment. That committee takes all these articles, arranges them in proper order, inserts the proper titles, inserts the proper sections and subdivisions, and reports a Constitution embracing all these articles with such verbal changes as are made necessary from the original, and the Convention then acts upon that. Under this plan we shall not be liable to adopt two articles on two different days that conflict.

Mr. STEVENS. I would like to ask if it is referred to the Committee of the Whole before adoption, may it not be amended and new matter inserted on the report of the Committee on Revision?

Mr. CAMP. Certainly.

Mr. PARSONS of Morton. I would like to ask once more—I may be unpardonably ignorant—whether there is anything in this resolution designed to prevent a roll call on every section or any part of the Constitution on its adoption. If it does not prevent that I should be in favor of it.

Mr. CAMP. There is nothing in the resolution to prevent the Convention from acting in regard to the roll call as it sees fit. They can take up the Constitution section by section, or article by article or as a whole. The report of the Committee on Revision brings before this body in compact form the whole of what the Committee on Revision has recommended.

Mr. ROLFE. What would be in the way of reporting the report of the Committee on Revision and Adjustment back to the same committee for their revision and adjustment after action of the Convention in Committee of the Whole? In other words, what is the necessity of this further committee that is suggested—what would its office be—what would its office be which the Committee on Revision and Adjustment could not accomplish? If the Constitution is acted on by the Committee of the Whole, if it should be necessary to refer that to another committee for further revision, why not refer it to the committee that we now have?

The resolution was read again, whereupon

Mr. ROLFE said: I understand now—I thought before that the resolution contemplated an additional committee.

Mr. MILLER. It seems to me that that resolution is eminently just and proper. I know of no way that we can throw this Constitution together unless it is by referring it to some proper committee. The Committee on Revision and Adjustment is that proper committee. I don't see any other way to get at it, except as that resolution provides.

Mr. STEVENS. I have no objection to the reference; the only question is as to the time when it shall be referred. This motion contemplates that it shall be referred previous to its adoption; it provides that when it is recommended by the Committee of the Whole it shall then be referred. It would save a great deal of time if we referred this to the Committee on Revision from the Committee of the Whole. New propositions may be made, amendments offered, and a good deal of discussion might take place which would have been proper to have taken place when it came up originally from the Committee of the Whole as a single resolution. I am opposed to the reference as proposed in the res-

olution, because the time of reference is not the proper time to save time to this Convention. It would be better to refer it after it has been passed on and adopted, and then, if perchance we should adopt two sections which are antagonistic, by a proper explanation to this Convention, they can suspend the rules and reconsider the proposition if desired.

Mr. LAUDER. It seems to me that after the Constitution has been formed, and after it has been adopted, it is too late to then refer it to any committee. The work of the Convention is then done. Then, again, it will take the Committee on Revision more time to do their work. If the work which that committee has to do is delayed until all the articles are prepared and have been adopted in the Committee of the Whole, then the Convention will have nothing to do but to wait for the Revision Committee to do its work. Then the Constitution will not be adopted as a whole until after the Revision Committee as well as the other committees have entirely completed their work. The adoption of the Constitution by the Convention will be the last work for this Convention to do.

Mr. STEVENS. I don't mean that it is proper to wait before referring articles to this Revision Committee till every article has been adopted, but each should be referred immediately after they have been adopted by the Convention. I move as an amendment to the resolution that the articles shall be referred immediately on their third reading by this Convention.

Mr. CAMP. It seems to me to be a very strange proceeding—to adopt an article and then refer it to a committee. When you have adopted it you have made it a part of the Constitution. That is the reason why I drew the resolution as I did.

Mr. PARSONS of Morton. I may misunderstand the scope of the Revision Committee, but it seems to me that we have the power in our own hands, having passed any resolution or adopted any article to reconsider such a resolution or article. It seems to me in the history of parliamentary bodies generally, that that power has been used. Because we adopt something, it does not necessarily preclude us from again reconsidering it. When the Revision Committee looks over these articles that have already been adopted, and report back to this House that two articles conflict in certain particulars, it seems to be fitting and right and proper that they should at once reconsider their previous action. It appears to me that what I have indicated is the scope of the

committee, and I heartily concur in the amendment of the gentleman from Ransom.

Mr. CAMP. The thing we have to adopt here is a Constitution—not a lot of separate articles and sections, but a Constitution. I don't believe that this Convention wants to adopt anything else. It should not take official action on any part of the Constitution until it is ready to act on the whole Constitution and pass on and adopt it as a whole.

Mr. ROLFE. I would suggest that the amendment be made to cover these points—that the article when considered in the Committee of the Whole be first adopted only for the purpose of referring it to the Committee of Revision and Adjustment; that the consideration by the Committee of the Whole should not be considered final adoption, but that it be considered adoption simply for the purpose of reference to this committee. Then when that committee has made its final report, then the Constitution be taken up for final adoption by the Committee of the Whole.

Mr. CARLAND. It seems to me that the motion of the gentleman from Stutsman simply changes the mode of adoption of the Constitution from adopting it section by section and piece-meal, until it shall become a perfect instrument. Then it shall be taken up section by section and the Convention shall act upon it, either to adopt it or reject it. That is to say, this resolution prescribes that when this Convention in the Committee of the Whole have recommended that a certain article or section should be made part of the Constitution, that section or article should be then referred to the Committee on Revision and Adjustment. If the Committee of the Whole adopts the section or article it will be adopted by the Convention, for the same gentlemen who compose the committee compose the Convention. Then it goes to the committee and they report it back to the Convention when the Constitution is completed. It seems to me that the resolution would be entirely proper, because in the meantime the Committee on Adjustment and Revision would have an opportunity to perform their labors with less hurry than if these articles are retained and referred to the committee at the close of the Convention. Then it would take them some time probably to make their report. Of course the action of referring the article to the Revision Committee does not bind the committee. They have still to act on it. If the article is referred by the Committee of the Whole and reported back with the recommendation that it be passed, and it is

passed, then the Committee on Revision and Adjustment would be utterly powerless to change its phraseology or to change a word in it; while at the same time it might conflict materially with another section, and make one section in the Constitution repugnant to another.

Mr. HARRIS. In regard to the question of the gentleman from Morton as to whether or not we can reconsider a question at any time, I would quote rule 19 which reads as follows:

> No motion for reconsideration shall be permitted unless made and seconded by delegates who were in the majority on the vote on the original question, and within six days of actual session after the decision.

Mr. STEVENS. I judge from the remarks of the gentlemen from Burleigh that the Committee on Revision and Adjustment have not only the right to arrange, but to change the phraseology; change the wording of an article that has been adopted by this Convention when sitting in Committee of the Whole. I understand that they have such a right. If they have, then why not ask them to make their report first, for if they are to make the phraseology on this Constitution, we had better find out what their phraseology is before we act on it.

Mr. CARLAND. What is the Committee on Revision and Adjustment for do you suppose?

Mr. STEVENS. Where two propositions are antagonistic to one another the committee should report that fact, and the Convention should act on the report, and say which proposition or article they will have.

Mr. CAMP. There are several articles already introduced here using the words General Assembly; others use the word Legislature. That is a specimen of the work of the Committee on Revision and Adjustment. When these articles come to this committee they will adopt one phraseology. There are scores of such details which will need revision by this committee, and that committee is for the purpose of making such revision and reporting its action. Of course this Committee does not possess any final power. All they can do is to report a change and recommend that it be adopted.

Mr. CLAPP. As I understand it, the report of the Committee of the Whole does not appear on the Journal.

Mr. BEAN. If we adopt this amendment it will practically bind the Convention to six days for reconsideration, unless we can go back by common consent. Under ordinary circumstances we

can take up an article by common consent. When two or three articles conflict it looks to be proper for the committee to arrange the whole matter themselves. They can only change the articles so that none will conflict, and the whole thing practically lies with their action on the articles. It makes no practical difference, only that if we adopt this amendment we will bind ourselves so that we can discuss the articles again only by common censent if the six days have expired.

The amendment was put and lost.

The original resolution of Mr. CAMP was then carried.

THE DEBATES AND PROCEEDINGS.

The following resolution, which had been introduced by Mr. SELBY, was then discussed:

Resolved, That 500 copies of the transcribed stenographic report of the debates and proceedings of this Convention be printed and published in bound volume form for distribution among the members, and exchange with other state and territorial libraries, and that the Legislature of the State at its first session make an appropriation for the payment of such printing and publication, as certified to by the proper committee, unless such expense is paid out of the Congressional appropriation to defray the expenses of this Convention.

Mr. STEVENS. I move as an amendment that the words eight hundred be substituted for five hundred.

Seconded by Mr. ROLFE.

Mr. SCOTT. I would like to inquire what the expense of publishing 500 copies of the debates will be, and what will be the difference between the cost of 500 and 800.

Mr. STEVENS. I would say that of course this is problematic how large the volume would be, but at government rates, for the volume such as we would have, the additional expense of 300 would probably not exceed $250.

Mr. SCOTT. It seems to me that if that is all the difference we ought to have a thousand. Most of the gentlemen would like to have their debates in circulation, and if we have any printed at all, we should have a thousand.

Mr. STEVENS. I make this amendment for this reason: When they are distributed among the various state libraries and public institutions that will want them, there will not be to exceed two or three for each member. I think each member should receive four or five, or six copies for distribution among his constituents. If you distribute them among the public institutions

in the United States it will take about all the 500 copies, without any going to the inhabitants of North Dakota.

The amendment was carried.

Mr. CARLAND. I would move that the resolution of the gentleman from Traill be amended by striking out the following portion: "And that the Legislature of the State at its first session make an appropriation for the payment of such printing and publication, as certified to by the proper committee, unless such expense is paid out of the congressional appropriation to defray the expenses of this Convention." In support of my amendment, I would say that I am of the opinion that the language in the resolution would be inoperative, for this reason—that the only way this Constitutional Convention can in any way pledge the faith of the future State would be by a provision in the Schedule of the Constitution, and that will be operative when the people have voted upon it. A mere resolution of this Convention to the effect that the future State shall pay for this printing is entirely inoperative from the fact that this Convention has not the power to bond the State or pledge its faith by resolution. I therefore move that it should be so amended so that it will read:

Resolved, That 1,000 copies of the transcribed stenographic report of the debates and proceedings of this Convention be printed and published in bound volume form by the public printer for distribution among the members, and exchange with other State and Territorial libraries.

And leave the expense part of the matter to be fixed by the Schedule.

Mr. SELBY. Mr. PRESIDENT: My object in incorporating in this motion the latter part which the gentleman from Burleigh desires to have stricken out, was for the purpose of getting the Convention to commit itself on the question of publishing the debates if it desired to have them published. Then if it is the sense of this Convention that the debates should be printed, a subsequent Legislature will make the appropriation. If this resolution is adopted the Committee on Schedule will incorporate it in their report.

Mr. CARLAND'S amendment was adopted.

Mr. STEVENS. I move the adoption of the resolution as amended.

Mr. SPALDING. I move that the resolution be so amended as to include the distribution of six copies of the debates to each member of the Convention, and one copy to each employe, and

one copy to each State and Territorial library in the United States, a copy to the Congressional Library and one copy to each of the first State officers elected.

The amendment was carried.

Mr. STEVENS. I move that the committee rise and recommend to the Convention that the resolution as amended be adopted.

Seconded and carried.

The Committee then rose, and the Convention convened.

Mr. POLLOCK. I move the adoption of the report of the Committee of the Whole.

Mr. SCOTT. If we figure out on a basis of a thousand copies, six for each member will be 450 copies. If each State library is only entitled to one and one to each Territory, and the Congressional library one, and each employe one, that would only make about 550. What are we going to do with the balance?

The report of the Committee of the Whole was adopted.

Mr. BLEWETT. I move to adjourn.

The motion prevailed, and the Convention adjourned.

SIXTEENTH DAY.

BISMARCK, *Friday, July 19, 1889.*

The Convention met pursuant to adjournment, with President *pro tem.* JOHNSON in the Chair.

THE REVISION QUESTION.

Mr. LAUDER. There seems to be some misunderstanding as to the exact meaning of the resolution offered by Mr. CAMP yesterday. I desire that the resolution be reconsidered. My idea in voting for it yesterday was that it would expedite business and I did not carefully examine the language of the resolution. I was well satisfied with its general import. The resolution reads as follows:

Resolved, When the Committee of the Whole shall have recommended that any proposition or article be made a part of the Constitution, such proposition or article shall be referred to the Committee on Revision and Adjustment,

whose duty it shall be to arrange in order and revise all such propositions so that no part of the Constitution shall conflict with any other, and to report a Constitution embracing all propositions and articles so referred, as so provided and adjusted, for final adoption as a whole by this Convention.

It seems to me that there is a desire on the part of the members of this Convention that when the Committee on Revision and Adjustment shall have reported, then the Convention as a whole shall have an opportunity, not to vote on the Constitution as a whole, but to vote on the adoption of each article separately. It would appear from the reading of this resolution that the only thing the Convention could do after hearing the report of the Committee on Revision, would be to vote on the Constitution as a whole. The Convention may desire to amend some articles after they have been reported. I therefore move that the vote by which the resolution was adopted, be reconsidered.

Seconded.

Mr. MILLER. I think that the last line of the resolution is susceptible of two constructions. I know it to be the fact that the mover of the resolution intended that the Constitution should be reported here as a whole, and that it should then be voted on section by section, and amended if this body saw fit. I have no objection to change that last line. The mover of the resolution did not intend that we should be compelled to adopt the Constitution as a whole.

Mr. LAUDER. I understood the resolution the same as did the gentleman from Cass. But I think it would be more satisfactory to the members if it were so expressed in the resolution, and that is the only object I have in moving a reconsideration of the vote.

Motion to reconsider carried.

Mr. LAUDER. I move that the last line read "for final adoption section by section by this Convention."

Mr. BARTLETT of Griggs. I am opposed to the amendment as well as the resolution. It seems to me that when the Committee of the Whole rises and reports to this Convention, that is the time that report should be acted upon. I don't know why we should defer the acceptance of that report till the Committee on Revision has reported.

Mr. MILLER. I understand that the report of the Committee of the Whole on any proposition stands in about the same position as the report of any other committee. If the gentleman

is correct, and we are to act after the committee rises and accept any particular clause of this Constitution, that becomes a part of the Constitution, and we may as well send these disjointed parts to the printer and let his devil set them up as to send them to the Committee on Revision because they would have no opportunity to change their phraseology or punctuation. For example, there is one article introduced here that may become a part of the Constitution which provides that any qualified elector of the State of North Dakota is eligible to any office in the State. There are other provisions introduced that may become a part of the Constitution to the effect that a Judge of the Supreme Court must necessarily have been a resident of the State of North Dakota for five or six years. The Committee on Revision and Adjustment might add to the first quoted article the words: "Unless otherwise provided," and make the one article conform to the other. If we act on these articles and definitely decide to put certain articles in the Constitution, before the Committee on Revision has had them referred to them, the work of the committee is gone—there is nothing for them to do. But if we refer the report of the Committee of the Whole to the Committee on Revision and they put it together in logical and proper form, we can get our work properly and systematically done, and we cannot do it in any other way. It is a straightforward proceeding—to refer the articles from the Committee of the Whole to the Committee on Revision and Adjustment, and I hope the motion of the gentleman from Richland will prevail.

Mr. BARTLETT of Griggs. As Chairman of the Committee on Revision and Adjustment, I may be mistaken as to its duties, but I understand after this is adopted and referred to that committee, if we find there are sections that conflict we refer them back and the Committee of the Whole then amend the work. The Committee on Revision will have no power to change the Constitution in any respect, except so far as there are gramatical errors, and if there are any places where articles conflict those we must refer back to the Convention for amendment.

Mr. STEVENS. I have nothing further to say that is different from what I said yesterday. While I would not for a moment wish to question the motives of either the mover or any other supporter of this motion, I can see in my mind's eye that it is subject to this objection—we are here not, perhaps, to legislate, but in a sense to legislate, for various interests. Those interests are to be

considered when they come up, and those interests have no right to be apprised of what we are about to do in relation to them. As for instance, the corporations have no right to know what this body has passed upon as to effect their interests long enough to interfere with the operations of this Convention. If this resolution is passed as it is presented here, every corporation will know, and every interest will know, when passed upon by the Committee of the Whole, and will have a right to swarm this town with a lobby if they see fit, and attempt to entirely change the work of the Committee of the Whole. I say that when it is adopted it should be adopted as it comes from the Committee of the Whole, and after that it will take two-thirds majority to rectify any mistake we have made. I know that at least two-thirds of the members of this Convention are at all times and under all circumstances willing to suspend the rules and correct an error, if it is shown to them. It will obviate the necessity of examining as closely as we would have to do the report of the Committee on Revision and Adjustment. If the plan is adopted that is proposed in this resolution, it will make this Committee on Revision practically the Committee of the Convention. Every word will have to be scanned to see whether or not the propositions that have been passed by the Committee of the Whole have been embodied in the report, and for that reason, and for the strongest of reasons to my mind, that no one interest should have notice a week ahead of what this Convention proposed to do in this Constitution there is objection to this propositions.

Mr. LAUDER. I fail to see the force of the arguments of the gentleman from Ransom. We sit here with open doors. I supposed it was the policy of this Constitutional Convention, as of all such conventions, to give as great publicity as possible to its proceedings. I cannot see the force of his argument that corporations or special interests will know what we are about to do. The Journal is supposed to contain everything we do, and it is public property. I have too high a regard for the members of this Convention to believe for a moment any such argument as has just been made by the gentleman here. It seems to me that it is a reflection on the members of this Convention to talk about flooding this town with railroad lobbies or any other lobbies. It seems to me that the resolution here that I have offered presents the best and the simplest way to proceed in this matter, and it seems to me that the explanations offered by the gentleman from Cass are

satisfactory and should be regarded as such. When an article is recommended by the Committee of the Whole to become a part of the Constitution, it is then referred to the Committee on Revision and Adjustment. When they have finished their labors that instrument is brought back to the Convention and becomes the property of the Convention. It can be taken up, examined section by section, adopted, so every member of the Convention will have an opportunity to go on record on every proposition contained in the Constitution. It was, Mr. PRESIDENT, for the purpose of giving every member an opportunity of placing himself on record on every proposition that I offered this amendment. It was for the purpose of giving the fullest debate, the widest discussion, the most extended consideration of each and every article in the Constitution—and it seems to me that this is the proper way—that I have introduced this motion.

Mr. ROLFE. I am opposed to any course of proceeding which will defer final action on any article until the Committee on Revision and Adjustment are able to report an entire Constitution. For various reasons—one because our action on certain articles would depend largely on the action of the Convention on other articles. As an illustration—the Committee of the Whole can take no action on apportionment until the Convention has previously acted on the question of the number of members the Legislature is to be composed of. The idea that we are none of us to know anything as to what the Convention will finally do as to specific articles until the entire Constitution is ready to be passed on is out of the question. It seems to me that it is the natural and logical course to pursue, that when the Committee of the Whole have reported on a proposed article that the Convention should then pass that article or reject it, and then it can be referred to the Committee on Revision and Adjustment, and that should be done from day to day as the Committee of the Whole may pass on the several proposed articles. We can thus limit the action which we will allow the Committee on Revision and Adjustment to take, so that their duties shall be simply clerical—so that their duties shall not embrace much of any work beyond making certain grammatical changes or the like. We can by resolution limit that committee so that it shall not be an important committee further than its obvious duties are concerned—simply that of revision and adjustment. I am opposed first and last and all the time to this continued deferring of our work to some distant point in the future.

Mr. STEVENS. I rise to a question of personal privilege. If my remarks were susceptible of the construction that the gentleman from Richland put upon them, I assure you it was the furthest from my mind to express such a sentiment. I did not understand that what I said was capable of such a construction. I believe that every man in this Convention is as honorable, at least as myself, and I believe that every man in this Convention will be as far from being influenced by a lobby as I would myself. I shall believe that till I see to the contrary, but at the same time I do believe that a lobby in this town attempting to get engrafted into this Constitution any article, would impede our business and be an injury to the Constitution, honest though we may be.

Mr. BEAN. There is a motion before the House to amend this resolution. Yesterday we spent half or three-quarters of an hour going over this same ground. Now the same persons are going over the same ground again, expressing the same ideas that they had yesterday. But now the question is not on the resolution but simply on the amendment offered by the gentlemen from Richland, and I don't believe that there are half a dozen persons here who are opposed to the amendment itself.

The amendment was then put and carried.

Mr. WALLACE. There seems to be an impression prevailing that this Committee on Revision have the authority and the power to take up the various articles and disturb the ideas that are there engrafted. I take it that the duty of the committee consists in putting these articles in symmetrical order and arranging the substance of the matter, but in no way to make any change that will change their intent. If we send to the Committee on Revision and Adjustment this Constitution before we have adopted it, it places it in their hands in such a way that they can change the phraseology so as to seriously impair the meaning of the various articles that have come before them. It seems to me that the proper course would be when the Committee of the Whole rises it should report to the Convention what it has done, and then the articles go to the Committee on Revision and Adjustment, and they simply correct grammatical errors. It seems to me that in case they have the right to insert here and change there, without specifying what they have done, we will finally have to go over our work again and examine it word by word, to see that we have got what we passed upon.

Mr. SPALDING. I concur in the remarks of the gentleman

from Steele in regard to the work of this committee; also with the remarks of the gentleman from Richland that under this resolution we propose to take it out of the hands of the Committee on Revision and Adjustment, so that they cannot, if by any reason they do make an amendment to the Constitution which would effect the intent—so that they can't tie our hands and prevent us from changing it back to its original intent. If it first is reported to the Committee on Revision and Adjustment, and then they make a change, the Convention still has it in its hands to reject or amend, or do what they please. It seems to me that the thing for us to do is to pass this resolution.

Mr. MOER. I understand that the amendment does not provide for adopting the Constitution as a whole at all. There should be an adoption of it as a whole after the adoption by sections. I move to amend by adding the words: "And to be then adopted as a whole."

Motion to reconsider was carried.

Mr. WILLIAMS. There seems to be quite a division on this proposition. I cannot see any reason for forcing this through at this early day. I am really in favor of further consideration, and I move that the resolution be laid over till Monday and then come up under the head of unfinished business.

Mr. NOBLE. This resolution has already been before this Convention once, and was then considered pretty thoroughly, and the motion to reconsider is simply to get in a small amendment. I don't see the necessity of delaying this matter till Monday, and then going over all this ground again. The resolution itself has been considered thoroughly.

Mr. WILLIAMS. It has been suggested to me that Tuesday would suit some of the members better. Therefore, with the consent of my second, I will make it Tuesday—under the head of unfinished business. I will say that the resolution has been reconsidered and is now before the Convention. It is before us for action.

Mr. ROLFE. I may be wrong, but it occurs to me that possibly many members of this Convention have in their minds the idea that action of the Committee of the Whole is action of this Convention.

The Chair ruled that the question to postpone to a day certain was not debatable, and the motion of Mr. WILLIAMS was then put

and lost. The resolution as amended by Messrs. LAUDER and MOER was then adopted.

Mr. PARSONS of Morton, introduced the following resolution:

Resolved, That the Committee on Revision and Adjustment be instructed to report to this Convention every change made in the text of matter referred to it.

Seconded.

Mr. MOER. It seems to me that this resolution is useless, as the Committee on Revision and Adjustment must refer these articles back to the Convention, and certainly the Convention will take notice of any change. It seems to me that it is useless to call on them to make such a report.

Mr. WALLACE. I take it that it would enable the members of this Convention to see much more easily what corrections had been made if they were pointed out as this resolution calls for. It would be a good deal like looking for a needle in a hay stack, and I think it is proper that we call on them to point out exactly what changes they have made. We may find their changes after a very careful hunt and we may not.

Mr. BARTLETT of Griggs. I hope that this resolution will pass. If by any accident a change of one word should change the phraseology or the meaning of any section, and this Convention did not notice it, I don't want it said afterwards that I purposely did it, and I hope that the committee will be compelled to note every change made.

The resolution carried.

COUNTY AND TOWNSHIP ORGANIZATION.

In Committee of the Whole section one of the report of the Committee on County and Township Organization was read as follows:

SECTION 1. The several counties of the territory of Dakota lying north of the seventh standard parallel, as they now exist, are hereby declared to be counties of the State of North Dakota.

Moved and seconded that it be adopted.

Mr. SCOTT. I move that the word "organized" be inserted in the first line before the word "counties."

Mr. COLTON. I should like to know what state or territory we will put the unorganized counties in? We have some little country that is not organized.

Mr. SCOTT. It seems to me that if we let this article go as it is without the amendment that I have proposed, the boundaries of the counties, whether the counties are organized or not, must remain as they are to-day.

Mr. ROLFE. Under section two no such thing as that suggested would take place. That provides for the changing of county lines, whether organized or unorganized, by the Legislature, under a general law to be passed. As one of the members of the Committee on Township Organization, I would say that it was the design of the committee that that should simply establish or fix the boundaries of the counties which should come into the new state. It does not necessarily fix them forever, but now.

Mr. SCOTT. I withdraw my amendment.

The section was adopted.

Section two was then read as follows:

SEC. 2. The Legislature shall provide by general law for organizing new counties, locating the county seats thereof temporarily and changing county lines; but no new county shall be organized nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than 1,000 *bona fide* inhabitants. And in the organization of new counties and in changing the lines of organized counties the boundaries of congressional townships and natural boundaries shall be observed as nearly as may be.

Mr. CLAPP moved to amend by striking out the words "twenty-four," and inserting "sixteen." He said: If this were a Legislature it might be all right to leave it as it is, but as it is a convention making a constitution for all time, to say no county shall be formed less than twenty-four by thirty-six miles is going too far.

Mr. POLLOCK seconded the amendment.

Mr. McHUGH moved as a substitute that the word "twenty" be inserted instead of "twenty-four."

Seconded by Mr. ELLIOTT.

The substitute was lost.

Mr. WALLACE. Is seems to me that if counties are made only with sixteen townships they are pretty small. In the county from which I come there are twenty townships, and it is plenty small enough. I would not be in favor of making it any less than twenty.

Mr. CLAPP'S amendment lost and section adopted as it came from the committee.

Section three was then read as follows:

SEC. 8. All changes in county boundaries in counties already organized, before taking effect shall be submitted to the electors of the county or counties to be affected thereby, at the next general election thereafter, and be adopted by a majority of the legal votes cast in each county at such election; and in case any portion of an organized county is so stricken off and added to another, the county to which such portion is added shall assume and be holden for such portions, part and proportion of the indebtedness of the county or counties from which it was so stricken.

Mr. MOER moved its adoption. Seconded.

Mr. BARTLETT of Griggs. I shall have to ask for information before I can vote on this. The last three lines are indefinite. What proportion are they to assume? If one-half, are they to pay one-half? If one-third, then one-third? It seems to me that there should be a proportion fixed, and the just rate would be the proportion of the assessable property cut off. I should like some explanation as to what proportion they propose to pay.

Mr. MILLER. I am in the same fix. I don't understand this section. It reads as follows: "All changes in county boundaries * * * * at the next general election thereafter." Thereafter what? What does it refer to? There certainly can't be any changes in the boundaries until the election has taken place. I don't know how that could be construed, or if it is susceptible of two or three constructions. Going a little further, I am of the opinion that all the balance of this File No. 63 after section No. 2 is a matter more properly pretaining to legislation and to be considered by the Legislature, rather than by us here. We have established in sections one and two the counties and the conditions on which counties can be made, and that is all that is necessary for us to do. All the other matter is there to forestall some action of the Legislature. I deem it inadvisable and improper for us to do this. If the other members of the Convention differ with me I should like to have that section three construed so that I can understand it.

Mr. MOER. The point raised by the gentleman from Cass on the word "thereafter" while possibly it may be well taken—it seems to me that that word refers directly back to section two, which provides that the Legislature shall provide by general law, etc. The Legislature shall do this, and it seems to me the only construction would be that after the Legislature had provided for an election at the next general election thereafter the vote should be taken. I am strongly in favor of the opinion expressed by the gentleman from Cass as to all the article after section three. I

move that the section be adopted merely to get it before the committee. I believe that this is absolute legislation, and if we are to go on in this way we are going to have a Constitution twice as long as the Sioux Falls Constitution, which I regard as utterly useless. I believe that all of this section should be stricken out.

Mr. MILLER. In relation to File No. 63, which we are now discussing, I move to amend the motion of the gentleman from Dickey by moving to refer it back to the Committee on County and Township Organization, from whence it came, with the opinion that the balance of the entire bill is not for action of this Convention but for the Legislature.

Seconded.

Mr. MILLER. I desire to call the attention of this body to section nine of this article, which reads as follows:

SEC. 9. In each organized civil township there shall be elected, at the first general election, for such terms as the Legislature may by law prescribe, three township supervisors, one of whom shall be designated Chairman, and the chairmen of the several boards of township supervisors shall together constitute the county board of their respective counties.

That clause would leave much of the new State of North Dakota entirely unrepresented on the county boards. I will refer in the first instance to the effect it would have, for instance, on Morton county. If the townships were organized, there would be from eighty to ninety members of the county board—a body larger than this body here. It would be an exorbitant expense and entirely useless and unwieldly. In the next place take Cass county. We have forty-nine organized townships. That would make our county board consist of forty-nine members as this bill now stands. The city of Fargo has about half the population of the county—not quite that, but that city would have no representation on the county board as allowed by this bill. In other words about one-half the voters in Cass county would be disfranchised so far as representation on the county board was concerned. The board alone would consist of forty-nine members, and no representation from the cities of Fargo and Casselton, which two cities have a large proportion of the population of the county. In case that this bill is so amended as to give these cities representation, it would increase the membership of that board to over sixty members, and with their clerks and attaches would make a convention for the board of county commissioners as large as this Convention that has assembled here for the purpose of forming a

Constitution for the whole of North Dakota. These men could not work for less than $3 a day each, and they would travel upon an estimate, at least twenty miles each to reach the county seat to hold their sessions. This would make $180 a day fees for their per diem, and their mileage would be forty miles each—twenty going and twenty returning—which would give them $4 each or a total of $240 more to be added to each session. It has been urged that the township should pay its member for his attendance on the Board of County Commissioners. But it is as broad as it is long. If the township pays it must tax, but if the county pays it must tax too, and then the expense would be spread over the entire county. It seems to me that this is a serious objection to the bill. I should be in favor of the Legislature passing a law which would give counties an opportunity of trying this plan, but to make this innovation, and make these large Boards of County Commissioners as a part of this Constitution, which it will be impossible to change for many years, I deem unwise and unsafe—something that we should not do. Many of the gentlemen who favor this class of township representation on the Board of County Commissioners, have lived in states where that system is in vogue. I lived in the State of Wisconsin, but the counties there are very small, composed of but few townships, and the boards vary there from nine to twelve and fifteen members. In this Territory the counties are composed of from forty to eighty and ninety townships, thus giving you as large a membership to the Boards of County Commissioners as you have in both houses of the Territorial Legislature. I don't know but that I should vote for this bill if this were a Legislature instead of a Constitutional Convention. The experiment might be worth trying, and I am in favor of leaving it to the Legislature to be tried, if by vote the counties see fit to try it. There are some other objections to all the articles of this bill, and I hope the motion will prevail and this bill be re-referred to the committee with the recommendations that I have suggested.

Mr. GRAY. I would like to ask the gentleman where he gets his authority for saying that the new boards would want so much per day. Is there anything of the sort prescribed in the bill? Is not that a matter for the Legislature to regulate? I don't understand what right he has to say that the members would be paid $1 or $4 or $5 a day. There are men, good men, in our town who

are willing to work for $1.50 a day, and there is no reason for saying that $3 a day would be the price.

Mr. MILLER. The statement as to $3 a day was entirely presumption on my part. I assumed that any person who was qualified to sit as a member of the board could not be expected to sit for less than $3 a day. His hotel bills would be $2, and he should have some compensation in addition to that, and the Legislature in providing compensation for the service would at least pay them for their time and service what their actual expenses would be.

Mr. GRAY. We find plenty of men who are ready to serve their townships at $1.50 a day, and we think we could find some more who would be ready to serve them for $2 a day at least.

Mr. MOER. There are other as objectionable features. Section four for example—this is purely Legislative. Section five, too; section four reads as follows:

SEC. 4. In counties already organized, where the county seat has not been located by a vote of the people, it shall be the duty of the County Board to submit the location of the county seat to the electors of said county at the first general election after the admission of the State of North Dakota into the Union, and the place receiving a majority of all votes cast at said election shall be the county seat of said county. If, at said election, no place receive a majority of all the votes cast, it shall be the duty of the County Board of said county to re-submit the location of the county seat to the electors of said county at the next general election thereafter; and the electors at said election shall vote for one of the two places receiving the highest number of votes at the preceding election. The place receiving the majority of all the votes cast for county seat at said second election shall be the county seat of said county.

It seems to me that this is purely legislative, and that if we are to go on the theory as embraced in the File submitted by the Committee on County and Township Organization, it seems to me that we will legislate on every subject that it is possible to bring in. We shall have enough legislation, do the best we can, and it seems to me that the whole thing should be stricken out. It is a matter for the Legislature to say how we shall change county seats. Section six is perhaps wise. It reads as follows:

SEC. 6. The Legislature shall have no power to remove the county seat of any organized county.

We don't want to go on and tell the Legislature just exactly what they will have to do to change county seats, or in the organization of boards of supervisors. In my county the mileage alone would cost our county $150 every session, and in view of the fact that we have a great many very large counties, it seems absurd for us to

attempt to inaugurate a general supervisor system. The only men who favor it, it seems to me, must be the men who come from states where it is in vogue and where there are nothing but little counties. I am heartily in favor of referring this to the committee again.

Mr. SPALDING. I would amend the amendment by including as desirable for us to adopt all of sections six, seven and ten, except the word "other" in the tenth section. These are not matters of legislation, but are limitations on the Legislature, and I believe they would be proper sections for this article, and that they don't come within the objections made by the gentlemen who have just spoken.

Mr. MILLER. With the consent of my second I will accept that as part of my amendment.

Mr. STEVENS. I am heartily in favor of re-referring this report to the committee, but I am opposed to instructing them that we won't have county township organization, and I will ask for a division of the question. I desire to vote on the question separately. I am opposed to doing away with the county township system, either that, or such as the committee may recommend. I have lived under it, and in counties where the county seats are located anywhere near the centre of the counties, the mileage is not very heavy.

The CHAIRMAN. How shall the question be divided?

Mr. STEVENS. First whether it shall be referred, and second whether the recommendation shall be given to the committee.

Mr. SCOTT. I think that we can make better progress if we take up this report section by section. There are some sections that I favor, and some that I am opposed to. I don't believe that we should adopt three, four or five, but I think six is all right, and I am not so sure but some of the remaining sections are perfectly proper. At all events if this report is going to be re-referred to the committee it should be informed as to what our wishes are in the matter, and we should decide whether we are in favor of township organization going into it or not. Then the committee will know what to do with it. Take section seven—I am not clear that section seven is not all right, and so with eight, and with section six I think there is nothing the matter with it.

Mr. ROLFE. I suppose that we shall, before we get through with our work here, listen to the cry of proposed legislation a good many times. If the cry is listened to, our Constitution will

probably be a very small and comparatively unimportant document. I undertake to say that pretty nearly every member, if not every member, has suffered at the hands of the Legislature in one respect or another to a sufficient extent to make him suspicious of Legislatures. If the real and honest intent of this Convention is not to introduce some wholesome legislation into the Constitution, then we had better go home at once. In regard to section three, it does not seem to strike the gentleman from Cass as being particularly objectionable, except that it is legislation. But he undertakes to throw a cloud on section three by attacking section nine. He undertakes to blot out all respect for three by insisting that section nine is in our present condition a ridiculous system to introduce. Now, let section three stand on its own merits if it has any. Let us settle this report of this committee section by section. If section three is not a wholesome restriction on the Legislature, let us blot it out. But don't get a new report on section three because section nine is bad. I apprehend that there are many here who are in the same position that I am in—who have suffered from abuses that have arisen from a system that has been in vogue, and which system section three will correct. In the county from which I come, we were obliged to vote for the candidate for Delegate to Congress last fall that we did not want —a man who belonged to a different party, because it was the only way in which we could preserve our county intact. We made a trade; the party to which I belonged was obliged to make a trade with the opposite party, and we voted for their candidate for Delegate to Congress and they in return voted for our candidate for the Council who was pledged to oppose and defeat, if possible, any measure looking to the cutting up of our county. We sacrificed our political principles in many respects for the purpose of preserving our county life. Now I apprehend that there are a good many here whose experience has been similar. They will agree with me that there is some merit in section three. Therefore I am very much in favor of considering this section alone.

Mr. MILLER. The gentleman suggests that he has suffered at the hands of the Legislature. That may be admitted, but the suffering may be remedied after two years; the suffering that will be occasioned to the people of this Territory if these sections are adopted will be universal and will last for more than ten years before this Constitution can be amended. There is not an indi-

vidual taxpayer who won't feel it. I have no doubt but that legislatures sometimes trample on the toes of people and localities who try to organize counties. Their financial interests are trampled on, and as Judge Cooley very wisely said, we have to trust somebody in the future, and the Legislature seems to be the only tribunal that we can trust in these matters.

Mr. WALLACE. It seems to me that the best thing we can do is to take up this matter section by section.

Mr. NOBLE. I move that the committee do rise, report progress and ask leave to sit again.

The question was put and lost.

Mr. MILLER. My motion is that section three be re-referred to the committee with the opinion of this body that it is proper subject for legislstion, but should not become a part of this Constitution.

Mr. APPLETON. As one of the committee that submitted this report, I would say that we were of the opinion that section three was not legislation. It seems to me that there is nothing wrong in this Convention saying that all changes in county boundaries shall be submitted to a vote of the people. We are simply saying that before a change is made in any county the people shall have a voice in the matter. We say that where the people vote to be set off and be made a new county, they shall assume their portion of the debt of the county. It did not seem to me that there was anything unfair about the proposition that before any of the boundaries or lines of the counties shall be changed, the people shall have a chance to vote upon it. I move that section three be adopted.

Seconded by Mr. COLTON.

The Chair ruled that a motion to refer back is not capable of being amended.

Mr. O'BRIEN. As I understand it the motion of the gentleman from Cass would be practically of no effect at all. If this motion prevails, then section three goes back to the committee. But for what purpose ? What are they to do with it ? Are they to change it and bring it back to us again in the shape of another report ? It seems to me that a better plan would be for us to take this up and discuss it in Committee of the Whole, and if we arrive at the conclusion that it is legislation, of which I am somewhat of the opinion, we can settle it right here without burdening the committee again with it. I think it would be a great deal

better for us to settle it here. There will probably be a great many other subjects that will come up in the same way and if they are to be referred back after half an hour or an hour's discussion, the committee may make another report like the first and we will never reach the end of our discussions. But if after a full and free discussion of this matter we are of the opinion that it is not proper subject to be incorporated in the Constitution, that settles it, and we can proceed to something else. For that reason I oppose the motion of the gentleman from Cass.

Mr. COLTON moved that section three be adopted.

Mr. BARTLETT of Dickey. Whether this is legislation or constitution I cannot say, but of one thing I am certain—it is good, wholesome law. I know that it should be in the Constitution, and that is why I am in favor of it. I have listened with great pleasure to the arguments of the gentlemen in whom I have confidence as lawyers, but that section suits me mighty well.

Mr. HARRIS. I move to amend section three by adding after the last word the following: "As the assessed valuation of the part so stricken off shall bear to the total assessment of said county or counties."

Mr. COLTON. I would accept the amendment and I would have put it in, but I saw that there are so many who want to leave the Legislature something to do, and I thought it would be well to leave that to them. I believe at the same time that in the matter of the dividing of counties it is well to let the people have a voice, and that is why I am in favor of having this article adopted as part of the Constitution. I have seen the effects of there being no restrictions on the Legislature; I have seen cases where the Legislature has, without consulting the people, taken part of one county and added it to another, and made the county that took the piece, pay what they had a mind to. It is not right to leave it so that a Legislature can make one county take a piece from another whether they want to do so or not.

Mr. MOER. I move to strike out all of section three after the word "thereby" in the third line.

The amendment was declared to be out of order, and it was then moved as a substitute.

Mr. ROLFE. In the minds of the committee there was a good reason for every word in that section, and I would like the members of this Convention to analyze it carefully. It provides that changes in counties shall not be absolute when passed by the Leg-

islature. I believe that there is no question as to the wisdom of that. But further, we wish to bind the Legislature to provide for two or three items that are of importance to the voters in each county. First, that they shall not be cut up without a chance to say something about it at the polls. Second, that the county shall not be cut up unless the entire county has something to say, and third, the county shall not have a portion put on it without having something to say about it. Fourth, that the section of the county that is to be cut off shall not have the entire say in the matter. It is manifestly unfair that a portion be stricken from a county to be added to another unless the entire voting population in the two counties so affected, or three or four counties, as the case may be, without having a voice in the matter. I have seen the most fertile portion of the county which I represent taken away from the rest of the county, simply on the vote of the part which it was proposed to cut off—a small part containing not more than a hundred votes. The oldest settled portion of the county —the best portion—cut off simply by the votes of the parties living in the other part. There was no provision that the part so cut off should bear any part of the indebtedness already existing, but both counties subjected to the change made by the votes of those few people in the territory cut off. It seemed to this committee that that was manifestly unfair. In regard to the latter part of the section, it is provided that the county receiving the part cut off shall assume the proportion of the debt properly belonging to the portion so cut off, and it was thought that if the Legislature would pass a bill, any bill so changing a county, then in order that the measure might be popular it would be necessary for the Legislature in the same act to provide for an equitable adjustment of the debt, and provide the details for the assumption by one county of the debt. Remember, it was the design of the committee to embody the principle simply in this section and leave the details to the Legislature.

Mr. MOER. I want to call attention to the fact that all that has been urged in regard to section three has been that under it the Legislature would not be able of itself to cut a county to pieces. Now the first three lines of the section are sufficient for that purpose. Those three lines make it necessary for the Legislature to submit the question to all the electors of the county or counties affected. Let us take it for granted that the Legislature will give us a little decent legislation, and let us not put it all in

the Constitution. Let us presume that the Legislature will provide that the portion set off with the county or counties it is attached to, shall bear its portion of the existing indebtedness. What is the use of having it all in here? By adopting these three lines, we give all the protection to the counties that seems to me to be necessary.

Mr. WALLACE. The gentleman seems to fear that we shall not leave the Legislature anything to do. He seems to think that if we leave it to them they will go on and do what we have here sought to compel them to do. I don't see why this article is not just what we want. I think the gentleman from Burleigh has struck the right thing with his amendment.

Mr. APPLETON. I agree with the gentleman from LaMoure that the first three lines of this section are the most important, admitting with him that those lines should go into the Constitution, and I would ask if there is anything inconsistent in saying that a majority vote shall be required? Further, I would ask if there is anything wrong or inconsistent in saying that any portion of the county cut off shall bear its part of the existing indebtedness? If this is good legislation, why not put it into the Constitution? Why leave to the Legislature something to do which the gentleman admits is right?

Mr. MOER. I admit that a great many things are right; I admit that this is right, but I believe that the Legislature could enact it. We might as well say that because murder should be punished, we should say how it should be punished. That is the only point I make against it.

The substitute motion was then put to a vote and lost by 32 for and 34 against.

Mr. JOHNSON. If there is an argument in favor of that amendment I don't see it. It occurs to me that the principle of the amendment is wrong. That is not the just method of determining the liability of each portion of the county. I think we have a very striking example now in the Joint Commission as to how debts should be divided when territories separate. I think the committee has prepared the article just as it should be without any amendment. The amendment would require you to divide the debt, not with reference to the benefits that had been received; not with reference to the causes for which the debts were created, but simply with reference to the future ability to pay. Suppose the portion stricken from the county had within its territory the

value received for this debt; suppose the bridges for which the debt was incurred were all in that portion; suppose the public buildings or improvements were all located in the portion to be stricken off; would it be fair and just then in saying who shall pay that debt, to figure up simply the present property valuation, and make that part of the county which derived no benefit, pay as much as that part which derived all the benefit? Leave the article just as it was reported by the committee that prepared it, and then the Legislature can provide that the debt shall be divided equitably between the different portions, or if no provision is made the courts will settle it equitably. The article as it comes from the committee provides that the portion so set off shall with the county to which it is added, assume and be holden for such part and proportion of the indebtedness of the county from which the piece has been taken. That would leave it an open question to be decided in a court of equity—as to what proportion each county shall bear. A commission could be arranged for to take evidence as to what was the cause of the indebtedness, and to repay it. Therefore I am decidedly opposed to the amendment offered by the gentleman from Burleigh.

Mr. HARRIS. As I understand section three without the amendment, in case a portion of an organized county is stricken off and detached from one county and added to another, the county that gets the addition only assumes that part of the indebtedness which the area of the part so stricken off bears to the whole area of the county. It says: "In case any portion of an organized county is so stricken off and added to another, the county to which said portion is added, shall assume and be holden for such portions, part and proportion of the indebtedness of the county or counties from which it is stricken." My amendment was intended to cover the proportion which the part stricken off should assume; without that amendment, in case, for illustration, the township in which the City of Bismarck is situated should wish to be stricken off and attached to Morton county, the amount of indebtedness which Morton county would assume would only be the part which the area of this township bears to the whole of Burleigh county. This would not be just. If they are to take the amount of property that we have here, they should certainly assume the amount of debts which that would carry with it, and my amendment was intended to provide that the pro-

portion assumed should be a just proportion, and should be in proportion to the total assessed value of the whole county.

A vote on the amendment of Mr. HARRIS was taken with the result that it was adopted by a vote of 42 to 6.

Mr. COLTON pressed his motion that section three be adopted as amended.

Mr. SCOTT. There is a misunderstanding as to the import of this article. In section two we have provided everything that is necessary for the Constitution. We find there that the Legislature shall provide by general law for organization of new counties, for the location of county seats temporarily, and likewise by general law for changing county lines. Now then, we have given the Legislature all the power in that respect that we can give them, and then we propose to go and take away certain of their powers by section three. We form half a law, and say that the Legislature when it makes this general law shall put in it certain provisions, one of which is that the question shall be submitted to the votes of the electors of the county. It would be a peculiar Legislature that would make a law regulating these affairs that would not submit it to a vote of the people after this. If they make a general law, they would require in it that these matters be submitted to a vote. Section three provides that it shall be approved by a majority. The Legislature cannot require anything less than that. When we require in section two that the Legislature shall pass a general law, it does not look right for us in section three to make half a law ourselves. I move as a substitute that the whole of section three be stricken out.

Substitute lost by 35 to 28.

Section three was then voted on with amendment of Mr. Harris, and carried by 41 to 25.

Mr. PARSONS of Morton. I move to adjourn.

The motion prevailed, and the Convention adjourned.

SEVENTEENTH DAY.

BISMARCK, *Saturday, July 20, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

The Convention adjourned without transacting any business.

NINETEENTH DAY.

BISMARCK, *Monday, July 22, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. BOLLINGER.

Mr. PURCELL. In view of the fact that many of the delegates present are anxious to be relieved of duty as fast as possible, and in view of the fact that to-day is the last day for the presentation of articles, I move that all standing committees be required to make their reports by Thursday of this week.

Seconded and carried.

SOUTH DAKOTA CONSTITUTION.

Mr. PARSONS of Morton moved the following resolution:

Resolved, That the Constitution of South Dakota as appears in Long's Legislative Hand Book, (a copy of which is upon the desk of each member) be considered as introuded for adoption by this Convention, without being printed in the Files or Journal.

Mr. WALLACE. I should like to know if it is intended to print the Constitution either in the Journal or in the Files.

Mr. PARSONS of Morton. I supposed that the resolution was clear enough. The only printing that we have done is in the Journal and the Files, and my resolution specially says that the Constitution of South Dakota shall not be printed. I introduced the resolution simply that we might have the Constitution before us as an assistance in future debate. The Constitution is right here and we can refer to it. There are several matters coming before us which are brought out in this Constitution, and I think it would be wise for us to have the privilege to refer to it if we want to.

REBUKING A COMMITTEE.

An article introduced by Mr. RICHARDSON, known as File No. 46, was referred back to the Convention by the Committee on Revenue and Taxation, with the statement that as the matter was covered by other articles, the committee had no further use for it.

Mr. RICHARDSON said: I rise in protest of the way these Files are handled by the committees. It appears that there have been several propositions or proposed articles handed in to the committees covering the same ground. For instance, the preamble or the prohibition question, and in fact there is hardly any matter that is not covered by two or more proposed articles. I don't see why one particular article should be taken out from the numerous articles and flung back at the parties bringing it in, unless it is an established rule that every article which the committee does not see fit to adopt is to be sent back in this way. I supposed that the proposed articles went before their respective committees, and that the committee acted on them and from their own ingenuity they selected or made out a report, and that report, if accepted and adopted by the Convention, became one of the articles of the Constitution. It seems, however, in this case, that one or two articles are brought out separately and thrown out, while there are other cases where several articles are handed to the committees that are all alike, and these are retained in the hands of the committees that are all alike, and these are retained in the hands of the committees. Mr. PRESIDENT, it seems to me that this Convention has no right justly to say that one proposed article shall not remain with the committee until their final report any more than that all shall. I would move that this article be referred back to the committee.

Mr. WILLIAMS. It seems to me that the remarks of the

gentleman are fair. If the committee wishes to adopt a substitute for this article they can report the article back when they report the substitute. It seems to me that it is hardly proper to select one or two articles to return to the Convention in this way. Let the File be recommitted, and if the committee has something better let it report a substitute.

File No. 46 was recommitted to the committee.

Mr. LAUDER. I am a member of the committee, and I desire to say to the gentleman from Pembina that there was no disrespect to the gentleman from Pembina, or his proposed article intended, but when we came to look over the articles we found that we had half a dozen or so covering the same ground, and if the committee returned only this one, it was because we had not got through with the balance.

Mr. PARSONS. Would it not be well to have a resolution passed providing that all Files or articles referred should not be reported back until the final report of the committee, except such articles as are recommended to be referred to another committee.

Mr. RICHARDSON'S motion was carried.

Mr. PARSONS of Morton. I move that all articles submitted to committees be not reported back to the house until the committees send their full report, except such articles as they may send with the recommendation that they be referred to some other committee.

The motion was seconded.

Mr. WILLIAMS. I think it would be better to leave this to the discretion of the committees. After this informal discussion that we have had I think the committees will understand what is expected of them. I think it would be better not to adopt this resolution, and thus tie up the hands of the committees.

Mr. STEVENS. I move as a substitute motion that all matters reported from any committee shall immediately be referred to the Committee of the Whole, and be taken up at the time the report of the committee is discussed.

Mr. PARSONS of Mortion. I withdraw my motion.

Mr. STEVENS. I withdraw my substitute.

Mr. MOER. I move that the vote by which File No. 44 was indefinitely postponed be reconsidered.

Seconded and carried.

Mr. MOER. I move that File No. 44 be referred back to the Committee on Revenue and Taxation.

The motion carried.

Mr. ROBERTSON. I move that the several standing committees hereafter report back to the Convention no articles unless the same be deemed of use for other committees.

The motion was seconded.

Mr. MOER. I don't wish to offer any discourtesy to the gentleman, but it seems to me that this would give a committee wonderful power. It simply allows a committee to say, out of all that is introduced, what shall go back, and we have no power to pass on anything that is introduced here that the committee does not see fit to report back. It makes the committee absolute judge of what shall go before this Convention. I move that the resolution be laid on the table.

The motion was seconded and carried.

Mr. ROLFE. I move that the resolution by which the committees were required to report by Thursday be reconsidered. I voted in the affirmative. I do this for the purpose of moving an amendment which will read: "Except the Committee on Apportionment and Representation." That committee can make no report whatever until the Committee on Legislative Department has reported upon the number of houses, and the number of members of which the Legislature shall be composed, and that report has been adopted by the Convention, or at least by the Committee of the Whole.

Seconded.

Mr. WILLIAMS. It would seem unnecessary to pass this. We are not going to ask any committee to do that which they cannot do. If one of the standing committees cannot report, all they have got to do is to stand up in this House and say they can't report for lack of action on the part of other committees. It does not seem to me that it is necessary to do more than this.

Mr. STEVENS. I would say that the resolution that was passed relative to the reports of committees does not say that they shall finally report, but that they shall report, and they can easily do that. The resolution is simply that they shall report. They may report progress under the resolution.

Motion to reconsider was lost.

The following resolution, known as File No. 25, was taken up for discussion in Committee of the Whole.

Resolved, That the Constitution provide that the Legislative authority of this State shall rest in a single body, to be called the "Legislative Assembly,"

which shall consist of not less than one hundred members, to be elected by the people; *Provided*, The Legislative Assembly may from time to time increase the number of members, as necessity may require.

Mr. LAUDER. I move that the speeches be limited to twenty minutes.

Mr. WILLIAMS. I hope this motion will not prevail. I think the Committee of the Whole should allow the members as much time as they desire to take to discuss these questions. It is fair and just that they should say as much on this question as they want to say.

Mr. LAUDER. I have no desire to deprive any man of time, but it seems to me that we are spending a good deal of valuable time here without doing much. But I withdraw my motion.

THE SINGLE HOUSE QUESTION.

Mr. STEVENS. Mr. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE OF THE WHOLE: In introducing this proposition to have our Legislature consist of a single house, I assure you I have not been influenced by an ambitious desire to depart from the beaten path trod by constitutional conventions heretofore held, merely as an experiment. Neither have I been influenced by a morbid curiosity to ascertain what support the proposition might receive. I take unto myself no credit for having originated the idea or the resolution under consideration. As far back as 1850 the Hon. D. A. Robertson urged its adoption in the great State of Ohio, and in North Dakota its adoption has been ably urged by the Bismarck Tribune, and endorsed editorially by some of the leading papers of the Northwest. No meeting of its advocates has, so far as I am aware, been held to consider what course is best to pursue in urging its adoption, but it comes before you as a simple proposition for your earnest consideration. And had I the powers and ability that would allow me to make a plain statement of the necessities of its adoption unembelished by oratorical display, I would have attained my highest ambition in its advocacy.

In the formation by this Convention of a constitution we are led to consider not only its permanency, but also its adaptibility to the wants and the necessities of the people. What might be appropriate in the great manufacturing states of Massachusetts and Pennsylvania, the great mining states of California and Colorado need not of necessity be applicable to the wants of the great agricultural State of North Dakota. The members of the

Constitutional Convention that formed our greatest of National Constitutions took into consideration, not only the necessities of the times and the circumstances of the people, but also attempted in a measure to adopt a plan as near analogous to the form of government under which the people had been governed as the blood-bought liberties of the people would admit, and that among other things was one of the causes that led to the dual complexion of our National Government. In imitation of the British Parliament the two branches of Congress were formed, one to protect the rights of the people and the other to protect landed interests. Different modes of election and qualification were prescribed for Senators and Representatives so that no conflict might ever arise as to their election. The one and only argument to-day in favor of the perpetuation of our National Senate is the protection it affords to independent sovereignties which compose our Federal Union—a branch of the government where the little state of Delaware and the great empire state of New York shall meet on equal terms and have equal representation. Can any such argument be urged in favor of a Senate for North Dakota? Surely not unless you agree that every county is entitled to a member of the Senate. If the Senators are to be elected from the same districts as Representatives, then every argument in its favor is but a drop of sand, and the boasted protection to the rights of the people it is supposed to afford becomes but a sounding brass and a tinkling cymbal. The House of Lords, in imitation of which our National Senate was originally created, is but a remnant of that old feudal system which the enlightenment of time has relegated to the dead past, and to-day the House of Lords is only perpetuated to mark that aristocratic distinction so absolutely necessary to a monarchical form of government, and sits idly by trembling at the very frown of the House of Commons.

The argument used to show the necessity of a United States Senate is that it gives each of the different sovereignties equal representation. No such method has ever yet been adopted in the formation of a state. You say each district shall elect three members of the House and one Senator. Why this distinction? Why make one equal to three? Both branches have the same legislative powers; each can originate measures for consideration. The check upon the Senate is as necessary as upon the House, and both are necessary. Would the electors send a representative to one branch of the Legislature under the belief that he would disagree with

the member of the other House because he belonged to a different branch of the same body? Surely not. True it is that measures have passed the House that were improper and have failed in the Senate, but in nearly every case they have only passed the House to be used as trading stock in the Senate, and had there been no co-ordinate branch they would have failed in the first instance. What measure of great injury or inconvenience to the people has ever passed the House and failed because of the conservatism of the Council during our territorial existence? What evils have our Territorial Council prevented; what rights protected; what benefits bestowed upon the people? I call upon the champions of co-ordinate branches to cite them, and failing to do so they must admit that thus far our Territorial Council has been an ulcer upon our body politic that could well have been dispensed with.

Historical observation has taught us that when great emergencies arise and co-ordinate brancnes of the government disagree, the one branch is swept from power, and as was said by Mr. Snyder of Illinois, in speaking of our Constitutional Congress: "The old, wornout habilaments of mediæval monarchy were cast aside or forgotten, and the grandest and most illustrious of all legislative bodies ever known to a people accomplished its work with unparalleled ability, scouting not only the trammels of an executive vote, but also the dilatory stumbling block of a co-ordinate body." We are not here to form a constitution for the past, but for the future. The history of the past is spread out before us for our instruction, nor should we follow blindly the precedents set by other states in deciding what is best for our success. Look around you and see what has been accomplished by bodies acting without co-ordinate branches in the past. The Athenian democracy to whose wisdom and sagacity we to this day pay the highest tribute of respect; the Phenician republic which swept away more than 2,000 years failures of other forms of government; that grand body of men who presided with so much marked ability over the destinies of Genoa; the Swiss confederation and the Kingdom of Norway and Sweden of the present day; and in our own country, for more than six long and bloody years, a single body carried on with consummate wisdom to a successful termination our own revolution, which established for all time the liberties of a people and the justice of our cause; that promulgated that immortal document, our Declaration of Independence, which has stood, and ever will stand, as a beacon light promulgating the doctrines of

our Republic to the oppressed of every land. It was a single body that framed that Constitution we have just adopted, and which after more than a century of time has required fewer amendments than we have been days in session, and whose work was not even submitted to popular vote for its adoption, and the justice of whose provisions has attracted to our shores the wooden-shoed peasant of staid Germany and sunny France, England's sturdy toilers, the hardy mountaineer and miner of Norway, the brawny and genial son of Erin's isle and Scotland's noble sons, until to-day not a sail whitens either ocean but bears pilgrims coming to worship at the shrine of that document promulgated by a single house.

The constitutions of every state in this Union have been formed without a co-ordinate house. The great City of New York with its two million souls, and the City of Chicago with its millions, and the ramification of whose industries and interests are more varied than that of almost any state in the Union, are governed by single councils elected from year to year. Their growth in wealth, population and importance have had no parallel in modern times. True, I will be confronted by Tweed's reign in New York. So, too, originated in the co-ordinate branch of our own government from the pernicious doctrine of state's rights, the greatest rebellion the world has ever known, and which caused the deep-toned war dogs to bay death from their black and horrid throats for more than four years, and from the effects of which more than half a million of America's noblest sons bit the dust, the evil influences of which will pass away only with the great generations of that day. That great corporation, the Northern Pacific railroad, whose steel threads span our land from lake to ocean and under whose management its patrons are conveyed with speed and safety across our broad prairies, scaling the rockies and bringing the traveler to view with wonder and admiration the snow-capped billows of the Pacific; that has so materially aided in making that country that twenty-five years ago was supposed to be a barren waste, to blossom like the rose—is controlled by and governed by a single board of directors.

With these illustrations before us of what has been accomplished by single bodies, why may we not say we will leave the old rut of precedent, set in the formation of our states, and guided by the splendid examples before us provide for a single Legislative body. Congress has provided that this Constitutional Convention consist

of a single house. Surely the permanency and importance of our work is greater than can be the work of any Legislative Assembly. I am here met with the objection that before it becomes operative it must be ratified by the people. Yes, as a whole it must, but without power in the people to rectify or amend, and I have sometimes thought it would be better if the work of the Legislature as a whole, before its laws become operative, were ratified by the people. Unjust discrimination, jobs, schemes, and corrupt practices would disappear from our Legislative halls. The governing power ought to have no right to inflict penalties until the governed have had ample opportunity to know what laws they are expected to obey. Some will say I would like to see this resolution in force, but am afraid of experiments.

First, It is not an experiment. It has been demonstrated to be a success in every instance in which it has been tried. Second, had Newton when the apple fell, or Galileo when with measured beat the pendulum marked the present, past, or Franklin when he gathered the lightning from the clouds, stopped before following their observations to their legitimate conclusions—had they not by experiment and demonstration shown the wisdom of their observations, the world might still be groping in ignorance of the great discoveries they made. Had Columbus, when he sailed upon his voyage of discovery followed in the path mariners had followed for centuries before him, our own fair America might to-day be uninhabited save by the untutored savage, who sees God in the clouds, and hears Him in the winds, and Columbia, our fair goddess, never have presided over the world's greatest republic. When our Constitution shall have been adopted and our Legislature shall have prescribed a code of laws for our government, we shall need very little legislation until changes in our condition shall require it. One of the evils of the times is the tendency to make too many laws—to legislate on too many subjects. We have no great subsidies to protect—no great industries save that of agriculture to foster. The greatest problem we will have to solve will be economic problems, and which can as readily and safely be solved by a single House. Let us, then, study well the problem before us, and see how well it suits our circumstances and conditions. It has been urged that, should this resolution be adopted, we would stand alone in the galaxy of stars with such a provision. The firmanent of heaven is thickly studded with brilliant stars, but the man lost on the open prairie or in the tangled wood; the weary

mariner when lost upon the trackless ocean intuitively looks to the north star alone, and from it takes his bearings to guide him to a place of rest or a harbor of safety. Let North Dakota set an example by the adoption of this resolution and he who shall at the end of a quarter of a century turn his eyes to the northern boundary of our Union will see not only a united, happy and prosperous people whose flocks and herds graze on a thousand hills, and whose millions of acres of golden grain wave in the breezes of heaven, but he will also see on the pages of this day's history a reform that will stand out in bold relief as if the Angel Gabriel had dipped his fingers in the sunbeams and painted it in letters of living light across the vaulted arch of heaven.

Mr. WILLIAMS. If there are no others who wish to speak I move that the committee rise.

Mr. TURNER. I would like to second the adoption of the resolution if it has not been seconded. In seconding this resolution that North Dakota have one legislative house instead of two, I do so because I think it is a matter of very great importance to this country that we should establish a legislature with one house instead of following the usual routine which has been followed in all other states of having two houses. As has already been stated by the speaker who has addressed you on this resolution, the objection is raised against one house that the one house plan has not been tried and found to be a success. This objection I claim is not well grounded. We have the experience of the British House of Commons for nearly two hundred years—the House of Commons, that with all its varied interests, extends not only over the united lands of England, Ireland and Scotland, but over more than fifty-one dependencies which are connected with the British crown. All the legislation for about two hundred years which has been enacted for that great empire has been passed by the House of Commons, and has been the act of one legislature and one legislature alone. The House of Commons was called into existence in 1264 by the noted Simon B. Montfort, to aid the barons in the rebellion against Henry III. Since that date the march of progress has been marked with respect to the powers of that one house, always encroaching on, and doing away with, the powers of the upper house. No sovereign in England for nearly two hundred years has ever vetoed an act of that House. All acts that have been of a progressive character have emanated from the House of Commons. We have the

Catholic Emancipation act, the Reform Bill of 1832, the Disestablishment of the Irish church which the House of Lords tried to prevent, but which the Commons assured them that if they did prevent it it would be the death of the House of Lords. We say that the wisdom manifested in the legislation of one house is sufficiently manifested in one of the greatest nations that wields the scepter in Europe. If we come to the colonies of Great Britain in North America, we find that while the Dominion of Canada has two houses, the upper house is rather an incubus than a help in the great work of legislation, and the most of the advanced thinkers in Canada, and the most acute politicians, all hold that it would be better for Canada to do away with it to-day if it had only one legislature—the House of Commons simply. If we take the various provinces we find that there is only one of these provinces that has to-day or ever has had, more than one house of representatives. Nova Scotia, New Brunswick, Ontario and Manitoba each has only one house of representatives. Quebec is the only province that has two houses. It is confessed on all hands that the legislation in Quebec, in importance and value, is behind that of the other provinces which have but one house. I might refer you to the legislation which we have had here, in Dakota, and say that two houses of the Legislature in the past has not proved that two houses are especially conducive to wise legislation. It is a fact that on the statute books of Dakota there are acts which have been passed, which have received the sanction of both houses, and yet they are contradictory the one to the other, so that even the Attorney-General, who occupies the highest legal position in this Territory, has been unable to say just what the law means on these subjects. I say with respect to the legislation of Ontario, with which I am most familiar, that their acts have been very much more clear, very much more distinct, very much more easily understood than the acts of the two houses of the Territory of Dakota, and so correct has their legislation been that while the Dominion Houses of Parliament have sought to veto the action of the Legislature of Ontario, and have done so in some thirteen cases, there has not been one single act that has been vetoed by the Dominion Parliament but which, when carried to the highest court, has been sustained, and when carried to the Privy Council of England has been invariably sustained by the highest judicial authority in the whole Empire of Great Britain. These facts

should impress on our minds the great fact that the one-house plan is not wanting in success, and that it bears favorable comparison with any double houses of legislation that have existed anywhere. Bearing these facts in mind, would it not be well and wise for us to pass out of the old-traveled ruts and try among the states of this Union to establish a single legislature to prove to other states that one house can do the work of this people as well and more economically than two houses have hitherto done?

Mr. PARSONS of Morton. I would like to say, Mr. CHAIRMAN and gentlemen of the Committee, that my understanding of the matter was that this matter should come up to-morrow, and therefore I made no preparation whatever on the subject; but there is one matter which seems not to have been touched upon here, and which seems proper to be considered at this time. The remarks made to us a few days ago by one of the ablest jurists of the day contained the statement to the effect that if Thomas Jefferson was here to-day as one of the delegates to frame a Constitution for North Dakota he would not be as well quailfied to act and determine on the questions of to-day as any delegate on the floor. There are questions for us to consider to-day which have not come before the people, and which it has been impossible to bring before the people in their true light. I would guarantee that the great mass of the people who compose the inhabitants of North Dakota are far more intelligent than the inhabitants as a mass of any State in the Union. Go back if you please to any state in the most enlightened, the most populous, the most powerful, and out of the line of traffic, away from the business and commercial centres, and you will find that the people are not one-tenth as well posted as they are in Dakota. Now, then, Mr. CHAIRMAN, there is one fact that we have to consider here—it is a fact that precedent is very strong in one direction, but although the one house plan has been tried by two Territorial governments in these United States and finally discarded, and although all State governments to-day have two houses, yet we have the problem before us which must be solved in some way. If the one house system offers the solution to the problem, it seems to me that we should accept that. I am not prepared to state that the one house plan will solve the great problem that is before us. That problem is briefly this—in the days of yore we were accustomed to see men engage in business, and two or three would combine together in enterprises. But to-day we have to meet with the combined capital of thousands of

our citizens in one enterprise. A man will say—I don't feel like embarking all I have in this enterprise, but I will contribute a few hundred dollars and take so much stock. By that means we have developed this great Northwest, and the principal portion of the United States, and it has placed us in the foremost rank of the countries of the world. But with characteristic American style we have gone in a free handed manner—whole hog or none—and placed no restraints on this tendency. To-day the toiling masses of the people of this country who earn their living by the sweat of their brow—and that description takes in the farmer as well as the laborer—have come to the conclusion that there must be a line drawn—something done to stop the rapid centralization of capital, or this country will soon be in the condition of those across the water, where he who toils for his living is rivited in chains stronger than those forged by any blacksmith. It has been suggested that these matters are legislation—can all be determined by the Legislature, and that they can be dealt with by the same system as prevails in the other states of the Union. It is lamentably true that we have tested the matter here in the territories, and we are confronted with this humiliating spectacle, that after being granted an organic act and as territories conducting our business here, our legislators have conducted themselves in such a way that it is brought to the ears of the national government, and they have been obliged to pass laws restraining them. However humiliating it may be to the citizens of Dakota or the other territories, it is nevertheless true, and what guarantee have we in the future that simply because we have met here in Constitutional Convention and adopted a Constitution—have taken the reins in our own hands, that the course in the future will be different from that of the past? Now, Mr. CHAIRMAN, the one point comes before us—where two houses have the power of determining in regard to our legislation, the argument urged for the upper house has been that it acts as a wholesome check on legislation. That seems to have been the argument in our national government, and accepted as such in state governments without, perhaps, fully considering the matter. If it has been fully considered, we must admit that we have met with great evils here in our own territory. Men have arisen on this floor, and I will guarantee there are many more who will rise to testify to the wrecks of property and just claims that have followed in the tracks of legislation in this territory. The question becomes one

like this—shall we have that system of legislation which will permit one-eighth or one-sixth of the ligislators to obstruct and prevent legislation? It is a notable fact that all the capital united in the corporations or trust companies pay no attention whatever to the lower house of our national government, or to the lower houses of our state governments, except when they need some positive legislation. As a rule all corporate influence simply asks the absence of legislation. They wish to restrain legislation, and the influence here, if it is exercised, will be felt in the restraining of members of this Convention to incorporate more in that constitution than they wish to see there. In the past, as I have said, the rule has been for the corporations to direct their influence towards the upper house. It is much easier to control a small majority in that house than to control a majority in the lower house, and having a majority there they can check any legislation that they regard as being injurious to them. Now Mr. CHAIRMAN, it seems to me that as a safeguard to the people it would be harder for any influence to control a majority where the legislature met in a general assembly of one house, and it seems almost impossible that a corporation should be able to control a majority there, where they are elected directly from the people, and where it would be necessary to have fifty or over in the State of North Dakota. What object can be attained, what safeguard can we have, what benefit can be derived, from two houses so long as they are both apportioned on the number of voters and they come from each district? I have not considered this matter fully, and I hope that a final vote will not be taken on it to-day. It seems to me that some measure—some plan must be formulated for reform in these things, if we wish to see prosperity and peace and happiness fill the homes of our people. It is perhaps one of the most important subjects that will come before us, and while we have precedent of every other state in the Union before us of two houses, we must consider the influences that work here differ in a great degree from those there. We are largely dependent on corporations. Corporations in North Dakota will always have a stronger influence than they have elsewhere. With all due justice to them—we wish to encourage them—we wish to help them—but we must beware of the day when they will shackle us and control our people. In the interest of this measure I would ask that it be further discussed at some future day. I would like to hear from other members—have a full talk, for it is evident at

present that if we have two houses of legislation based on the apportionment as heretofore existing, the same evils will exist in the future that have existed in the past, and it has not been argued here that we should have two houses of the Legislature with a Senator from every county. I should like to have this matter discussed and if the parties who defend the one house theory can show that it will be a panacea for the ills under which we now labor, let us have it. If not, then let us have some change that will bring about a different state of things from that which we have had in the past.

Mr. CARLAND. I move that the committee do now rise, report progress and ask leave to sit again.

The motion was seconded and carried.

Mr. McHUGH. I move to adjourn.

The motion prevailed, and the Convention adjourned.

TWENTIETH DAY.

BISMARCK, *Tuesday, July 23, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

File No. 63—report of the Committee on County and Township Organization—was considered.

Mr. STEVENS. If I recollect rightly the question of a single or duplicate house was made a special order for yesterday, and being continued to to-day I think it would retain its order.

Mr. MOER. I move that the consideration of the one house bill be taken up.

The motion was seconded and carried.

Mr. MILLER. In regard to the consideration of the report of the Committee on County and Township Organization, I move that it be postponed till Thursday. There are several gentlemen absent who are interested in it, and I should prefer to have them here. All of them do not agree with me on the points to be dis-

cussed, and that is one reason why I should like to have them present.

Mr. LAUDER. It seems to me that if the business in this Convention is to be dictated on the principles suggested by the gentleman from Cass, we shall be here next January making a Constitution. I have no disposition to take the matter up and discuss it in the absence of gentlemen who want to be here, or to take advantage of the absence of anyone, but we have been here nearly three weeks, and it does seem to me that we have not made the progress that we should have made, and this has resulted in a large measure from deferring to the wishes of gentlemen who find their private business of more consequence than their duties as members of this Convention. I am opposed to the postponement of the consideration of any of these matters for the convenience of men who find their private business stands in the way of their doing the work they were sent here to perform. My business at home is just as important, perhaps, as that of the other members. But I have stayed here every day at an inconvenience to myself, for the purpose of getting through with this work, and I hope that members of this Convention will take up these reports and dispose of them, and make some progress.

Mr. MILLER. I did not make my motion for the purpose of securing delay, but I understood that there were several gentlemen who propose to address this Convention on the one house plan, and in moving to postpone what I did till Thursday, it was to let some other measure take the place of the report of the Committee on County and Township Organization.

Mr. LAUDER. If the time of the Convention is entirely taken up in the discussion of the one house plan, there will be no necessity of the motion of the gentleman from Cass.

The motion was put and lost.

THE SINGLE HOUSE QUESTION.

File No. 25 was before the Convention.

Mr. McHUGH. I move that the consideration of File No. 25 be indefinitely postponed.

The motion was seconded.

Mr. STEVENS. The matter is before the committee. They have reported and ask leave to sit again. I don't understand that this motion is in order.

Mr. PARSONS of Morton. I move that we go into Committee of the Whole for the consideration of File No. 25.

The motion was seconded.

Mr. STEVENS. I hope that this motion will prevail for this reason—those who have been in favor of the one house plan have had their day, and I think it is no more than fair and just that those who have prepared speeches to be delivered in this Convention on the other side have an opportunity to convince this Convention that they are right. I am very much in favor of hearing the arguments in favor of this resolution not being passed. If I am wrong and if those who are with me in this proposition are wrong we would be pleased to know it, and hear the discussion on that point. I am informed that some of the gentlemen are ready to discuss this question before the Committee of the Whole, and I do hope that though it is against the proposition I have introduced, these arguments will be allowed to be presented to this Convention.

Mr. McHUGH. My purpose in moving the resolution I did was to bring this matter up for discussion, and if desired I will withdraw my motion.

The motion of Mr. PARSONS was carried.

Mr. O'BRIEN called to the Chair. Committee of the Whole.

Mr. CARLAND. It is perhaps, not necessary that I should address this Convention on the subject of the adoption of the proposed article known as File No. 25, providing for vesting the legislative power of the proposed State of North Dakota in a single body; but it has been asserted in the public prints and by gentlemen who have urged the adoption of the resolution of the gentleman from Ransom, that the minds of gentlemen who resist its adoption are tied down and bound by slavish devotion to precedent. Such being the case, it is not more than right that at this time and before the Committee of the Whole I state a few propositions which have led me to believe that this resolution should not be adopted. It has been said that it is a dangerous thing for a nation to forget its past, and the more those words are considered in the light of the experience of constitutional government in the United States of America, the more force can be drawn from them. It has been said that we ought to try this new experiment—that we ought not to be bound down by precedent—that because the other states of the Union have adopted the principle of vesting their legislative power in two houses is no reason why

we should do the same. Now, I don't care to weary the committee by any long or extended remarks, but I desire to call your attention to a few facts which are historical and known of men who have studied in any degree the history of constitutional government so far as it affects the American States. So far as this proposition of one house is concerned—so far as its being a novel question—it is the furthest from it. It has been tried for years and years in this American Union, and has been found utterly inadequate for the purposes of the exercise of legislative power, and after that trial it has been thrown aside, and so far from being a novel question it is to-day in constitutional law, so far as the American Union is concerned, obsolete. A few references to the history of this country will show this. It is known of all men that the American colonies, when dependent on the crown before the declaration of independence—that the legislative power of these colonies was vested in a single house. Some of those colonies existed for a hundred years in that way, but when those colonies came together to adopt the Constitution for the United States government, there was only one colony in the Union that voted for placing the national legislative power in one body, and that was Pennsylvania. A glance at the early Constitutions of some of the States of the United States show the following facts—the Constitution of the State of Vermont of 1777, provided that the supreme legislative power should be vested in the House of Representatives of the freemen or Commonwealth or State of Vermont. That was the first Constitution she formed. She acted under that Constitution till the year 1836, when a special Constitutional Convention was called for the purpose of vesting the legislative power of that State in two bodies. There was a trial of the one house proposition, and it was discarded by the State. Under the form of government prepared by William Penn for the government of Pennsylvania that was the regulation there, that it should be in one house, and Pennsylvania when she came into the Union made a Constitution vesting the legislative power in one body. The Constitution of 1776 provided that the supreme legislative power should be vested in one house. Did she continue it? Had the experience under colonial government—had the experience between 1776 and 1790 led her to believe that was the best way to exercise legislative power? Not at all. In 1790 she adopted a Constitution with this provision: "The legislative power

of this commonwealth shall be vested in the General Assembly which shall consist of the Senate and the House of Representatives." Again, Georgia, when she adopted her Constitution, vested the legislative power in one house; so did South Carolina, but they all changed, until to-day there is not a State in the American Union which has that system of the exercise of the legislative power. The Congress which governed the colonies of America thought that the most prominent defect in the whole Articles of Federation was the vesting the power of Congress in a single body, and they decided that they would not try the experiment again. The history of this country shows that this is an old question—that it has been tried, and the people have decided that it was not the proper way and that it was not a safe way to exercise the legislative power. I cannot conceive that such is the case, but there may be communities so small in population or geographical extent, or of habits so simple that a single body might exercise the legislative power without harm, but I can say it without contradiction that there is no political power on the face of the earth to-day possessing the legislative power that the State of North Dakota will possess after it has been admitted into the Union, but that exercises the legislative power through two houses. All the examples that have been given of the Swiss Republic, Norway and of Ontario are to be looked at under the conditions of things which exist in those countries. In Ontario there is the supervisory power in the Crown, or the Privy Council, that may be exercised at any time to veto a law passed by the legislative body, and so in Switzerland. They are little bodies in the cantons, but there is a check and balance on the whole business by the adoption of laws providing for the Central Legislature. It has been argued that because corporations by boards of directors have governed their property with success that consequently a legislative power vested in one house in this State could and ought to exercise the legislative power with discretion and for the welfare of the people. In considering this question this important principle must not be forgotten—it must be admitted, or it may be admitted for the sake of argument that the majority of men are good, that they are honest, that they are benevolent, but when you admit that, you must also admit that their goodness or their honesty or their benevolence is always first exercised at home—first to the near relative, then to the distant relative, then it goes out of the family to the town, the county

and the state. When that truth is admitted it decides this whole question, because in the Legislature consisting of a single body, men will go there with a knowledge of the wants of their constituency as regards their particular locality, and they go to secure certain things; and you will find that a body consisting of a number of men to be called a Senate, who should be elected for a longer term, will act as a check against the exercise of ill digested legislation on the part of the people. It must be admitted that the people themselves sometimes make mistakes. The people have their flatterers as well as kings, but it may be as well admitted right here that the people make mistakes, and are often led away by passion, prejudice, self interest—by thinking of the interest of the state last, and history has shown that wherever the legislative power has been vested in a single body they have been carried away by passion, and their proceedings have been so irregular as to cause an inadversion of mankind upon their proceedings. No sadder example is presented in history than the fall and ruin of the Italian republics, who had the system of exercising the legislative power vested in one body. It has been argued that the Constitutional Convention that framed the Constitution of the United States was only a single body, and that it framed a remarkable document. It did, but the action of that convention had to be ratified by the states—two-thirds of the states—and the action of this Convention will have to be ratified by the people of North Dakota. If you will give us a legislative body who shall exercise legislative power by simply proposing as we do, the law, and sending it to the people for their adoption or rejection, there would be no trouble about vesting it in one body, but when there is but one body, and nothing to stop or check their action, no judge but themselves as to how far they will go in transcending their powers, or jeopardizing the rights of the citizens—I say the liberties of the citizens are in danger and no man will ever consent when taking a practical view of the matter to vest the legislative power in one body. The arguments in favor of one house have always been made by enthusiasts, by gentlemen of studious habits but of impractical mind. It was advocated in favor of the congress or the assembly that ruled the French government during the French revolution in 1791; it was advocated by no less a statesman than Benjamin Franklin in our own country; but there is not a sadder example of the folly and foolishness of vesting legislative power in one body than that very assembly. In conclusion I

would say that the history of this country, so far as constitutional government is concerned, and so far as I have been able to judge, in the short time that I have looked at it, shows conclusively that this vesting of the legislative power in one body has been denied by the universal consent of the people inhabiting the United States. And I don't agree with the gentleman who discussed the proposition on the other side, that if we are to adopt this proposition and vest the legislative power in one body that we would be the north star of the republic, and that all eyes would be turned to us as such as soon as we had made this constitution. I think on the other hand that the boundaries of the United States government so far as North Dakota would be concerned, would be changed, and limited on the north by the northern boundary of South Dakota, and that the mind in looking at the map or upon the situation of the country would think that we had gotten into her Majesty's dominions, or into Manitoba, subject to the rule of the imperial cabinet.

Mr. JOHNSON. I was very glad that the vote on this question was not taken yesterday. We heard the argument for the one house presented then with great force and eloquence, and there was a feeling on the part of the side that has been represented here to-day that they were strong in numbers and that argument was unnecessary, and thus it was feared that argument would be dispensed with. I am very happy that this Convention has asserted its dignity; assumed its proper position as a deliberative assembly, an assembly that will hear argument and deliberate on such questions. I am happy to believe that this Convention is composed of men who have come here, and who are here to-day unbiased and unprejudiced, and free to decide according to the argument and the reason that is produced here. I am glad, too, that the prevailing constitutional provisions—the prevailing institutions in the country, have been so happy as to have an advocate of the ability, the experience and the learning in constitutional law and history that they have had in their advocacy on the floor of this Convention. I take it for granted that that side has been presented with all the learning, with all the ability, with all the force and reason of which that side is capable. No other conclusion can be drawn but this, that if the argument just made is inconclusive, it is so, not from lack of ability and force on the part of its advocates, but from inherent weakness in its structure. It was said that the reason for the two houses was simply one of fashion,

one of tradition—that in this country we had fallen into certain ruts which we are following after the reason for these ruts had vanished. Another argument was that one house would be a check on the other. I leave it to you to say if that is not a fair representation of the arguments just made. Does it include any other points than the ones I have made? If those points can be answered, then we are entitled to your votes. I don't come here as a special advocate of this cause. The thought never entered my head, I confess it with some humiliation, but it is a fact that in the few hours that I had for a preliminary study of the questions to come before us, I did not think of this. I dare say that the same is true of many of you—of the many things you studied this important matter escaped you as it did me. My opinions on the question have been entirely formed by the discussions that I have read in the papers; by the arguments on this floor and by my own reflection. The time has come when I am prepared to take a decided stand.

Is it not true that the argument presented here for two houses is one strongly of precedent? That we should follow the traditions and fashions that we see around us? Is not that one-half of the strongest arguments that are brought? Is it not more than one-half? I am reminded of the way they have in China of cookery. They have a curious way of preparing roast pig in China. Many centuries ago there was a stable burned down. In the stable there was a litter of small pigs. In raking over the embers the carcasses were found. They were very delicious and from that day to this the same custom has been followed and handed down from generation to generation and from century to century, and the fashionable and stylish way to prepare roast pig is to corral them in a stable, burn the stable, rake out the embers and put the pig on the table. That is the Chinese method. Is that the Anglo-Saxon method? If we are to be bound by such fashions we are not true to the progressive mind of which our race is a part. We are not followers of Alfred the Great, of Cromwell and Washington. Coming nearer to our own times and the political heart of the gentleman who has just taken his seat, there was a Democratic convention once, and one of the young delegates rose and moved that there be inserted in the platform a plank something like this: "Resolved, That the Democratic party of this county is unalterably opposed to corruption, peculation and dishonesty, and is in favor of the rigid accountability of the

officials, and public economy." An old gentleman—an old wheel-horse—one of the moss-backs, died-in-the-wool, arose and made a speech something like this: "Gentlemen, I am decidedly opposed to introducing any new-fangled theories into the platform of the Democratic party." Let me tell you that the fault of the old man was that his horizon was not wide enough. He had drawn his conclusions from the practices he had seen laid down in his own ward, township or county. If he had studied the history of his own party, had studied Jefferson and Tilden, statesmen of that rank, he would have known that instead of being against the teaching of the leaders of the party, honesty, economy and reform were the watch words of the Democracy. The same is true of this doctrine. Instead of the one house plan being a new fangled notion and untried, it is as the gentleman has well said, a long tried theory, but my conclusion is entirely different from his. In my judgment the experience is not one of failure, but one of success. I read history differently from the gentleman who spoke on the other side. Let us go back to the nation that has furnished us the oldest history—take the National Assembly of the Jews. After the days of the theocracy—for the last four hundred years before the birth of Christ, the National Assembly called the Sanhedrin was but one assembly. It was composed of three classes—of the priests, the elders of the people, and the scribes. But those three classes met in one hall, discussed public matters, passed resolutions and made the supreme law of the land for 400 years, anyhow. Take the Senate of Rome that sat at the Eternal City, and from its throne ruled the world for over 1,000 years. The government of Rome pursued the single policy of accretion and aggression and power, and glory and greatness. For 475 years of that period during the proudest period of its existence, when the people were free, when art and learning flourished and literature rose and built their splendid monuments, as Horace says, "more enduring than brass, more lasting than bronze and higher than the royal pyramids," Rome was managed by one house—the Roman Senate. Such a thing as two houses was never known till the Thirteenth Century. If we shall stand for 1,000 years, if our arms shall march under the call as the Roman legions marched for 1,000 years, we shall walk in the path, not of uncertainty, not of danger, but as the life of nations goes, in the light of safety and strength and glory. Take the Republic of Carthage—one of the great powers that long withstood the power of

Rome—the nation that sent Hannibal across the Mediterranean, scaled the Alps and for eighteen years thundered at the gates of Rome—the Republic of Carthage was governed by a single house—the Senate of Carthage. That was the only government in the great continent of Africa that ever attained a great and lofty position. Take the great republics every one—where they were not pure democracies, and where they were representative in any measure as in Athens and Corinth and Sparta, they had single legislative assemblies. Who is there that does not point with pride to the spot in southern Europe—where a handful of men stood bravely on the battle field of Thermopylae—where genius and art flourished, where literature abounded, where there was at one time in the city of Athens 30,000 marble statues—a city governed by a single house. Let us come down later to our own times. The gentleman who has just taken his seat refers to the first National Assembly 100 years ago. We are willing to stand or fall by that. When the monarchy was driven from France; when the revolution was precipitated; when the hierarchy of Rome was driven from that country, and the king and queen beheaded, the National Assembly that was called on to take charge of the government was called on to take charge of a mob of anarchists. Never was such a trying time presented to any body of men. Human nature and human sentiments were stirred to the depths, and never before was such a task given to any National Assembly as that which was called on to secure the fruits of that uprising of the French revolution. Are we ashamed of the records of that assembly—of that single house? Indeed not. Just as soon as matters had settled—just as soon as that assembly had an opportunity to assert itself, it planned and executed for the country a career of power, and glory, and splendor, and intellectual development such as had never before been equalled in Rome, and though every nation in Europe combined to crush the French republic, they trusted their ship of state to one National Assembly; their cannon wheels plowed the fields of Europe, they fought and defeated every army on the continent and spread the name and fame of their people as no monarch except perhaps, Louis XIV, had done. They planted the seeds of liberty, equality and fraternity when every power in Europe was combined against them. Have we lost the fruits of the French revolution? Never. Not to the remotest day and time will the real fruits of the French revolution be lost to liberty. Take the

cantons of Switzerland, or take Norway. The speaker who preceded me says that there is not a state in Europe on the face of the earth that wields the power that North Dakota will wield that is governed by one house. Is it nothing that the cantons of Switzerland, in their numerical weakness have stood 500 years between nations that had the most intense hatred of each other, and have maintained a government for 500 years in their corner of Europe, through the changing times, through the wars that have many times changed the face of Europe—that these brave people in their cantons with their single house have maintained their political existence and their integrity and their power—is not all this something to their credit? You take Norway for instance—Norway is significant when compared with North Dakota. We shall probably have more people here, but we never shall have the history. I doubt if we ever shall have the genius, the art, the poetic instincts and the moral and intellectual power that reside in that people. Just think of a million and a half of people that have maintained themselves among the people of Europe for 2,000 years unconquered. When Napoleon went over to Europe he did not go as far north as Norway. Alexander never touched those shores; Julius Cæsar, when he and his legions swept over Germany, never landed a soldier in Norway. They are the only people in Europe who can say that they never bowed their neck to any foreign conqueror. You may take them under their present Constitution which was adopted in the year 1814, when they decided upon a single house, and I have this to say—you can nowhere find on the face of the earth a million and a half of people who have commenced with the poverty and the ignorance they had to commence with, when they were freed from the oppression, of Denmark—when there was not a printing press in the country, nor had there been a printing press or a high school allowed there for 300 years—and now see what they have done in seventy-five years. See what they owe to such a government as we propose to adopt here. Read the accounts from the exposition at Paris, and you will learn that in the art exhibit, when a comparison is made between the United States and the little kingdom of Norway, Norway appears to the better advantage. Think of the possibilities of a million and a half of people—as many as there are in Minnesota, who make a display in the art department of an exposition that is equivalent to that made by this nation with its sixty millions of people. Think of a nation that

begun seventy-five years ago with the poor resources that they had—a sterile soil and severe climate, and in three-quarters of a century they show a record like this. Whereas in Dakota we have only three per cent. of our population who cannot read, they have not one per cent. who cannot read—a country where every man, woman and child who is not an idiot is able to read. Are we afraid to follow in the footsteps of such a country as this? There are many people in this state from that country, and you may rest assured that they will not condemn you for following in their lead in establishing a system of government under which their country has become happy and prosperous. We have the example of the states north of us—our immediate neighbors—all of whom, with one exception, are governed with one house. There are men on this floor who have watched the plan and who speak well of it. There are thousands of our fellow citizens who were born and bred under that system, and they know that it is safe and for the best interests of the people. Are you afraid to go back and meet those citizens who would feel complimented, safe and happy over the adoption of this resolution?

Mr. PURCELL. I move that the committee rise and report that this resolution do not pass.

Mr. LAUDER. I do not intend to take up the time of the Convention with any extended remarks on this question. I have made no preparation to speak on this subject, but I have some convictions upon it. I am satisfied from what I know of the Convention that my convictions will not be adopted, but I feel it to be my duty to express them, and I will do so briefly. It seems to me that the friends or advocates of a two-house Legislature are endeavoring to put the friends of a one-house Legislature in a wrong position—in other words, they are attempting to shift the burden of proof. I think that I can safely proceed with the assumption that all things being equal and other things being equal, one house being simpler and less expensive, is preferable. Starting out with that assumption, it follows as a necessary conclusion that the burden of showing which is preferable rests upon those who represent the two-house plan, because the two houses are more expensive and complicated. Hence, we stand in the position of simply answering their argument. They must convince the Convention that two houses are preferable. I shall attempt to answer some of the arguments that have been made in favor of two houses, and shall devote but very little time in adducing ar-

guments in support of one house. The gentleman from Burleigh starts out with the idea in the first place that the Constitution of the United States is the perfection of all wisdom, and that inasmuch as that provides for two houses of the Legislature—provides that the legislative power shall be vested in two houses—it follows that the states should adopt that plan. If that were true I would say that it would have great weight, because our system of government should harmonize, should be symmetrical, and if the legislative power is vested in two houses in the National Legislature, unless for some special reason, the states should follow it. But what was the reason that induced the Convention which framed the Constitution of the United States to provide that the legislative power should be vested in two houses? What was the reason? It was no reason that has been assigned on this floor. In the short time that I have had an opportunity to devote to the debates of that Convention, I don't find a word uttered with reference to one house being a check on the other. No claim was made that one house could not be trusted to legislate for the nation, but the fact was the enactment which provided for two houses in the legislative department was the legitimate offspring of states rights. It was the fear of those men who were imbued with the idea of states rights that unless there was some power in the legislative department which should watch over and guard the sovereign power of the states, their sovereign power would be destroyed, and they would be merged in the national government. That was the argument in favor of two houses used in that convention. Is the House of Lords a part of the legislative department of Great Britain because of the fear of the people to trust the power of making the laws for their nation to the House of Commons? No, it had its origin in the condition of things then existing in Great Britain when it was established—the House of Lords was not adopted as a check on anybody, but as a representative of a distinct race or class in the nation, just as the Senate of the United States was started as a representative of the sovereignty of states. Now, I say that in these two cases the legislative power was vested in two houses for the special reasons that I have given, and if it had not been for these reasons it is safe to conclude that no nation would ever have thought of vesting their legislative power in two bodies any more than their executive power—one to watch the other. If there were classes here as there are in Great Britain;

special interests to be subserved or promoted; antagonisms between distinct classes, it might be well that all of these classes be represented in the power which legislates. But that condition of things does not exist here. Senators and representatives are elected alike; they are actuated by the same motives, influenced by the same considerations, and we have no reason to suppose that a man who is elected to one house will act any differently than if he had been elected to another house. In other words, a county, assuming that that is the integer, would not be apt to elect two senators to watch four representatives, but would elect two senators and four representatives because they would each have capacity for the places to which they were elected. There would be six members. Does not that idea destroy all idea of a check?

The gentleman who first spoke says that a nation should never forget its past. That is true, but it should remember its past only that it may legislate more wisely for the future. The legistators of to-day should remember the past in order that they may understand the mistakes of their ancestors, and guard against them. All the way from the time that our barbarous ancestor hunted for the snake in the hollow log, to the civilization of the Nineteenth Century, there has been one continuous innovation. If we are not to adopt this because it is an innovation, then we should say that we have arrived at the perfection of wisdom, and there is no further opportunity to advance. In answer to the gentleman who says that if we adopt the one house system the people may put the north line of the United States at the south line of our State, and conclude that we have gone over to Manitoba, I would say that if it had not been for the deference which our ancestors played to the same British empire, we never would have had, perhaps, two houses of the Legislature in this country, but it was when following the British example that we incorporated the idea into our government in which the gentlemen takes so much delight.

Mr. HARRIS. I am not here to make a speech, but I want to say in advocacy of the two house idea that I believe in the survival of the fittest; and the gentlemen who have taken the other side have not shown us one instance in modern times where the one house idea has been a success, unless it has been the gentleman from Nelson who has told us about Norway. France under the one house plan has gone into oblivion. The gentleman who has just taken his seat says we should look to the past only that we

may avoid the mistakes that have been made. He says nothing about the states in the Union that have tried the one house plan, and have discarded it as impracticable and not up with the times. I don't think that we need go back of the Nineteenth Century for advocates and examples of the two house idea. The United States to-day, if we had no other example of it—not collectively but as individual states—in their prosperity, in their civilization, in their intelligence, and in the height to which they have raised themselves in every element of prosperity and intelligence, are examples enough for us. I am not afraid of the old ruts. When we get our railroad train started on the track, we are not afraid of the two lines that lead to success, while we know that it is a practicable railway. I am not going to take the time of this Convention, but I want to say that I believe in the survival of the fittest, and the history of this nation, and the states of this nation have proved that the two house idea is the practicable way of doing our legislative business, and for that reason I am in favor of two houses.

Mr. SCOTT. I would suggest an amendment to the motion. It was moved that the committee do now rise and report this resolution back. I would amend it in this way, that when the committee rise it report the resolution back with the recommendation that it be postponed.

The amendment was accepted.

Mr. PARSONS of Morton. Inasmuch as I have been quoted as supporting one house, I would like to say that my choice and preference would be two houses of the legislature, with the upper house containing one Representative from each county, irrespective of the number of inhabitants. But if it were to be between two houses of the legislature as we have had them in the past, and one house, I should most emphatically vote for one house. It seems to me that in this discussion the questions of the day have been ignored. We have argued this question simply on the ground of precedent and what has been. If there are no issues in the present day—if the same state of affairs exist to-day which existed a hundred years ago, then I have made the greatest blunder in speaking about the matter at all. But I believe there are evils to be corrected and there are measures which have failed in the past, and I don't believe that the people have had their will in the past. These things have not been considered, and it was only on that ground that yesterday I spoke as I did. I have this

to say, and I wish it to go on record to this effect—that if the prospect in future of the legislation of North Dakota with two houses is not better than that of the past, then I would go on record in favor of one house.

The motion as amended was carried.

COUNTY AND TOWNSHIP ORGANIZATION.

Mr. BEAN moved that the committee recommend that section four of File No. 63 be stricken out.

The motion was Carried.

Mr. SELBY. I move that when the committee rise it recommend that in section five, in the third line, the words "specifying the place to which it is to be changed" be stricken out.

Seconded by Mr. LAUDER.

Mr. BARTLETT of Griggs. If that is carried, I would like to know how the county board can specify to the people. It seems to me that if we adopt that we kill the whole section.

Mr. SELBY. The section now reads as follows:

SEC. 5. Whenever a majority of all the legal voters of any organized county shall petition the county board to change the location of the county seat which has once been located by a vote of the people specifying the place to which it is to be changed, said county board shall submit the question to the voters of said county at the next general election, and if the proposition to so change the county seat be ratified by two-thirds of all the votes cast at said election then the county seat shall be so changed, otherwise not. A proposition to change the location of the county seat of any organized county shall not be submitted oftener than once in six years.

The simple propositition of presenting the petition with the proof that it is signed by a majority of the legal voters of the county, sets the wheels in motion, and it is unnecessary to state in the petition the particular place in which it shall be located.

Mr. MILLER. I move that section six of the article as embraced in File No. 106 be substituted for section five of this File No. 63.

Seconded by Mr. MATHEWS.

Mr. MILLER. With the consent of my second I desire to amend my substitute, and make my substitute sections six and seven of File No. 106.

Mr. APPLETON. The committee in drafting their report took the stand that any county that had never voted on the subject of the location of the county seat should have a vote if they desired. Now it seems to me that we are not here in this Convention to

draft a constitution for the county of Cass. We are here to draft a Constitution for the counties of the State of North Dakota. The Committee took the broad stand that the people should be heard on the question of county seats, and we made the proposition like this—that in any county where the county seat had not been located by a vote of the people they should have a vote on that question. After voting on that question and deciding it by a majority vote, afterwards the question, if it came up again, should require a two-thirds vote to change it. It seems to me, Mr. CHAIRMAN and gentlemen, that this is a fair proposition. It would be absurd for us to strike out the words "by a vote of the people," for every county seat has been fixed somehow. There is not a county seat that has not been fixed by individual wire-pullers, and some are located in out-of-the-way corners in the interests of some particular set of men. They are all fixed. If we make the change proposed we can't move a county seat in the Territory, because they are all fixed.

I move that in the substitute offered by the gentleman from Cass, after the word "fixed," we put the words "by a majority vote of the people."

The substitute was seconded and carried.

Mr. CAMP. I move as an amendment to the substitute that the words "hereafter organized" be inserted after the word "county" in the second line.

Mr. MOER. I move that the substitute and the amendment be both laid on the table.

Mr. PARSONS of Morton. It seems to me very strange that after voting with a rising vote on this question, that its whole purport should be sought to be changed immediately by the gentleman from Stutsman.

Mr. CAMP. Yes, the two words that I have sought by my amendment to get in here, do change the entire meaning of the section. My reason for introducing it is this—there are a large number of counties that have been organized for a large number of years. Under the power of the legislature the county seats were fixed. The county seats have always remained there, and it would tend to cause considerable trouble in many of the older counties if this were made to apply to any county already organized where the county seat has not been fixed by a majority vote of the people. There may be some few counties in which it is desirable to have the county seat question voted on hereafter. If

there are any such I am unaware of the fact, but it is proper that this section apply to unorganized counties hereafter to be organized. While I am on my feet I may say that I hope the whole substitute will be reported with the recommendation that it do not pass, and that section five will be reported with the recommendation that it be stricken out, for the reason that in the legislative department there will be an article, I suppose, providing that the Legislature shall pass no special law fixing county seats or organizing counties, and there will be in the Schedule a provision that the present laws of Dakota shall apply to the new state as far as practicable. That will leave us with a good and complete system for the fixing of county seats, and these two sections, four and five, are absolutely useless in this Constitution. They will be lumber in it in my opinion.

Mr. MILLER. With the consent of my second I withdraw the motion substituting these two sections.

Mr. MOER. In what condition is section five now ?

The CHAIRMAN. There was a motion by the gentleman from Morton, that the committee when it rise report back the section with the recommendation that it be adopted. The gentleman from Traill offered an amendment to that striking out the words "specifying the place to which it is to be changed."

Mr. SELBY'S amendment was carried.

Mr. SELBY. I wish to offer an amendment to this effect: At the end of the section these words be added. "Providing, That in counties where the county seat has been located prior to the the construction of the line of railroad in the county, and which remains more than five miles distant from the line of railroad, and more than five miles distant from the geographical center of the county, that it can be then submitted and relocated by a majority vote."

Mr. SELBY. In explanation of this amendment I wish to say first that I don't believe that there should be anything incorporated in this Constitution relative to the removal of county seats. I think that all these questions should be left to the legislature to adapt the legislation to conform to the interests of the people. I am particularly opposed to establishing it on the basis of a two-thirds vote, having it a constitutional provision so that in the future counties like mine, suffering under the inconvenience we are suffering from, will have practically no remedy. I live in a county with 12,000 inhabitants. We have three lines of railroad

with the county seat more than twelve miles distant from any one of them and on the extreme edge of the county. There are three towns in our county that are located on the railroads, that are populous, and each one is looking for the county seat. If we have only a two-thirds vote to work on I think the county seat must remain where it is. The people want it removed. The objection that this would be special legislation, simply to cover my case is not true in fact. While it may be so to-day, when the expanse of the western portion of this Territory is opened up and counties are organized—counties that to-day have no railroads—they may be placed in precisely the same position that my people are in to-day. Are we to say to them that under a constitutional provision you must remain in that condition? It is unfair for you to say this, not only to my county but to counties that in the future may be placed in a similar situation.

Mr. McBRIDE. What is the reason for the latter part of the amendment, "Five miles from any railroad?"

Mr. SELBY. I presume that ordinarily the people prefer to have their county seats near a railroad. It is immaterial whether you say one mile or five or ten—our position is the same. But I thought it was reasonable to say five.

Mr. APPLETON. I move that all after the word "or" in the amendment be stricken out.

Mr. BLEWETT. I move that this committee do now rise and recommend that all of section five with its amendments be struck out.

Mr. CAMP. I second the motion, and I hope that it will carry. It will then leave the matter to the Legislature. Our Constitution will provide that no special legislation can be enacted, and the whole matter will be left to the Legislature to enact a general system for the removal of county seats. This article is useless in my opinion, and just so much lumber.

Mr. PARSONS of Morton. I hope sincerely that the motion will not prevail. It seems to me that it would be too bad to make it possible in the future for the Legislature or a faction, to have a club to wield over any member and say—if you don't vote so and so we will remove your county seat.

The motion to rise was lost.

Mr. BEAN. The question as it now stands is that in all counties that have had their county seats located by a majority vote—in those counties it can be resubmitted, and simply a majority vote

can carry it instead of two-thirds. If you make it a majority vote you give a preference over the plurality. Why not make it read that in all counties where the county seat has been located by a plurality vote? I should say that in counties where the county seats had been located by a plurality vote they should be allowed to vote on the question and a majority vote should carry.

Mr. SELBY. I have no objection to the amendment of the gentleman from Nelson.

The amendment of Mr. BEAN was carried.

The amendment of Mr. SELBY was carried.

Mr. SCOTT. I move that when the committee do rise they recommend that section five be stricken out as amended.

The motion was seconded and carried.

Mr. BLEWETT. I move that when the committee do rise they recommend that section six be adopted.

The motion was seconded.

Mr. CAMP. I wish to move an amendment, and I wish to state my reason. There are several prosperous counties of North Dakota now existing without township organization. They find it far more advantageous than some of their neighbors who exist under township organization. The township system has proved an expensive and wasteful experiment, and there are many counties that don't wish to be forced into it. I certainly have no objection to any county which desires township organization, adopting it, but I do object to having the township organization system forced on us, and therefore I move as an amendment that the Legislature may provide by a general law for township organization, which any county, may adopt on a vote of the people.

Mr. FANCHER. I second the amendment. Stutsman county is now working under the commissioner system, and it is very satisfactory to us. We have sixty-four townships in our county, and if we were compelled to adopt the supervisor system it would be very expensive and our people don't desire it for that reason. I second it.

Mr. SCOTT. I think the Legislature should provide for organizing counties into townships. I think it should be compulsory on the Legislature, but I don't think it should be compulsory on the counties to adopt that system unless by a majority vote. I think each county should have the privilege of adopting the system or not.

Mr. CAMP. The use of the word "shall" in this Constitution

will apply to the Legislature. This Constitution can say what the Legislature cannot do, but it cannot compel future Legislatures to do anything. When we use the word "shall," in my opinion we are doing a useless thing. We say the Legislature shall provide a township system. Suppose the Legislature does not do this, is there any power to compel them? When we use such language we are not making a fundamental law, but giving the Legislature some advice. We don't want anything here which a court of law cannot enforce. If I am mistaken in this view I hope I shall be corrected, for it will be very important in future deliberations of this body to know just what we can do. If we can compel the Legislature we want to know it, and if we can't we don't want to attempt it.

Mr. CARLAND. The criticism of the gentleman from Stutsman in regard to the use of the word "shall" seems to be in part correct, but he has argued as an amendment that the word "may" should be put in. Of course the Legislature possesses all the legislative power there is. They can do anything that the Constitution does not prohibit. So to say that they may do anything is to say they may do something without the Constitution. I don't see how the amendment of the gentleman to say that the Legislature may do something helps us at all.

Mr. CAMP. I understand the proposition of the gentleman from Burleigh as being entirely correct, and the only reason I made the amendment was to get in the requirement of consent on the part of the county.

Mr. STEVENS. I am in favor of a provision which will, after the Legislature has provided a system under which townships may be organized—a system that will give the counties an opportunity to vote on the question—then where the people vote in the majority for township organization it shall go into effect. In those counties where they vote against it, the county commissioner system shall remain in effect. But I don't believe that the amendment offered reaches that point. I believe that there is no election provided for, or how it shall be submitted. In my opinion it should be by a provision of the Legislature submitted to each county, and on a majority vote of each county, they would determine whether or not they desire to adopt the plan.

Mr. FLEMINGTON. I move that the committee do now rise.

The motion was seconded and carried.

THE DEBATES.

Mr. CAMP. I desire to offer an amendment to a resolution that was adopted here some time ago, and I move that the debates that occur in the Convention be published, and not those that occur in the Committee of the Whole.

Mr. STEVENS. Under the resolution that was previously passed here, this motion is out of order.

Mr. CAMP. I move that we reconsider the resolution introduced by Mr. SELBY, and passed July 18th. It reads that the debates of the Convention shall be published. The purpose of my motion to reconsider is to make a construction of the words "debates of the Convention," and I wish to limit the publication to the debates of the Convention proper, and not to have the debates of the Committee of the Whole published.

Mr. STEVENS. The same objection might be stated here. The same matter that would have been voted on before would be voted on if this motion is put. The object is to cut out the debates of the Constitutional Convention. All the debates, or practically all of the debates, will be made in the Committee of the Whole. In all probability when we have gone into debate in the Convention, after the Committee of the Whole has passed upon these questions, the five minute rule will be established, particularly as we are nearing the close of the session. If the debates that are to be published are to be of any benefit, it is that we may see how and know all that was done in this Convention. By the adoption of this resolution you practically cut out of the debates all the most important matter that will come before us. If the debates are not published the people can never know what the views of the Convention were on the subject. If the debates of the Committee of the Whole are published in full everything that has gone on before this Convention will be there for review. For that reason I am opposed to the reconsideration.

Mr. CAMP. Some object to the publication of all the debates on account of the expense. We don't realize how rapidly we are speaking when speaking here. We have already made at least one large volume of debates in the Committee of the Whole, and we have hardly begun. The debates of the Constitutional Convention of Pennsylvania comprise from eight to ten volumes. The debates of other Constitutional Conventions which published their proceedings in full comprise numbers of volumes. Our

debates, if published in full, will hardly be found within five or eight volumes. It seems to me that the enormous expense attending such a publication should make us willing to forego the great pleasure and honor that we would derive from seeing our names printed as we would speak in the Committee of the Whole. If any gentleman is desirous of putting himself on record, he can make his little motion or his small amendment in the Convention and put himself square with his constituents.

Mr. STEVENS. How long was the Convention in session in Pennsylvania ?

Mr. CAMP. One year.

Mr. LAUDER. It seems to me that in estimating the extent of the record the gentleman from Stutsman anticipates that this Convention will be in session a very long time—much longer than I hope it will. I know not what the proceedings may be in the future, but so far as we have gone, the remarks that have taken place in the Committee of the Whole have been really the only important debates of any value that we have had. I am not ambitious, Mr. PRESIDENT, to have anything that I may say incorporated in this report. That is not the purpose of my speaking on this question. But it seems to me that unless the debates that take place in the Committee of the Whole are recorded, the record will very imperfectly record the proceedings of this body. For instance, there have been a number of speeches made here upon this one house question by members—the gentleman from Burleigh county, the gentleman from Ransom, the gentlemen from Nelson and Morton. Some of them were prepared, no doubt, evidently with some care. Some labor was bestowed upon them in their preparation—must necessarily have been—and it seems to me that debates of that kind should be recorded and perpetuated. In view of what to me seems to have been in some cases hardly a justifiable expense, it is raising the economy cry in a very bad place, to undertake to prevent the publication of these debates that take place in the Committee of the Whole, on the ground of expense. It seems to me that we had better put the expense in there and lop it off somewhere else.

Mr. BARTLETT of Dickey. I am heartily in favor of reconsideration, and I will vote for having nothing reported from the Committee of the Whole. If we proceed as we have done in the past two or three days in discussing county and township matters, we shall be here a year. If debates are to be reported here our

Convention will be lengthened out just twice as long as otherwise. I am opposed to having this Convention made a school by which political speeches made for effect shall be printed at the expense of the state. I say that there will be a great many speeches made here if they are reported and printed which would not be made and many long speeches made which would not be made, and I think our constituents would rather that we get through with our work.

Mr. HARRIS. If there is any gentleman here who thinks that his constituents are going to read his speeches, he is very much mistaken. The debates of this body are the foundation of the interpretation of this Constitution, and if we are going to print anything about this Constitutional Convention we want the whole business.

Mr. LAUDER. I am not advocating the reporting of the speeches that are made in the Committee of the Whole for the purpose of giving any member of this Convention an opportunity for display. If I thought that the Committee of the Whole was to be used here simply as an electioneering platform, as has been intimated, I should be opposed to having the speeches reported, but I don't believe this. I believe that the speeches are to be reported for the purpose of preserving a record of this Convention for the purpose of the public good, and I don't believe that the privileges of the members to talk here will be abused.

Mr. MOER. I think that the point made by the gentleman from Burleigh was exceedingly well taken in this matter. I believe with the other gentlemen that we want to keep the expense down, but it seems to me that it is very desirable that we should have all the debates so that those who come after us can find out just what the Convention actually meant. The debates would help in this, and I know of no Convention but what has had its debates reported, and it does not seem to me that they would be very extensive.

The motion to re-consider was carried.

Mr. CAMP. I move that the motion of the gentleman from Traill be amended by inserting after the word "Convention" the words "but not the proceedings or debates of the Committee of the Whole hereafter had."

The motion was seconded.

Mr. SCOTT. I am not in favor of this motion. I don't think any gentleman in this Convention will accuse me of being a speaker or intimate that I desire to have my debates or any

speeches that I may make recorded. So I feel a little freer to speak on this matter, probably, than some of the gentlemen who have already given us some of their efforts. It does not appear to me that there is any use of employing a Stenographer and paying him $10 a day unless we employ him to some purpose. It is well known to all of us that most of our discussions where we will arrive at our decisions on any of the articles which are to be incorporated in the Constitution, will be in the Committee of the Whole. It will be very seldom indeed that after the Committee of the Whole has reported that the arguments will be brought before the Convention. We have our Journal, which contains about all that the Stenographer's report will contain unless we have a transcript of the proceedings of the Committee of the Whole. As the gentleman from Burleigh remarked, it is important that we have the debates printed with the arguments adduced pro and con on any measure, so that in the future it will be known what the reason was and what the object was of any particular paragraph. For that reason I think it is proper—I think it is right—that the debates which occur in the Committee of the Whole should be taken by the Stenographer and be printed with the published debates as well as those which occur in the Convention. I don't see that this resolution will help matters anyway, for if a gentleman is going to make an oration he will make it in the Convention in place of the Committee of the Whole. As the Committee of the Whole has more of an informal way of discussing matters, I think it is preferable that the debates there should be printed rather than those which are more stately.

Mr. CLAPP. I hope that the amendment of Mr. CAMP will not pass. This Convention has already determined by its vote that when anything has gone through the Committee of the Whole and is recommended, it shall then go to the Committee on Revision, and shall then be declared to become part of the Constitution. If it is not to be recorded how the members talked and voted on a certain proposition, we won't know where they stand. I think the amendment should not pass.

Mr. WALLACE. I have thought over this matter, and I have come to the conclusion that I was wrong before. I think we want to have a record of what our delegates have said. The yeas and nays are not called in the Committee of the Whole, and we shall have no other record of how the members stand in the committee but the report as prepared by the Stenographer.

Mr. SPALDING. Mr. PRESIDENT: The remarks of the gentleman from Steele have brought to my mind one objection which has not been raised to the publication of the debates, and that is we are not all born orators, and it puts us at a disadvantage when compared with the orators. In the Committee of the Whole there can be no roll call, and the only way a man can get himself on record as the gentleman from Steele has indicated, is by making a speech in the Committee of the Whole. This leaves all of us who cannot speak, out in the cold. We cannot go before our constituents and say what we have done and how we voted, and point to the record, because there is no roll call and no record. We have had simply a rising vote, and we cannot show them what our action was on the different questions that came before us. This places us at a disadvantage, and prejudices us in the eyes of the people of the Territory, and for that reason, considering it on the basis of the gentleman from Steele, I am opposed to it. If I were the orator that the gentleman from Steele is, or the gentleman from Ransom it would be different.

Mr. STEVENS. I appreciate a compliment when it is well intended, and a pun when well driven. I can see very well what the gentleman means by referring to me. He is attempting to have this Convention believe that I am in favor of having the debates all published because I desire my speeches recorded. I will say that I will be perfectly willing that the reporter should not record one word of what I say. Probably I would stand better with my constituents, but I would very much like to hear the gentleman from Cass in some of his consistencies in debate on the floor of this Convention. I desire, at least, in this Convention to be consistent. I desire at least, if I cannot be eloquent—if I cannot make my hearers understand the meaning of my words—I desire at least to go on record as being consistent, and the gentleman who voted in favor of the adoption of this resolution that has already passed this Convention, as the gentleman from Cass did, cannot claim consistency if he afterwards goes and seeks to amend it by cutting out all of that part which will be of any benefit. He is inconsistent in his conduct, and should be so recorded in the records. Were I to say what the gentleman does, that he cannot make an eloquent speech, I would be saying that which the facts would not justify me in saying. He is one of the most logical speakers in this Convention, but be he logical or eloquent or not, the generations that are to come after us—the Constitutional Con-

ventions that shall be held in this or other halls—are entitled to the wisdom that he shall display in argument in the Committee of the Whole of this body, and I hope they will receive it.

Mr. CAMP. When the gentleman from Cass referred to the gentleman from Ransom, I supposed he referred to the colleague of the gentleman who has just taken his seat, but the speech he has just made has convinced me that this supposition of mine was unfounded.

The amendment of Mr. CAMP was then carried.

Mr. LOHNES. I move to adjourn.

The motion prevailed, and the Convention adjourned.

TWENTY-FIRST DAY.

BISMARCK, *Wednesday, July 24, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

THE JUDICIARY REPORT.

Mr. CARLAND. In presenting the report of the Judiciary Department I desire to say that there is one feature of it which was not universally concurred in by the committee, and it was understood that until the minority report was made on that provision, action on the report would be deferred. I understand that the report of the minority will be made to-morrow.

Mr. MILLER. I move in relation to File No. 106 that the further consideration be postponed till Saturday of this week. I do that for the reason that as it is a Constitution entirely of itself, it would seem to be showing not quite due consideration to the various committees of this House who have drafted several clauses for the Constitution, to take this up before they have had an opportunity to submit their reports. Their reports will be all in by to-morrow, and can be considered in advance of this. I hardly

think it right that the gentleman from Burleigh should urge the consideration of his measure till all the committees have reported.

Seconded by Mr. LAUDER and carried.

Mr. BARTLETT of Griggs. I move to adjourn.

The motion prevailed, and the Convention adjourned.

TWENTY-SECOND DAY.

BISMARCK, *Thursday, July 25, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. BARKER, of Fargo.

COMMITTEES REPORTING.

Mr. MILLER. It is evident that quite a number of the committees will not be able to report to-day, and under the resolution adopted several days ago, this is the last day for them to present their reports. The Committee on Public Buildings and Institutions have not yet been able to have a meeting, owing to the fact that the members are on several other important committees, and no meeting has been held except one at which only a few members were able to be present. I move that the resolution fixing this as the day for the sending of final reports, be reconsidered. There are many other committees in the same position as the one I refer to particularly.

Mr. BARTLETT of Dickey seconded the motion.

Mr. PURCELL. Inasmuch as the resolution which it is proposed to reconsider was offered by me, I feel called upon to say something in support of it. I would have no objection in supporting the motion of the gentleman from Cass provided in it, he stated some specific time within which his committee would report. If this resolution is put out of the way, other committees can run on indefinitely, and it will be at their pleasure that they will make their reports. I submit that we have spent sufficient time to have accomplished something here, and unless the gentleman will specify

a time within which he will make his report I shall oppose the motion.

Mr. SCOTT. There are several committees who find it impossible to report to-day. For example, there is the Committee on Apportionment and Representation. They cannot get to work till the report of the Legislative Committee is dealt with. The report of the Committee on Schedule—there will be additions, they will have to make their reports after most of the other committees have reported. Take the Committee on Revision and Adjustment—it will be impossible for it to report yet, and a general resolution covering the time for all the committees to report would not be proper.

Mr. PURCELL. Of course the original resolution was not intended to apply to the committees which in the very nature of things can't report yet. But my idea is that most of the committees might be compelled to get together and report their actions to this Convention as soon as possible. If there is a committee which cannot get its report in because of waiting for other reports, it can be exempt from the operations of this resolution. But it seems to me that we shall save time for us to fix a date within which these committees will be compelled to report progress to this Convention.

Mr. PRESIDENT. It would seem under this resolution that the idea to be conveyed was that the committees should report progress. That would be a proper thing for them to do under this resolution.

Mr. BARTLETT of Griggs. If it is the understanding of the Convention that that resolution simply meant to report progress I am in favor of reconsidering it and inserting the words "final report." If these reports cannot be made to-day, have them to-morrow. I understand that there is another committee that has only had one meeting, and the Apportionment Committee is waiting for another committee to report. I don't think there is any absolute necessity for so much delay.

The motion to reconsider was lost.

Mr. WILLIAMS. I move that the reading of the reports of the standing committees to-day be dispensed with.

The motion was seconded.

Mr. PURCELL. There is a report of the Committee on the Judiciary Department. I understand that there was time granted for a minority report. I have been informed by the gentlemen of

the minority that there is no objection to a consideration of the majority report. It seems to me that we ought to do something to-day. It seems to me that the reports which are in shape to be read should be read.

Mr. LAUDER. I am certainly as anxious as any member of this Convention to expedite the work, but inasmuch as the gentleman from Burleigh who is Chairman of the Judiciary Committee is absent to-day, it seems to me that it is proper that we should defer it.

Mr. TURNER. I think there are some of these reports that might be very well taken up to-day. I would suggest that the report of the Committee on Temperance, and the report of the Committee on Impeachment be taken up.

Mr. WILLIAMS accepted the suggestion of Mr. TURNER as an amendment to his motion.

The motion was carried.

THE LEGISLATIVE DEPARTMENT.

Mr. ROLFE. If it is proper to make this motion, I would move that the rules be suspended and the Convention do now resolve itself into a Committee of the Whole to consider that portion of the report of the Committee on Legislative Department that relates to the number of which the Legislature shall be composed. I make this motion for the purpose of expediting the determination on that point, so that the Committee on Apportionment may have something to work on in the preparation of its report.

Mr. PRESIDENT. It is not necessary to have a suspension of the rules.

Mr. ROLFE. It seems to me that if we are not to consider the report of the Committee on the Judiciary Department we have nothing before us. I believe we can determine as to the number of which the Legislature shall be composed as well now as at any time.

The motion was carried.

Mr. ROLFE. My motion simply referred to that portion of the report of the committee which referred to the number of which the Legislature should be composed in either house. That was all that I thought we should discuss in the report this afternoon.

Section 8 of the report providing that the House of Representatives shall number not less than 60 nor more than 140 was adopted.

The Clerk read that part of the report in section two which provides that "the Senate shall be composed of not less than thirty nor more than fifty members."

Moved by Mr. WILLIAMS that the section be adopted.

Mr. PURCELL. I move as an amendment that it shall read so that there shall never be more senators than one-third the number of representatives.

The amendment was seconded by Mr. BARTLETT of Griggs.

Mr. ROLFE. I move to amend the amendment by providing that the number of senators be never less than one-third or more than one-half.

The amendment to the amendment was seconded.

Mr. PURCELL. At the time the report of this committee was offered it was accompanied by a statement from the CHAIRMAN that some of the members desired to make a minority report. As one of those members who desired to make a minority report, my report was intended to cover this question exactly. In other words I desire to make a report as a minority covering the repressntation in the two houses in the Legislature. There have been some measures introduced which have been referred to the committee touching the question of minority representation, and it was my desire, and was understood between us, that before this matter should be discussed we were to have it so that the Convention could take the majority report into consideration in conjunction with the minority report. I would ask that the question now under consideration with reference to the number of members of the next Senate, shall be postponed till the minority report is before the Convention.

Mr. WILLIAMS. It seems to me but just that the request of the gentleman be acceded to. That was the understanding in the committee. Owing to the order made requiring that we report today, the report of this committee was made up hastily, and last night it was generally understood and agreed to among the members of the committee that the gentleman from Richland should have the right to make a minority report on that particular article, and it seems to be but just and right for the Convention to postpone further consideration of this question till he has had an opportunity to submit his minority report.

Mr. ROLFE. Do I understand the gentlaman from Richland to say that the consideration of his report touching minority representation should necessarily precede our discussion of the number of members of which the Legislature should be composed?

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Mr. LAUDER. I am certainly as anxious as any member of this Convention to expedite the work, but inasmuch as the gentleman from Burleigh who is Chairman of the Judiciary Committee is absent to-day, it seems to me that it is proper that we should defer it.

Mr. TURNER. I think there are some of these reports that might be very well taken up to-day. I would suggest that the report of the Committee on Temperance, and the report of the Committee on Impeachment be taken up.

Mr. WILLIAMS accepted the suggestion of Mr. TURNER as an amendment to his motion.

The motion was carried.

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Mr. PRESIDENT. It is not necessary to have a suspension of the rules.

Mr. ROLFE. It seems to me that if we are not to consider the report of the Committee on the Judiciary Department we have nothing before us. I believe we can determine as to the number of which the Legislature shall be composed as well now as at any time.

The motion was carried.

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The amendment was seconded by Mr. BARTLETT of Griggs.

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The amendment to the amendment was seconded.

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Mr. WILLIAMS. It seems to me but just that the request of the gentleman be acceded to. That was the understanding in the committee. Owing to the order made requiring that we report today, the report of this committee was made up hastily, and last night it was generally understood and agreed to among the members of the committee that the gentleman from Richland should have the right to make a minority report on that particular article, and it seems to be but just and right for the Convention to postpone further consideration of this question till he has had an opportunity to submit his minority report.

Mr. ROLFE. Do I understand the gentlaman from Richland to say that the consideration of his report touching minority representation should necessarily precede our discussion of the number of members of which the Legislature should be composed?

Mr. PURCELL. That will in a great measure depend on the number they fix. If they fix the number of Senators so large after having fixed the number of the lower house—if they fix a greater number in the upper house than one-third, it certainly would make my measure inapplicable. At least it might become so. If they saw fit to adopt my measure, the upper house would only consist, possibly, of one-third the number of the lower. They might make the number in excess of that if they consider it now.

Mr. ROLFE. The proposition before us is simply to fix the maximum and the minimum in both houses. The proposition is not to definitely fix the number of each house of the first Legislature, but to determine the boundaries within which the Legislature may at any time in the future fix the number. There must be a further report from the Committee on Apportionment fixing the number of which the first House will be composed, and that will come before the House for consideration. We are here setting boundary lines within which future Legislatures must work. So that I cannot understand how it touches the question of minority representation, if I understand the question at all, that is proposed by the gentleman from Richland. I have no wish to be discourteous to him, first because that would not be fair, and second because I like the gentleman.

Mr. PARSONS of Morton. It seems to me that our action thus far will not interfere with the gentleman from Richland. But in deference to the gentleman's wishes, I think we should allow the matter to lie over till the minority report is handed in.

Mr. ROLFE. The matter to be settled here is simply on the question of the maximum and minimum of which both houses shall be composed. No other question as to representation comes in here. It simply fixes the limit—that is all.

Mr. WILLIAMS. I would move that when the committee rise it recommends that the further consideration of the question be postponed till to-morrow. The report of the Legislative Committee would not have been made to-day without the consent of the gentleman from Richland, and we owe this to him.

The motion was seconded and carried.

Mr. TURNER. I move that the report of the Committee on Temperance be read a second time.

The motion was carried.

TEMPERANCE.

The report was read.

Mr. POLLOCK. I move that the Convention now resolve itself into the Committee of the Whole for the purpose of considering the report of the Committee on Temperance.

The motion was carried.

Mr. FLEMINGTON. I move that the committee when it rise, do recommend that that portion of the report of the committee which provides for a separate subdivision be stricken out, so that the prohibitory part of the report will go straight into the Constitution.

The motion was seconded by Mr. ROWE.

Mr. POLLOCK. I sincerely hope that this amendment will not prevail, for the reason that the people of this Territory, and in our State desire, as I view it, to settle this matter for themselves, and not to have this Convention here assembled determine the matter. The delegates have not been selected on that issue, and they didn't come here, as I understand it, for the purpose of deciding this question, and there was no intimation that they would so decide it. The people only ask that they may be privileged to determine this question for themselves, and they ask that it may be submitted for that purpose. It may as well be conceded that no advantage would be gained by our putting this in the Constitution unless a majority of the people are in favor of it, for the incorporation of a prohibitory clause in the Constitution, if we do not have a majority of the people in favor of it, would be useless. For that reason I hope the amendment will not prevail.

Mr. BARTLETT of Dickey. I agree with the last speaker. It is well known that there are but few men who feel more deeply than I do on this temperance question, but for that reason I want prohibition to go through on its merits. I don't want it to ride through on the Constitution, nor do I want it to be an impediment to the Constitution. I want it to go through on its own merits, and I hope the amendment will be voted down.

Mr. MILLER. I might add that it was the expressed wish by resolution of the convention held in our county, and of a good many other conventions held in other counties that this matter should be submitted to the people separately. The temperance people in different parts of North Dakota have expressed by resolution a good many times that they wished this matter submitted as a separate issue.

Mr. MATHEWS. A resolution adopted in Grand Forks, signed by the liquor men and by the prohibitionists was in favor of having this matter submitted to the people separately.

Mr. FANCHER. The people of Stutsman county, like the people of Grand Forks county and Cass, are of the same opinion, and I trust that the amendment will not prevail.

Mr. McKENZIE. My people in Sargent county are also opposed to having it put in the Constitution, as is contemplated by the amendment.

Mr. WALLACE. Of course we represent our various constituencies. A majority of the people in the state are in favor of the submission of this clause as a separate measure. I speak for the people of Steele county. They are in favor of putting it into the body of the Constitution. I recognize the signs of the times which say it shall be submitted as a separate clause, but I wish to indicate what is the prevailing sentiment in my county.

Mr. PARSONS of Morton. I hope the amendment will not prevail, for it will have one effect—that of arraying every one who is opposed to prohibition against the Constitution adopted in this Convention. It is a question that should be voted on separately irrespective of the Constitution, so that every voter may have a chance and opportunity to express himself on the Constitution and on the question of prohibition. I believe the people of the West Missouri country are in favor of a separate submission.

Mr. ROWE. I will say in representing the constituency of Dickey county that the people of that county take a more advanced ground on this temperance question than some, and believe that it should be incorporated right in the body of the Constitution. We represent the banner temperance county of the Territory of Dakota, and Dickey county in casting her vote the second time for local option gave a majority of 500 in favor of local option, and local option is a thriving success in that county. We believe that this prohibition amendment or section should be incorporated right in the body of the Constitution, that it may go along with the other movement towards statehood without being subjected to individual attack by the corporations or the interests that may be in favor of the license system. When we come into statehood we wish to come over the threshold with an article in our Constitution that is in favor of free homes, free speech and a free press, and against the freedom of the rum power.

Mr. BARTLETT of Dickey. I, too, have the honor of repre-

senting Dickey county, but I will say that I was instructed by the Democratic party of my county to have it submitted separately. I say here that I firmly believe that if this clause were incorporated in the Constitution it would result in the defeat of the Constitution. I believe that; I believe there is such a large element of people who are opposed to having it engrafted into the Constitution that it would be the means of defeating the Constitution. There are many here who know me, and I will say that if I thought it would be for the best, and if I thought the people would open a warfare against intoxicating drinks and defeat the liquor interests, I would feel all right. But you know how it was when we first had local option. It was not effective, simply because they said it was not the sentiment of the people, and that it went through on a side issue. But when we had it as a plain issue a second time, local option became the law on its own merits. It was a great deal more effective then, and if this amendment would carry it would take all the zeal and all the hope out of a great many honest men.

The amendment of Mr. FLEMINGTON was lost.

Mr. NOBLE. As I understand it, this report has not yet been printed. There seems to me very little question as to the submission, but there may be a question as to whether all is in this report which should be there, and I would move that the committee rise and report the report back, recommending that it lie over until it is printed.

Mr. NOBLE'S motion was lost.

The report of the committee was then adopted unanimously.

Moved by Mr. BLEWETT that the article on Militia be taken up and given a second reading.

Mr. PARSONS of Morton. Everything in the report of the Committee on Militia may be all right and proper, but it does seem to me to be a little hasty to consider these things when the members have no copies of them on their desks. I could not tell six words in that report from hearing it read. If there is nothing to do on it but vote, why can't we wait?

The article on Militia was given its second reading.

Mr. TURNER. I move that we now consider the report of the Committee on Impeachment.

Mr. FLEMINGTON. It does not seem to me that we should consider these reports before they are printed and on the desks of the members. I am not in favor of further consideration of

reports of standing committees until they are printed, and until we all have had an opportunity to read them. I think we have been acting on some reports concerning which only the members of the committees have been informed as to what they contained, except what we have been able to gather from the reading of the clerk. It seems to me that the consideration of these matters under such ' circumstances is immature. We at least should have a chance to read them carefully before we vote.

The motion of Mr. TURNER was lost.

Mr. PARSONS of Rolette. I move to adjourn.

The motion prevailed, and the Convention adjourned.

TWENTY-THIRD DAY.

BISMARCK, *Friday, July 26, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. MOER. I would like to ask that the consideration of the report of the Committee on Revenue and Taxation be laid over for consideration till Tuesday. I do so for this reason—it seems to me now that there will be a minority report submitted and three members of the committee, who I understand desire to put in a minority report, are absent, and will not return till Tuesday. It is possible that there will be no minority report, but I am informed that in all likelihood there will be one.

Mr. McHUGH. I move that the Convention now go into a Committee of the Whole for the consideration of File No. 121.

Mr. MILLER. I see that we have quite a lengthy minority report on that File. I have not the slightest objection to considering the File, but we must consider the minority report with it, and that is not printed yet, and there are no copies to be had.

Mr. BARTLETT of Griggs. I hope that the motion of the gentleman from Cavalier will not prevail until we have the minority report in the hands of the delegates.

The motion of Mr. McHUGH was lost.

Mr. PARSONS of Morton. I have been requested to make the following motion, that when we adjourn we take a recess until next Tuesday. I make this motion for the following reasons: A great many delegates here are farmers, and they claim that the situation of affairs at home demands their presence. It is time that they should make preparations for harvesting their crop. Time and tide wait for no man, and in deference to their wishes and interests I think that this recess should be taken. Personally I should prefer to continue at work here, but in deference to the wishes of the gentlemen who asked me to make the motion, I have said what I have, and I hope the motion will prevail.

The motion was seconded.

Mr. MOER. I am surprised that the gentleman from Morton county should, or any other man, make this motion, and still more surprised that the gentleman from Steele should second it. The gentleman from Steele has objected strenuously to all delays in the work of this Convention, and he has insisted that we should get through with our work as speedily as possible. By this motion we are put in a position where we lose two days. If there are any farmers or lawyers who want to go home they can be excused as has been the custom without adjourning this Convention. The business of this Convention has been delayed from day to day, and it now looks as though we might have to sit here for the next thirty days, and I fail to see any warrant or excuse for this adjournment.

Mr. BARTLETT of Griggs. I believe that I am one of those who has, so far, opposed all delays, but I believe now that it would be to the advantage of this Convention, and would expedite business to adjourn till Tuesday. One reason why I desire this is because we can see now, I think, almost all of the questions we shall soon have to vote upon in this Convention. I don't think that I embrace all the wisdom of my district, and there are many questions that I shall be required to vote on next week that I am at a loss to know their views upon, and I think it is so with a good many delegates here. As far as I am concerned I should like to consult with them on some of these matters, and therefore I am in favor of the motion.

Mr. SCOTT. As I understand the gentleman, he wants this Convention to adjourn in order that he may be able to go home and see a number of his constituents, and see how he shall vote.

If I know anything about the gentleman from Griggs I think I may say that he has made up his mind on most of these questions already, and has decided opinions, and if he does consult his constitutents they won't make any material change in his views. We have any quantity of work before this Convention. Here are six reports of committees which we can take up any moment. If there is any gentleman who desires a leave of absence for a day or two it can be granted. It has been granted before, but the fact that the gentleman wants a leave of absence is no reason why we should all adjourn and thus lose two day's work.

Mr. WALLACE. I am not at all surprised that there are some gentlemen who don't appreciate the situation. The facts are as have been stated—the business affairs of some of the members are in such a condition that they desire to go home for a short time. There are a good many who will be compelled to leave to-night. A week ago an attempt was made to adjourn over from Friday to Tuesday, but it failed, but so many went home that we did not do any business, and I anticipate that the same thing will occur in the present case.

Mr. LAUDER. I have no doubt that there are many gentlemen who have business that it would be well if they might have an opportunity to look after it. If that is so, they can be excused and can go and attend to their business. But it seems to me that it would be unjust to tie up the hands of the rest of the members in order to accommodate a few. I am so fortunate or unfortunate as to have some grain of my own, and probably it is as necessary that it should receive my attention as the grain of the gentleman from Steele requires his. But we came here to do a certain work. It has been delayed too long now, and I believe that there will be enough delegates left here to transact business and go right on with the work after we have excused all those who have business at home which requires their attention. I hope this motion will not prevail.

Mr. BARTLETT of Dickey. I am a good deal of the opinion of the last gentleman who spoke. I have not heard a gentleman ask to be excused who has not been promptly excused. I don't suppose there are five men here who have not business at home that they would like to look after. When we stop work for two days it makes a big hole in the appropriation, and I think we had better go slow about adjourning in this way. Let us stay here and

attend to our work, and those who wish to be excused can be excused.

Mr. WILLIAMS. I hope the motion will not prevail. As far as I am concerned I shall be willing to excuse any gentleman who has business away that must take him. But it does not seem to me that public business should be delayed in order that members may look after their personal affairs. We have an abundance of business before this Convention. Reports have been made and are now on our desks, and it seems to me there is no reason why we should not proceed to the consideration of these reports. I can see no just excuse in adjourning this Convention over for two days to subserve the interests of a few members. I am perfectly willing to excuse any member who desires a leave of absence.

Mr. PARSONS of Morton. I desire to repeat the remark I made at the first—this motion was put before the House by request. Were I to consult my own wishes I should vote no, but I was the witness to a motion last week of a similar nature, and it is amazing to me—the change of tune on the part of some. I don't believe that the public interest will suffer from now till Tuesday. It seems to me that one of the principal dangers we have to guard against is that of voting on questions without giving them sufficient consideration, and here are before us reports which it seems to me need considerable consideration before we vote on them. I don't stand here as the champion of this motion, but it seems to me that in view of the fact that there are so many who want to go away, and the further fact that we can be studying the committee reports, there will be no time lost by the adjournment.

Mr. MOER. I don't know to whom the gentleman from Morton refers when he speaks of a change of front on this question. Certainly it does not apply to me, as I have been consistent in this matter, for I have voted against every and all adjournments. In view of the fact that the appropriation from the United States Government is about exhausted, or entirely so, I think we should hesitate before we put the Territory to an expense of $500 or $600 a day. The State has got to pay it after this, and it seems to me it is unwise to adjourn just to suit the convenience of the gentlemen who want to go home and look after their farms or law business.

The motion to take a recess until Tuesday was lost.

EDUCATION.

File No. 124 was taken under consideration in Committee of the Whole.

It reads as follows:

SECTION 1. A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people, being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the Legislature shall make provision for the establishment and maintenance of a system of public schools, which shall be open to all children of the State of North Dakota, and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Mr. McHUGH moved that the committee recommend its adoption.

Mr. CAMP. I would like to compare this with the compact with the United States which we have adopted. What reason is there for the last two lines of this article: "This legislative requirement shall be irrevocable without the consent of the United States?"

Mr. SCOTT. That refers to section fourteen of the Enabling Act.

Mr. CLAPP. The original File proposed, which is File No. 3, contains words which are in this report, but the committee referred that part to the Committee on Education, and we embodied the language which is printed as the fourth part of section four of the Omnibus Bill, in this section. It seemed to make it necessary that the sentiment and the particular language should be made part of this article.

Mr. CAMP. I move you that the first three lines of the article down to the word "people"—as follows: "A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people, being necessary in order to insure the continuance of that government and the prosperity and happiness of the people," be stricken out.

The motion was seconded and lost.

The first section was adopted.

Mr. McHUGH. I move that the words "a uniform" be stricken out, and the words "an independent district" be inserted in the place. The section was read:

SEC. 2. The Legislature shall provide at their first session after the adoption of this Constitution for a uniform system of free public schools throughout

the State, beginning with the primary and extending through all grades up to and including the normal and collegiate course.

The amendment was lost.

Mr. ROLFE. I move that all of section two after the word "State" be stricken out.

The motion was seconded.

Mr. HARRIS. I hope this amendment will not prevail. If our educational system in the State of North Dakota is ever going to be a perfect system, and amount to anything, we want a head, and we want to build right up through the primary classes to our university. We want a complete system of education that will begin in the primary department, and end in the university. For that reason I am in favor of leaving in this section the words "beginning with the primary, and extending through all grades up to and including the normal and collegiate course."

Mr. ROLFE. I made the motion because it did not seem to me that the words "primary," "normal" and "collegiate" had any such distinct significance as to make it definite enough for the Legislature to proceed upon. These words may vary in their significance according to the various understanding which the several and separate members of the Legislature might have of the words, and unless this section goes further—to such an extent as to define carefully the particular significance, the intent and the scope of these words, it seems to me they should be struck out.

Mr. ELLIOTT. I hope the amendment of the gentleman from Benson will not prevail. The committee that drew up this report did not presume to incorporate in it merely their own words and ideas. The principal part of it was taken from the report that was submitted to them from some of the principal educators of the State of North Dakota that met about two weeks ago at Fargo. The very words which the gentleman from Benson wants to strike out were drafted by no less a personage than Professor Sprague of Grand Forks. If these words are vague and out of place it is not the fault of the committee. We presumed that they were all right, and for my part I think they are. Every one knows, and there is no dispute, what a primary course is, and what a normal and collegiate course is. It was the intention of the committee who drafted this report that it should be made compulsory on the Legislature to begin at the primary and build up to the head—the college—as the gentleman from Burleigh has stated.

Mr. ROLFE's amendment was lost and sections two and three approved.

Mr. ROLFE. Section 4—It is always to be presumed that any report presented by a committee has been carefully considered in all its parts. In this section I suppose there was deemed to be good reason for adopting the word "gubernatorial" instead of the word "general." The section now reads:

SEC. 4. A State Superintendent of Public Instruction shall be elected by the qualified electors of the State at each gubernatorial election after the adoption of this Constitution, whose qualifications, powers, duties and compensation shall be prescribed by law.

But it does not appear clear to me why this word "gubernatorial" was used.

Mr. ELLIOTT. The idea was simply this. The first set of State officers must be elected for one year, or three years, so that our general elections may fall in with the presidential elections. That has been conceded by every one. The first term must be for one or three years. If we proceed to elect a State Superintendent of Public Instruction, it is necessary that we should have one at once in order that our school system may become what it should be, and be set on a firm footing. It is necessary that we should have a State Superintendent of Public Instruction at once. If we put the word "general" in where we have "gubernatorial" we should have to wait a year for a superintendent.

Mr. ROWE. This section is covered in the Executive report.

Mr. ELLIOTT. As this is a fact, I move that this section be stricken out. But I would first ask if this Convention has adopted section twelve of the Executive report?

The CHAIRMAN. No.

Mr. ELLIOTT. Then I don't see why section four of File No. 124 should be struck out.

Mr. ROLFE. It would seem to me that it is fairly well understood in the Convention that the Committee on Schedule and Ordinance will take pains to provide for the election of all officers that shall be decided upon by the Convention, so as to bring the election of general officers, hereafter, at general elections. If I understand the position correctly there will be no general election till the year 1890, and I still cannot see the occasion for the use of the word "gubernatorial" instead of "general."

Mr. McKENZIE. If section four is out of place, or is covered by some other part of the Constitution, we have a Committee on

Revision and Adjustment whose duty it will be to take the various sections and put them together, leaving out those that conflict. I think that we are wasting time in discussing this matter, but should leave it to that committee.

Mr. ROLFE. I move as an amendment to section four that the words "at an election for the adoption of this Constitution, and at each general election thereafter" take the place of the words "at each gubernatorial election after the adoption of this Constitution."

The amendment was seconded and lost.

Sections five, six and seven were approved.

IMPEACHMENT.

File No. 126 was then taken up. Section one was adopted and section two was read as follows:

SEC. 2. All impeachments shall be tried by the Senate. When sitting for that purpose the Senate shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the Governor or Lieutenant-Governor is on trial, the presiding Judge of the Supreme Court shall preside.

Mr. LAUDER. I would like to inquire if it is intended that when the Presiding Judge of the Supreme Court shall preside whether or not he shall be considered a member of the tribunal, and have a vote in the deliberations of the assembly.

Section two was adopted.

Section three was read as follows:

SEC. 3. The Governor and other State and Judicial officers, except county or probate judges, justices of the peace and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under the State. The person accused, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment and punishment according to law.

Mr. POLLOCK. I would like to inquire why the word "crimes" is included in the third line after the enumeration of drunkenness, and so forth?

Mr. O'BRIEN. That word "crimes" was put in for the purpose of giving the Legislature the fullest scope over the matter. We have included certain specific crimes, and if the Legislature thinks that it will be well to provide that other acts shall be in-

cluded in the list of offenses worthy of impeachment, they can so include them.

Mr. WALLACE. I fail to see any reason for the use of the word "habitual" in this section. If a man who is Governor of this State gets drunk he should be impeached.

Mr. O'BRIEN. The committee gave this matter some little consideration, and they made up their minds that if a man were unfortunate enough in one instance to become under the control of strong drink, he should not be liable for that to be removed from office. They thought that they should simply cover cases where a man by the habitual use of intoxicating drinks, rendered himself unfit to perform the duties of his office. The idea of compelling an impeaching board to go to the trouble of taking up every single case where a man was unfortunate enough to become drunk on one occasion, did not commend itself to us. We thought that the Constitution should simply provide that if a man is habitually guilty of such an act, it should be ground enough for removal from office. I hope the gentleman's motion to strike out the word "habitual" will not prevail.

Mr. WALLACE. It seems to me that the gentleman is assuming a state of affairs that there is no reason for assuming. I understand very well that a man might possibly become too much influenced by liquor to present a very creditable appearance on the street, and if he should happen to have done that once, I don't think there would be any desire to impeach him, provided it was known that he was not liable to do it a great number of times. When it is made necessary to have a man an habitual drunkard before you can impeach him, he is liable to be pretty far gone. You might put in the section a clause something like this: "He shall be guilty of repeated acts of drunkenness," but a man has got to be very far gone to be an habitual drunkard. If it is an accidental thing I don't think there will be any desire to impeach him.

Mr. POWLES. I move that the word "habitual" be struck out and the words "repeated acts of" inserted.

The motion was seconded.

Mr. WALLACE accepted Mr. POWLES' amendment.

Mr. JOHNSON. It occurs to me that the committee adopted a fair and reasonable rule—certainly a rule that has always prevailed in this country. It is well known—it is the experience of mankind—that sometimes the very best of citizens, in a com-

munity, may fall in this matter. They may become jubilant and enthusiastic and their good qualities of heart and sympathy may draw them into company to such an extent that they may become intoxicated. But they should be given a chance to repent and return to good society. We have not yet in our progress in temperance reform reached that stage where drunkenness—a single instance of it—is regarded as intolerable, and the gates and the avenues of decent society should not be barred for ever against a man for an act of this sort. You will doubtless see very good men in your community in election times, if their party has carried the election, who will be beside themselves for a while. I heard one of the most temperate men say last fall—he is an honored public official—"If we carry this election"—he said it in a public meeting—"I am going on a big drunk, or I am going to give $25 worth of wood to the poor people in my neighborhood." That was not an unreasonable alternative. It was a sentiment that called forth the applause of his hearers. They would have been equally divided as to which they should expect. Many good citizens have gone on a big drunk. That may be deplored, but under the conditions of temperance as they now prevail, the report of the committee is fair and reasonable, and unless a person is an habitual drunkard—unless he shows such a state of mind and character that his neighbors cannot trust him, he should be allowed to hold his office and draw the emoluments and enjoy the honors attatched to it. I am opposed to the amendment, and I hope it will not carry.

Mr. ROLFE. In addition to that which has just been said, it occurs to me that the object of the article in our Constitution on impeachment and removal from office, is not to provide for the punishment of delinquencies of this kind, but to protect the public from acts of officers who have become incapacitated by reason of their unfortunate habits for the transaction of such business as would come before them. Our present beautiful code provides punishment for offenses such as those specified here; if we wish to punish individuals, either official or otherwise, we have provisions enough for it. I understand the object of this is to protect the public against acts of officers who become incapacitated. Officers would not be incapacitated for the transaction of the business of their offices by simple occasional drunkenness, but by habitual drunkenness. I don't believe that our courts should be lumbered up with proceedings for removal from office

in case of occasional drunkenness, and I also believe that proceedings looking to the punishment of officials for drunkenness should be taken in other than the Court of Impeachment. I like the word "habitual" there. I think it agrees with the precedents set in other states.

Mr. BARTLETT of Dickey. That word "habitual" covers a great deal. How many gentlemen are there here to-day that have not seen some police Justice sitting up with a red nose adjudicating on the rights of the people in the cities of the United States? When you try to convict these men of drunkenness so that they may be thrown out of office, you call witnesses and these witnesses universally favor the old bloat. These are facts that are a terror to every thoughtful man. I like the amendment. Then you can count out one, two, three, four, five times, and spot the officer. The witnesses can testify to the number of times, and I say that a man who adjuticates on the rights of an individual should not set an example of drunkenness before the people. I, for one, am proud to stand up here and say that any man who would be guilty of intemperance should never have the privilege of passing sentence on a human being.

Mr. O'BRIEN. I don't see what good it would do for us to say here in this Constitution that any man who gets drunk two or three times should be removed from office. We have provided sufficient ground for removal from office, and it is left so that the Legislature can fix the number of times that a man must get drunk to constitute habitual drunkenness. We are sufficiently protected now. We desire to have men in office who will do the duties of their office properly, and if they do not, we desire to have them impeached and removed. If a man happens to take a drink occasionally, and perhaps if he got drunk on one occasion, what does that matter to the public so long as he performs the duties of his office to which he has been elected? If the gentlemen who are supporting the amendment want to have the Legislature fix the number of times that constitutes habitual drunkenness, let them apply to the Legislature. But we have enough in here to cover all they want.

The amendment was lost, and the rest of the article was adopted without further discussion.

SCHOOL LAND.

File No. 130 was then taken up for discussion.

Section one was adopted.

Mr. CLAPP. I move that in line two of section two the words "Proceeds of all fines for violation of State laws" be stricken out. The section now reads as follows:

SEC. 2. The interest and income of this fund together with * * * * all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the common schools of the State, and shall be for this purpose apportioned among and between all the several common school corporations of the State in proportion to the number of children in each of school age as may be fixed by law; and no part of the fund shall ever be diverted even temporarily from this purpose or used for any other purpose whatever than the maintenance of common schools for the equal benefit of all the people of the State; *Provided however*, That if any portion of the interest or income aforesaid be not expended during any year, said portion shall be added to, and become a part of the school fund.

Mr. POLLOCK. If this conflicts with the provisions made by the reports of other committees, the whole matter will come before the Committee on Revision and Adjustment. It seems to me however, that considering this upon its merits, the place for the fines paid for the violation of any of the State laws, is here. This would be a source of revenue that would be of great value to this fund, and it would then be placed where it will do the most good.

Mr. CARLAND. I think the language used in this section is the proper expression, for there may be fines for the violation of city ordinances, and fines of that kind would not go into the school fund.

The amendment was lost.

Section two was approved.

Section three was read as follows:

SEC. 3. After one year from the assembling of the first Legislature, the lands granted to the State from the United States for the support of the common schools may be sold upon the following conditions, and no other: No more than one-fourth of all such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one-half of the remainder within ten years after the same become saleable as aforesaid. The residue may be sold as soon as the same becomes saleable at not less than ten dollars per acre. The Legislature shall provide for the sale of all school lands subject to the provisions of this article.

Mr. JOHNSON. It occurs to me that this is a subject that should not be passed over entirely without discussion. It is certainly a matter for consideration whether these lands should be sold at all or not. There are a good many people in this State who are anxious that these lands should not be sold. Before we

vote for this section it certainly is due the members of this Convention who are not on that committee, that the reasons that were urged in the committee, and on which it acted, should be given to the Convention. In order to give them an opportunity to be heard, I propose to offer the following amendment and move its adoption—as a substitute:

No lands granted to the State from the United States for the support of the common schools shall ever be sold, but the same may be leased from time to time as provided by law, and the rents thereof be applied to the support of the "common schools."

Seconded by Mr. LAUDER.

Mr. JOHNSON. More fortunes have been made in the United States out of holding lands, than out of all othor causes combined. You may take our western farmers that have grown wealthy, and almost in every instance you will find they took land when they were poor—pehaps government land—went into debt for it, or they were laboring men or tenants, and went into debt for their land. They managed to make a living and supported their families, and in course of time, perhaps ten, fifteen, twenty or thirty years, they found themselves wealthy; not on account of what they had earned by their labor, but on account of the rise in the value of their land. We live in a country where landed property has gone steadily up in value for the past hundred years. We live in a country where these values will go forward as steadily and much more rapidly in the next hundred years. Large fortunes were made before our present homestead laws went into effect. Speculators who went into the western states—notably into Illinois, Wisconsin, Iowa and Minnesota—and invested their money in lands and held them for a rise, made large fortunes. An individual who has but the short period of an ordinary business lifetime to count on, is in a poor condition to speculate in lands as compared with the state or corporation. The individuals that went into these western states, say at the close of the Mexican war, they knew those lands would rise in value, but they could only hope to reap the fruits of that rise in values if they could hold on to them for twenty or thirty years. A state has a longer life than that. North Dakota will be younger in all its activities and ambitions and possibilities a hundred years from now than it is to-day. If it is feasible, practical and sensible for a farmer to buy a piece of land and hold it for a rise; if it is possible for a speculator to buy and sell out and enjoy the fruits of his speculation within his lifetime—

to invest his money in western lands and hold them for a rise and make money—it certainly is much more so for a state, because the state is endowed with the possibilities of eternal life. A thousand years from now North Dakota will be here with children to educate, while we shall have passed away within a century. You can lease these lands, and within our lifetime you can get just as much out of them as you could by selliug them, and then the lands will have increased in value tenfold—perhaps a hundred fold in value. How often land is leased for ninety-nine years. You can lease a lot in town for ninety-nine years for practically the same as you can sell it. They will build large brick and granite blocks on lots that are so leased. Railroad companies will lease a line for ninety-nine years or 100 years,and invest as much in them for permanent improvements as if they were buying the property for ever. Now then, if we sell these lands, there will be a great danger that the money will be scattered. There will be, at the least calculation, as we are forbidden to sell them for less than $10 per acre, probably from $13,000,000 to $15,000,000 realized. You will find that all the safeguards you can throw around that trust fund—that all the safeguards the Legislature and honest state officials are able to throw around it—will not be sufficient to prevent the formation of the greatest ring you have ever seen in North Dakota to steal the proceeds of the sale of these lands. In order to save the proceeds we must put them in good security. Bonds of the state will be good security. But where are we to put the rest? Companies in the East that have millions of money are seeking an opportunity to invest their money in western securities—mortgages on western lands. We would be obliged, in order to have this fund secure, to seek real estate security—the very security we have now, and we would find that the interest of that fund would grow less and less as time went on. We have found since we have been in Dakota that the value of money is growing less and less every year, and the same is likely to continue. The per cent. is getting less and less, so that as we advance in population and our schools become more and more expensive and we have more children to educate, more need for money, we shall find if we sell these lands and trust to loaning out the money, that in all probability, instead of our having more money each year, we shall have less. On the other hand, if we keep the lands, their rental value would increase, and as population increased and schools increased the rental would keep on in-

creasing, and we should still have the lands rapidly increasing in value.

Mr. BARTLETT of Dickey. I have been delighted to hear the last gentleman talk, but I can't think it possible that he has read the bill. If he had he would not have spoken of having so much money on hand. This bill provides that there can be only one-fifth of the purchase money paid down. It also provides that there shall be a given amount sold, so that the country cannot be flooded with money. It further provides that we can only rent the lands for five years at a time—the Omnibus Bill provides that. Every man here who runs a farm knows that when he can get land for only five years, that is not a very long time, and he won't pay very much for it. The Omnibus Bill provides that we can only rent the lands for pasturage and only five years for that. The gentleman spoke of renting them for ninety-nine years. I would state, as a member of that committee, that if the law would allow us to rent these lands for ninety-nine years I would not favor the selling of a dollar's worth. But we connot. We are cramped, and therefore we have to do the best we can with it.

Mr. PURCELL. It seems to me that the substitute offered by the gentleman from Nelson is not practicable, for in starting out to statehood the school funds are low. The schools must necessarily be maintained, and it simply resolves itself into a question as to whether the people of the present generation are to continue to pay taxes for the support of the public schools and allow their lands to remain unsold, or whether they are to sell their lands and realize what the Omnibus Bill provides shall be a reasonable price therefor, and as the bill provides, invest that money and use the interest in support of the public schools. If the gentleman from Nelson had read the Omnibus Bill he would have seen that only the interest on the school funds could be used for the support of the public schools. I take it that every man in this Convention knows that at least one-third to one-half of the ordinary taxes of to-day are those which he has to pay in support of the public schools. It is all very nice in theory to argue that by holding our lands we should become rich in the future. That is very nice for future generations, but for us who are here now and who have to bear the burden of maintaining our public schools it is not logical. The argument would be all right if the schools could be maintained other than by taxes collected from the tax-payers. But we are not in a condition to do as has been suggested, for as I say, the

majority of the taxes paid to-day are exacted from us for the schools. This bill provides in section six that only one-fifth of the value of the lands is paid in cash. The balance is to be paid for at a future time. The bill, in section ten, provides that all monies realized from the sale of these lands are to be invested in government bonds, school bonds or the bonds of the State of North Dakota. I don't think that there is any danger of a ring being formed to take this money. I feel that the fund will be just as safe in the hands of those who will take hold of the helm of government as the funds of any other resources that might come to the Treasurer of the State. There should be no question but what every man under the new state regime will be held to a strict account for every dollar he handles. This argument as to the funds being squandered falls without any weight, for there is no distinction between the fund realized from the school lands and that realized from some other source. It seems to me that the best and most practical way for the people to deal with this school fund question is the way provided in this bill. Let us take the land that the government has given to us, and use it so that it will lighten the burdens of the taxpayers of to-day and for some time to come. It is true that land will increase in value, but it is also true that there are a number of acres of the school lands that will never increase in value to any appreciable extent. There are lands which could be sold to-day and realize just as much for them as at any time, and inasmuch as we are limited in the price of these lands, no one will see that there is any danger of our selling them for less than their actual value. To say that the lands which have been donated to the state for school purposes should be held intact and should not be sold, is virtually to say that we must bear the burdens of the support of these schools, and that it will be necessary for us to provide an officer who shall see that the school lands are leased. In this country lands leased for grazing purposes will realize but a very small revenue. If the lands were allowed to be broken and cultivated and planted, then in a few years we might realize some revenue, but to say that we could realize any considerable revenue from leasing lands for grazing purposes is to make a statement that cannot be supported, for everybody realizes that the money so obtained would not be sufficient to pay the man who would look after its collection.

A vote was taken on the substitute of Mr. JOHNSON, and the substitute was lost.

Mr. LAUDER. I desire to offer an amendment to section three by adding the following:

"Land belonging to the State, which is suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding 320 acres to each settler, under such conditions as may be prescribed by law."

This is no doubt a question that has already engaged the minds of the members of this Convention, and they have undoubtedly studied it in all its bearings, and perhaps it would be a waste of time for me to detain the committee with any extended remarks upon it, and I do not intend to. But it seems to me that the provision contained in this amendment should be incorporated in this article. The tendency of the times is to the accumulation and to the acquisition of large areas of land. I believe that every member of this committee will agree with me that that tendency does not promote the best interests of the people at large. The policy to be pursued, it seems to me, should be to prevent the acquisition by individuals of large and unwieldy tracts of land. It prevents the settlement of the country; it prevents the best and most profitable kind of farming. Men get these large tracts of land; they do their business away from their farms; they don't assimilate with and mix with the people, and it seems to me that it would be far better if the holding of these large tracts of land could be prevented. I understand that as this land is not connected it would be impossible to get large tracts of it, but the passage of this amendment would, in my opinion, promote the interests of the State. Three hundred and twenty acres of is land all that any man ought to own.

Mr. GRAY. I think the amendment of the gentleman from Richland should prevail for the reason that in my town there are four settlers on one school section of land. They have built themselves good buildings that have cost them $1,000 each, dug wells, are good, industrious citizens, and it looks to me as though it would be unfair to allow a speculator to come in there and buy those lands and crowd them off and have them lose their improvements. Again, on another section there is one settler; he has got good buildings, has dug three wells, and has shown that he went on the land with honest intentions—with the intention of making his home there. It looks to me that in the interests of such men that the amendment should prevail.

Mr. CARLAND. I hardly see how this amendment has much force without we are to understand what is meant by the words—

"actual settler." If it is intended to limit the sale of the lands in the proposed state to persons who have actually settled in the state already, then there would not be much sale of these lands, because those who have actually settled here would not be so numerous or so desirous of purchasing lands as to want to take all the lands that would be offered for sale. If you mean that this land is for persons who intend to settle, then it would be inoperative from the fact that the person might say he wanted this land for actual settlement—he might get it and not settle; or an actual settler might buy it and turn it over to a speculator. I don't see how it would have any force—to use the words "actual settler."

Mr. WELLWOOD. I don't agree with the gentleman who moved the amendment. I think that one man's money is just as good as another man's, and I think our object should be to sell the lands where and how we can realize the most for them. If there are any men who have settled on school lands and have used the lands for four or five years and got the goodness out of the lands for their own purposes, I think they would be satisfied to pay as much for them as anybody else would. If they would not, then they should not stay on them. I cannot agree with the gentleman in his amendment.

Mr. LAUDER. I don't agree with the gentleman that one man's money is as good as another's under all circumstances. I don't believe that that sentiment prevails throughout the country, as has been evidenced by the law recently passed by Congress preventing aliens from holding lands in the territories. This law prevents the aliens from coming in here and buying up all our land and holding it for speculative purposes, and I believe that the sentiment of the people of the country is favorable to that law. It was to simply apply that principle to aliens in the State of North Dakota that I offered my amendment.

Mr. SCOTT. This amendment requiring the land to be purchased by actual settlers is vague for this reason—it says lands that are suitable for cultivation. There might be a great difference of opinion between the Superintendent of Public Instruction, and the person who has charge of the sale of these lands as to whether or not a certain section or part of a section was suitable for cultivation. That, and the objection to which the gentleman from Burleigh referred seems to me to make the amendment too indefinite to be incorporated as an article of this Constitution.

Again, we are now looking after the interests of the State. We are endeavoring to frame an article which will conserve our school fund, and increase it in every way possible. We want to get the most for our money that we can get. A farm of 640 acres is not a very large farm in this country. That could not be held to be a large farm; it is the holding of lands in much larger tracts than a section that is a damage to the country at large. Very frequently you will find a man who wants to purchase 640 acres who would be willing to pay more for it than if he could only get 320 acres. I believe that it would be difficult for us to sell these lands for some years to come for $10 an acre. The great majority of this land will not be sold for the next ten or fifteen years for $10 an acre, and for that reason I think it would be unwise to limit it to the man who is actually living in the State, or to the man who intended to come and settle immediately on purchasing the land.

Mr. MATHEWS. I believe as the gentleman from Barnes does. Take in Grand Forks county to-day—one of the best settled counties in the Territory, and I don't believe the school lands will sell there for $10 an acre. In the county of Nelson, I don't think there is any danger of selling the land there. Taking it in all these counties it is doubtful if there is much that will sell. I don't believe that we can sell all that the law allows us to sell at these figures, and I don't believe that we should restrict a man to 320 acres, for very often parties want to secure a section who will become actual settlers, and pay more than those who are living in the country. Take through any of these counties, and there is comparatively little land that will find a ready sale at $10 per acre. You will very often find that a man won't buy 160 or 320 acres when he would buy 640.

Mr. PARSONS of Morton. This is a very important subject, and in view of the fact that some of us have not given it the consideration that we ought, I move that the committee do now rise, report progress and ask leave to sit again.

The motion was seconded and lost.

Mr. BARTLETT of Dickey. It seems to me that some of the gentlemen have not paid enough attention to the law under which we are working. The bill under which we are making this article provides that no man can lease more than 320 acres, if I mistake not. Where the land is sold in small quantities it will let the little fish in, and that is what we want. The provision is this—we

only get one-fifth down. The balance is to be paid later, and it is to bear interest at six per cent. per annum right along, so it will be a long term of years before we will handle much money.

Mr. GRAY. It looks to me that the pen that drew this article as it stands was guided somewhat by the hand of the speculator, and that it was to be sold in the interests of the speculator, instead of the interest for which it was designed when it was given to the new State of North Dakota. We are inviting settlers here, and yet we are so going to fix this Constitution that the school lands will go into the hands of speculators first. I had an amendment which I thought of introducing which would provide that settlers on school lands should have a prior right, other things being equal. The land will have been apprised before it can be sold, and it is the duty of this Convention to throw safeguards around these school lands so that speculators cannot get hold of them, but it should go to the tillers of the soil—to people who will settle on it and cultivate it and help to build up the State of North Dakota.

Mr. LAUDER. The remarks of the gentleman from Barnes seem to convey the impression that these lands would not be sold in quantities of more than 640 acres. I am not particular; I don't know but that I would consent that 640 should be inserted in lieu of 320 in my amendment. I am not so particular about that, but my objection to the article as it now stands is that it permits speculators to buy not only 640 acres, but just as much as they can buy, tie it up, take it out of the market and prevent settlement. That is what I object to. I cannot see the force of the argument that these lands will not sell for $10 per acre, and I would incorporate something here that would prevent the buying of these lands by individuals, or corporations, or speculators, and leave it in such a manner that at least every section, after the lands were sold, would have a settler upon it. If we provide by law that no man shall buy more than 320 acres or 640 acres, it will prevent speculators from buying these lands to any great extent, for if a man is unable to buy more than 320 acres, in most cases he will buy that to use as a farm and will live on it and work it. The gentleman says that it is our business at this time to look after the interests of the state. I agree with him, but when we are looking after the interests of the citizen, we are at the same time looking after the interests of the State, and if we can arrange this matter so that on every quarter section there will be an actual settler living with his family and cultivating the soil,

mingling with the people, increasing the volume of business, we will be caring for the interests of the state.

Mr. WILLIAMS. It is now about five o'clock, and there are eight more sections of this bill. It was only laid on our desks this afternoon, and it is one of the most important measures that this Convention will have to deal with. It will be impossible for us at this sitting to consider this bill fully and report it back to the Convention with the recommendation that it do pass and give it that consideration which it should have. I move that the committee do now rise, report progress and ask leave to sit again.

Mr. BLEWITT. I move to adjourn.

The motion prevailed, and the Convention adjourned.

TWENTY-FOURTH DAY.

BISMARCK, *Saturday, July 27, 1889.*

The Convention met pursuant to adjournment.

The CHIEF CLERK called the Convention to order and announced that the PRESIDENT had appointed Mr. ROWE to act as President *pro tempore* during his absence.

Prayer was offered by the Rev. Mr. KLINE.

The roll was called and there being no quorum, upon motion of Mr. WILLIAMS the Convention adjourned until Monday at 2 o'clock p. m.

TWENTY-SIXTH DAY.

BISMARCK, *Monday, July 29, 1889.*

The Convention met pursuant to adjournment, with President *pro tem.* ROWE in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

The roll was called, and there being no quorum, the Convention adjourned until Tuesday at 2 o'clock p. m.

TWENTY-SEVENTH DAY.

BISMARCK, *Tuesday, July 30, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. COLTON. I move that this Convention do now resolve itself into a Committee of the Whole for the purpose of considering File No. 130 and other reports.

Mr. MOER. The report of the Committee on Revenue and Taxation was held over for the purpose of allowing members of the committee to present a minority report. As that report is not ready, I would ask that the consideration of that report be deferred till to-morrow.

Mr. PRESIDENT. If there is no objection File No. 132 will be deferred till to-morrow.

SCHOOL LAND.

Section three of File No. 130 was then read and under discussion.

Mr. CARLAND. I desire to call the attention of the gentleman to the reading of lines seven and eight of this section. They read as follows: "The residue may be sold as soon as the same become saleable at not less than $10 per acre." Of course the act of Congress limits the price of these lands, but this section by its language only limits the price of the lands which may remain after selling no more than one-quarter and no more than one-half. In line four it reads: "No more than one-fourth of all such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one-half of the remainder within ten years after the same becomes saleable as aforesaid. The residue may be sold as soon as the same becomes saleable at not less than $10 per acre." It seems to me that if the Constitution is to adopt the limitation

imposed by the act of Congress it would be proper to make it apply to all lands, for that is the condition on which the state accept the school lands. I would move as an amendment to that section that all after the word "saleable" in the line be stricken out.

The motion was seconded by Mr. MILLER.

Mr. McKENZIE. I would call your attention to section six of the same article, the first and second lines which I think will cover it.

The amendment of Mr. CARLAND was carried.

The section was then adopted as amended.

Section four was then read as follows:

SEC. 4. The Superintendent of Public Schools, Governor, Attorney General and Secretary of State shall constitute a board of commissioners which shall be denominated the "Board of University and School Land Commissioners," subject to the provisions of this article and any law that may be passed by the Legislature. Said board shall have control of the apportionment, sale, rental and disposal of all school and university lands, and shall direct the investment of the fund arising therefrom in the hands of the State Treasurer, under the limitations of section ten of this article.

Mr. ELLIOTT. I move that the word "schools" in the first line be stricken out and the word "instruction" be inserted in lieu thereof.

Mr. ROBERTSON. I think it will be found so in the original draft.

The amendment of Mr. ELLIOTT was carried.

Mr. CARLAND. It seems to me that the reading of lines three and four does not convey the meaning intended. "Which shall be denominated the Board of University and School Land Commissioners subject to the provisions of this article and any law that may be passed by the Legislature." I would amend this by having line four after the word "commissioners" read "and subject to the provisions of this article, and any law that may be passed by the Legislature," and no period after the word Legislature. That is, I think, what is intended to be conveyed by the language.

Mr. ROBERTSON. I am aware that the gentleman is a jurist and his words have great weight with this Convention, but I would suggest to the gentleman the advisability of adopting the word "shall"—making it read "and shall be."

Mr. MILLER. If the gentleman reads further down he will find that the word shall occurs further down and has the same meaning as he proposes.

Mr. CARLAND. In line three, too, the word "who" should appear instead of the word "which."

Mr. JOHNSON. I should like to have some reason given for that change. Why would it be better to insert the word "who" instead of the word "which"? My opinion is that the word "which" is proper there. Before we make this change we should have some good reason given.

Mr. ROBERTSON. I think the word "who" is better as applied to persons. We say "the person who" or "whom." "Which" is generally applied to the lower animals. I think "who" is altogether a better term.

Mr. ROLFE. It strikes me that the question is—what is the antecedent to the pronoun? I take it that the word "board" is the antecedent, and therefore the word "which" referring to that is proper, rather than to the officers who compose the board. If the word refers to the officers then clearly it should be "who," but if it refers to the board as a body then plainly the word "which" is correct.

Mr. O'BRIEN. We have a Committee on Revision and Adjustment, and it strikes me that it would be better to refer this matter to them. Of course it will go there anyhow, and the duties of that committee are to arrange the matter, and cure any defects which may occur in the different sections. I think it would be the duty of that committee to cure the alleged defects that have just been pointed out here.

The amendment of Mr. CARLAND was lost.

Mr. ROLFE. I would suggest that the better place for the word "Commissioners" would be in the third line.

Mr. ROBERTSON. I think it would be better to leave the whole matter to the Committee on Revision and Adjustment. I think it would be a good deal better to have it occupy the time of that committee than the time of the whole Convention. That committee should have something to do.

The section was then adopted; also section five.

Section six was then read as follows:

SEC. 6. No lands shall be sold for less than the appraised value, and in no case for less than $10 per acre. The purchaser shall pay one-fifth of the price in cash, and the remaining four-fifths as follows, to-wit: One-fifth in five years, one-fifth in ten years, one-fifth in fifteen years and one-fifth in twenty years, with interest at the rate of not less than six per centum payable annually in advance. All sales shall be held at the county seat of the county in which the lands to be sold is situate, and shall be at public auction and to

the highest bidder, after sixty day's advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of not less than 160 acres, and those so subdivided in the smallest subdivisions. All lands designated for sale, and not sold within two years after appraisal, shall be reappraised before they are sold. No grant or patent for any such lands shall issue until full payment is made for the same.

Mr. BEAN. In line twelve it was the intention of the committee to have it offered in blocks of 160 acres. I move that the words "not less than" be struck out.

The amendment of Mr. BEAN was seconded and adopted.

Mr. LAUDER. I move that section six be amended by inserting after the word "subdivision" in line thirteen of the section, the following—the amendment I offered last Friday:

"Land belonging to the State which shall be designated by the board of appraisal of the county in which the land is situated, to be suitable for cultivation, shall be granted only to actual settlers and in quantities not exceeding 640 acres to each settler, under such conditions as may be prescribed by law."

It is File No. 109 modified.

The amendment was seconded by Mr. GRAY.

Mr. ROBERTSON. I sincerely hope that this amendment will not prevail. I don't think that we are yet prepared for a land limitation act. It does not seem to me that any such principle as this should become incorporated in this Constitution.

Mr. BARTLETT of Dickey. It strikes me that this would be unconstitutional. It is discrimination between men and would be unconstitutional. It is selecting certain parties to buy, and when the land is put up for sale it says how we shall sell it or lease it. We certainly cannot make any respector of persons, and therefore I hope it will be voted down.

Mr. LAUDER. I hardly think that the amendment is open to the objections that have been raised against it. It is in the direct line of the legislation of Congress on this question. Delegates here will know that there is now an act of Congress which provides that no alien may hold lands within any of the Territories, and if Congress had the power to legislate for the states in this matter, there is no doubt but that a similar provision would be applied to the states. Of course Congress may provide that any class of persons may become the owners of the soil and so may this Constitution. I do not care to detain the committee with any extended remarks. I stated my views upon it when the question was up before, and briefly those reasons are—we should

provide against any possibility of the lands that remain unsold in this State from going into the hands of foreign syndicates. We want the lands of the State of North Dakota for actual settlers, and not for the purposes of speculation, and it seems to me that anything that will bring about that end, and that is not otherwise unreasonable should be incorporated in this Constitution.

Mr. ROBERTSON. If the gentleman would look forward to the terms prescribed in this article for the sale of these lands he would see that the terms are not the terms such as would be acceptable to speculators. They are terms that favor the actual settlers.

Mr. MATHEWS. Section two of the Enabling Act says: "All lands herein granted shall be disposed of only at public sale, at a price not less than $10 per acre, etc." This sale will be advertised, and it will be put up for sale, and I can go in and buy one, two or five or a dozen quarter sections. Can they refuse to sell me this land if I am the highest bidder? If I go to the sale with my money, how can they refuse to sell me the land? I don't think that we have a right to make any such provision as the gentleman from Richland wants.

The amendment of Mr. LAUDER was lost.

Mr. WALLACE. I move to insert after the word "acre" in the second line the words "without the consent of Congress."

Mr. ROBERTSON. I think it is well understood that it could not be accomplished without the consent of Congress. The Enabling Act covers this ground sought to be covered by the amendment. I regard the words proposed as a mere incumbrance to the sentence, and it seems to me that they should not be adopted.

Mr. WALLACE. The reason for my moving this amendment is this, there is a good deal of border land in this Territory, and $10 an acre is a price that we can never get for a good deal of it. It might be that we might desire to sell this land for less money than this, and without this amendment we could not do it, even with the permission of Congress, without a constitutional amendment.

Mr. MATTHEWS. I think the argument of the gentleman from Steele is a good one. A number of delegates have lately gone to the western part of the Territory where they have seen a good deal of country that will not sell for the minimum price fixed by Congress. While we are making a Constitution it is well to insert these words proposed, and in case we have a chance to

sell these lands for less, and we get the permission of Congress, we won't be bound up by our Constitution.

Mr. BEAN. I think we should be careful and think the matter over well before we adopt this amendment. If this amendment is carried we may place our school land in danger. A bill authorizing the state to sell the lands for less than $10 an acre might be lobbied through Congress. There would perhaps be no one in Congress to see that the price was held at $10, and before we knew it there might be a bill lobbied through fixing the price of lands at $5.

Mr. WALLACE. Of course we have no intention of changing the price of these lands at present, but in the future we shall in all probability find that we shall have a great quantity of lands on hand that it will be impossible to sell for the maximum price. With these words in we might go to Congress and ask for the privilege of selling these lands at less money.

Mr. BARTLETT of Dickey. It seems to me very much like putting on a fifth wheel to the wagon. It strikes me that it is lumbering up the Constitution, and it is well enough as it is.

The amendment of Mr. WALLACE was lost.

Mr. O'BRIEN. I move as an amendment that the second line shall read as follows: "The purchaser shall pay one-quarter of the price in cash, and the remaining three-quarters in equal instalments payable in five, ten and fifteen years."

Mr. MILLER. I suppose the object of the sale of these lands is to bring as great a revenue into the State Treasury for the benefit of the schools as possible, and to continue it as long as possible. This bill provides that the interest shall be six per cent. There is no question but what in the years to come six per cent. will be a very high rate of interest, and it will be all the interest that can be obtained on first rate real estate in North Dakota. It seems to me to be a desirable thing to do to have as much of this money loaned as possible for a long time. I should rather see it extend for thirty years rather than fifteen or twenty. If we enforce the payment of that money at an earlier date it goes into the State Treasury and remains idle till it can be distributed for use and invested as provided by law, and I am opposed to the amendment because I think the method proposed will be less advantageous to the State.

Mr. O'BRIEN. The principal reason for my offering this amendment was this: The section as it now reads provides that

one-fifth of the price for which the lands shall be sold shall be payable in cash. If the land is sold for $10 per acre, all that a man would have to pay in cash would be $2 per acre. He would pay one-fifth of the price in cash, and he would get the benefit of the use of the lands for five years, and at the end of five years after having exhausted the soil he might not see fit to continue the payments, and would let the land revert back to the State. I believe that so far as the present value of lands in this country is concerned $10 would be a very high price, and there is no doubt but that he will be unable to sell anything but the best lands, and the best will be taken by speculators or settlers. If that is true, it would seem to me that before we allow the best lands to be all sold, we should make some provision that will secure the remaining portion of the amount which is to be paid under the terms of the sale, and I think that if some arrangement of that kind is made, so as to make the first payment large enough so as to be an inducement for the man to continue his payments, I think you would better subserve the purposes for which this enactment has been made. So far as prolonging the time of payment is concerned, it is not of any importance to me whether these payments are put off five, ten or thirty years. The principal object as I stated before was that the purchasers should pay a sufficient sum in advance to render the State secure against the man who would stay on the lands and take all their virtue out and not pay a sufficient sum to reimburse the State.

Mr. BARTLETT of Dickey. The terms of the sale are these: They are to pay one-fifth down, and the interest in advance annually. To make the very best of it—we get one-fifth. After one year from that time we get all the interest. I think that we have pretty good security. It was argued right here that they were not in favor of selling it and taking the cash simply from the fact that we would have money that we would not know what to do with. I think that we shall have good security as it is, and I hope the gentleman's motion will not prevail.

Mr. MATHEWS. I understand from the reading of this that they pay one-fifth down and the interest in advance at the time they buy the lands.

Mr. BARTLETT of Griggs. I notice the last two lines of the section says that "no grant or patent for any such lands shall issue until full payment is made for the same." They don't propose to issue a deed until the full expiration of the twenty years. The

purchaser would thus pay no taxes. It would pay our citizens to give up their land and buy these school lands and give up paying taxes for twenty years. If they are not going to give any deed or patent until the twenty years are up, they should compel them to pay one-half down.

Mr. MOER. It seems to me that the point is not well taken for the reason that the section provides that the interest shall be paid in advance. It is almost a certainty that the Legislature in passing laws necessary to carry out the sale of these lands, will provide that in case a default is made in the payment for any of these lands the land shall revert back to the state. It would hardly be business to sell a piece of land upon a payment of one-fifth and the interest for one year, and say we would allow the purchaser to hold it for twenty years. I don't think there is any danger of this being done. I think the point raised by the gentleman from Cass is will taken—that one of the principal things we want to do is to invest our funds at a good rate of interest, and before the twenty years have expired we should be unable to get so good a rate as six per cent. More of the lands will pass into the hands of actual settlers by a small payment down rather than by any other method.

Mr. COLTON. I would like to ask if lands sold under a contract would not be taxable as well as any other lands, and if the contract would not be drawn so that in case the parties did not pay the interest and the taxes the property would revert back to the original owners ?

Mr. MILLER. I move to refer the gentleman's question to the Committee on Judiciary.

Mr. LAUDER. This section provides that no patent shall issue till after full payment has been made, and that is right. There is a provision in the report of the Committee on Revenue and Taxation which provides that none of the property of the State shall be taxable, and it seems to me that until the patent is issued or the grantee receives his deed, the title would still remain in the State, and it seems to me that this land should not remain for this length of time in the possession of an occupant not to be taxed.

Mr. SPALDING. It seems to me that in selling these lands we should make provision so that we shall get enough during the first five years, or till some default is made, to pay us a good rental. Let us see. Suppose a quarter section is sold for $1,600. One-fifth of that paid down in cash would be $320—the balance

due would be $1,280. Six per cent. on that would be $76.80. For the first year's payment you would get $396.80, then the four years' interest would be about $300 more. That would make about $700 for the first five years' use. Suppose the land then reverted back to the State you would have $700 and a piece of land in practically a worthless condition, and the only question for us to consider is whether this is a fair price for the use of that land considering the condition it would naturally be left in. It would be $700 for five years.

Mr. MATHEWS. I can illustrate this in my own case. A man has a quarter of a school section, and pays about $75 a year for the use of it as interest. My taxes on my land amount to about $30 per year for each quarter section. I agree with one of the gentlemen who has spoken, that under these conditions a man had better sell his land and buy school lands.

Mr. STEVENS. I thought that the object of this report was to provide a foundation on which the Legislature might make a law. I do not understand that it was our duty or our province to make all the provisions that will be required for the protection of this land, and therefore I don't believe that there should be as much in the article as there is. As the gentleman from Cass has said, the main object of the sale of these lands is to bring to the new State the most funds that can possibly be had for the schools. I don't believe that in all cases it will bring the most funds to the State to sell these lands upon long time. There are men who would want to pay for their lands before twenty years. There are men who would probably be willing to pay more for lands if they could pay for them and get a deed at the end of five years. Men of the average age, such as my friend here, in twenty years or so, will, in all probability, be dead, and they won't probably want to go into debt and leave that debt to their heirs. It seems to me that it would be better policy to leave the matter of the period of payment to the Legislature. Let them fix the time—give them the privilege of legislating upon it.

Mr. BARTLETT of Dickey. We have talked this matter all over—we want to crowd out the speculators, for we know that there will be men who will want to come in and pay the cash and own the lands. We talked that over a long time in committee, and thought that we had got the best plan. The gentleman from Cass said that we should get in five years about $700 out of the land. I appeal to any farmer that knows, and he will say that

when land has been cropped five years, one summer's summer fallowing will make it perfect and make it produce a splendid crop. I think that $700 is ample payment for the use of a quarter section for the time named. You can to-day buy hundreds of thousands of acres of land for that money.

Mr. ROBERTSON. The prominent idea in the minds of the committee was that the lands should be offered on terms more acceptable to the actual settler than to the speculator, and in casting our thoughts on the propositions that we had before us, we thought that this was the best plan—this that we incorporated in our report.

Mr. STEVENS. I don't wish to intimate that it would be better to put this matter on a cash basis, but it surely can be no injury to the settler or the Territory if they are allowed to buy their lands on time or for cash as they may see fit. They would have the option, and surely land sold with that option would bring a better price than if sold without that option.

Mr. MATHEWS. I believe that the majority of the people who will buy these school lands will be settlers, and I should think that a fifth would be better than a fourth to pay down. In case they are occupied by settlers there will be more or less improvements put upon them, and while I don't like to see too much legislation in the Constitution, yet I think with the gentleman from Ramsey that it would be well to give the people the option of paying sooner than twenty years if they desire to do so.

The amendment of Mr. O'BRIEN was lost.

Mr. STEVENS. I would amend the section by adding after the word "years" in line five the following words: "*Provided*, That the last payment on the said lands may be made at the option of the purchaser at any time after ten years of the date of the purchase."

Mr. BARTLETT of Dickey. I oppose that amendment on this account—we have surely got good security. Ten years have elapsed, and we should give that interest up if the purchaser pays for the land. We won't need the money, and when we have a sure thing in good interest we should not let it slip. I cannot see any point to the motion only to help the purchaser and the speculator.

The amendment of Mr. STEVENS was lost.

Mr. LAUDER. I move that the section be amended as follows: After the last word add—"*Provided*, That all lands con-

tracted to be sold by the state shall be subject to taxation from the date of the contract."

Mr. BARTLETT of Dickey. I should oppose that amendment because the land would be taxable anyhow.

Mr. ROBERTSON. I don't understand the amendment.

Mr. MOER. I would like to inquire of the gentleman from Richland how the tax can be collected on these lands? How can the tax be enforced? Suppose the purchaser defaults in the taxes, fails to pay, how would it be collected when the title rests in the State?

Mr. LAUDER. I presume that the purchaser would be interested in protecting any right that he had, and if he was not, all the right he had would be lost to him by the sale of the land for taxes, and of course the Legislature will provide that the rights of the State will be protected, and that the State could transfer the land again to some other person. As this article now stands, inasmuch as no transfer of the title is to be made for twenty years, the land would not be subject to taxation till that time; and it seems to me that it would be bad policy to have this land occupied, and in a sense owned by individuals, and at the same time not be subject to taxation.

Mr. ROBERTSON. I am opposed to this amendment for the reason that if it is carried it will embrace two subjects, and this is improper, no matter whether we are framing an article for a constitution or a municipal ordinance. I think the subject of this amendment properly belongs to the article on Revenue and Taxation. It is one of the subjects that should be embraced there, and it is not germain to this article.

Mr. CARLAND. I don't understand that the words: "No grant or patent for any such lands shall issue until full payment is made for the same," has anything to do with the taxability of the lands. The gentleman has perhaps in mind certain litigation that has arisen over the taxability of lands lying within the Northern Pacific land grant. The Supreme court held that the Territory could not tax them for the reason that the taxation might result in depriving the United States of its lien upon the lands. If the State sells the school lands the Legislature can provide for the taxation of the lands in the hands of the purchaser, and if it is offered for sale the State protects itself by bidding it in. That is the practice in most states.

Mr. LAUDER. If our Constitution contains a provision that

the property of the State shall not be subject to taxation, and if this section provides that the title to this property shall remain in the State until the full purchase price is paid, then I fail to see what authority there is left in the Legislature to provide for the taxation of the lands without some such provision as I propose by my amendment. If the title remains in the State, the property is in the State and the purchaser has simply a possessory right. The title is still in the State. I say that with that clause in the Constitution the State has no right to tax its own property, and in order to reach it, it would be necessary to have the Constitution amended, and now is the time to provide the remedy.

Mr. WALLACE. I agree with the remarks of the gentleman from Richland. We should make sure of this point. It is a matter easily put in, and that would settle it beyond any possiblity of dispute, and it would be wise to put in a provision which would make it certain that these lands are subject to taxation. Otherwise a man had better take these lands and sell out what he has got. It would pay him to do so.

The amendment of Mr. LAUDER was adopted.

Mr. BLEWETT. I offer as a substitute for section six the following:

"No land shall be sold for less than the appraised value, and in no case for less than $10 per acre, under such provisions as the Legislature may prescribe."

Mr. BARTLETT of Dickey. That just kills the whole article. The appraisers may go out and appraise the land for $30 or $40 or $50 an acre and it must not be sold for any less. That would ruin the whole thing.

Mr. ROBERTSON. If this motion carries it will prove very destructive to the whole article. I don't believe that we are prepared to do this. I simply make these remarks to warn the committee.

Mr. ROLFE. I thought these folks who are opposed to legislation in the Constitution would wake up after awhile. I excepted it when we were discussing section three. Apparently section three agreed with some of those who were opposed to legislation in the Constitution, but that section suited them, and they called it proper. Section six does not agree with them, so they want to blot it out. I want to put myself on record as being favorable to some legislation in the Constitution—that which approves itself to the minds of those who have had experience of the Legislatures in the past. Those who have had such experience are justly in favor of such limitations on the Legislature, whether in the

nature of legislation or otherwise, as will best protect the interests of the people. If we are agreed here that there is good sense in this section, let us support it whether it is legislation or not—whether it is common—whether it is a provision such as is commonly inserted in Constitutions, or whether it is only legislation. The question for us to consider in this amendment is this—is there sound sense in it—is it in the line of serving the interests of the people in the future? I am opposed to the substitute.

The amendment of Mr. BLEWETT was lost.

Sections seven and eight were adopted. Section nine was read as follows:

SEC. 9. The Legislature shall have authority to provide by law for the leasing of lands granted to the State for educational and charitable purposes, but no such law shall authorize the leasing of said lands for a longer period than five years. Said lands shall only be leased for pasturage and meadow purposes, and at public auction after notice as heretofore provided in case of sale. All rents shall be paid annually in advance.

Mr. BEAN. I amend the section by adding after the word "years" the words "nor in quantities exceeding one section to any one person or corporation."

Mr. ROBERTSON. This particular question was discussed in the committee, and the reason it was left as it is, was that a section of land in the grazing portions of the State would not rent for very much for grazing purposes by itself, and it was thought best to leave the section as it is.

Mr. ROBERTSON. I move an amendment to the amendment, so that it will read "that the land shall be rented in quantities as has been or may be provided by Congress."

This amendment to the amendment was lost.

Mr. O'BRIEN. It seems to me that it is unnecessary for us to lumber up this section with another amendment. Congress has already made a provision in regard to this matter, and I don't see why it is necessary for us to try to aid Congress in any way in the matter. It is simply adding unnecessary words to the section.

The amendment of Mr. BEAN was lost.

Sections nine and ten were then adopted.

Section eleven was read as follows:

SEC. 11. No law shall ever be passed by the Legislature granting to any person, corporation or association any privileges by reason of the occupation, cultivation or improvement of any public lands by said person, corporation or association subsequent to the survey thereof by the general government. No claim for the occupation, cultivation or improvement of any public lands shall

ever be recognized, nor shall such occupation, cultivation or improvement ever be used to diminish, either directly or indirectly, the purchase price of said lands.

Mr. GRAY. I move to amend by inserting in the fifth line after the word "government" the following: "Other than the right to purchase the subdivisions on which any valuable improvements may be located by the owner thereof within three days after any sale, and at a price not less than the highest price offered at said sale."

Mr. ROBERTSON. The object which the committee had in presenting this article and this section was to give the occupants of our school lands no other recognition than that of trespassers; to give them no rights, and not allow the fact of their occupation to diminish the price of the lands. I believe that that is the sentiment which is shared in by a very large portion of the inhabitants of the State. I believe that they will recognize this article as being just and right. I don't believe that there is any desire to have those trespassers recognized as occupants, or that it is desired to give them the inside track. I don't believe that our people share in that opinion.

Mr. MATHEWS. At the present time there are parties breaking up the school lands in my locality, thinking that if they get them broken up they will be able to get possession before they become State lands. Last week there were parties that had eight teams at work, and I think that nothing of the kind should be recognized, and any improvements they have should be put up and sold the same as the lands, without any recognition of any improvements that they may have upon them.

The amendment of Mr. GRAY was lost.

The remainder of the article was adopted.

Mr. FLEMINGTON moved that the committee proceed to consider File No. 125.

The motion was carried.

MUNICIPAL CORPORATIONS.

Mr. MILLER moved the adoption of the following additional section to File No. 125:

SECTION 1. No municipal corporation shall ever become indebted in any manner or for any purpose in any amount, in the aggregate, including existing indebtedness, including four (4) per centum, upon the value of the taxable property within such corporation, to be ascertained from the last assessment for state and county taxes previous to the incurring of such indebtedness, and

all bonds or obligations in excess of such amount, except as hereinafter provided, given by such corporation, shall be void; *Provided, however*, That any incorporated city may become indebted in an amount not exceeding four per centum on the value of such taxable property without regard to the existing indebtedness of such city, for the purpose of constructing or purchasing water works for furnishing a supply of water to the citizens of such city, and for no other purpose whatever.

Mr. STEVENS. As I understand it that would be an original proposition and must first go to the hands of the committee.

Mr. MILLER. The reason for my introducing this amendment is simply this—that in all the cities in the State in which they desire to construct a system of water works, they could not raise a sufficient tax without exceeding the limit now provided by law, and in all these cities it is a matter of absolute necessity that they get their water from a system of water works, whether by the sinking of artesian wells, or by taking the water from a river or from some other source. In the City of Grand Forks their system of water works was constructed and Congress passed a special act authorizing the city to bond itself in an amount in excess of the amount laid down by a prior congressional law. In Fargo the citizens desire to construct a system of water works or purchase one partially in existence. They are unable to do so because they would incur an indebtedness in excess of the amount provided by law. If it were possible for the cities to secure their water in any other way the reason would not exist for the adoption of this article. They could not bond now for a sufficient amount for sinking of an artesian well, and it seems to me that they should have a right in municipal corporations to bond themselves in excess of the limit for that purpose only, and that is what the bill provides.

Mr. STEVENS. I don't object to the article, but it is the precedent which is here being set which I object to. If we adopt the precedent of making new articles, or of making entirely different articles than those which have been considered by the Convention or passed by the committee, we are very liable to get some matter into this Constitution which we should not get in, and it is more the precedent being set than this article, which I object to.

The CHAIRMAN. The Chair may be ignorant of parliamentary matters, but it is his judgment that the article may be amended the same as a section, and he rules this in order, but the CHIEF CLERK will assure you that this matter has been referred to the committee.

Chief Clerk HAMILTON. This proposed section was File No. 67. It was introduced by Mr. MILLER, and referred to the Committee on Municipal Corporations.

Mr. BENNETT. To accommodate Mr. MILLER I returned the File so that he could present the matter to the Committee of the Whole and have it considered.

Mr. SELBY. I wish to state in reference to the proposition that is now before the committee, that the Committee on Municipal Corporations at the time they were acting on this article had in view the proposition incorporated in the amendment that is now presented, and there is really but one matter in it that is proper to be considered in connection with this article as we at the time viewed it, for the reason that I presume it is the sense of the Convention, and it is the custom in all Constitutions, that where they make a limitation as to indebtedness it goes into the article upon Counties and Townships, and that article includes it all. If we were to incorporate this section in the article on Municipal Corporations we should find that we would want a similar provision in the article on Counties, and the matter would thus become cumbersome. It was omitted for the purpose of having it come in at the proper place, and forming one section of the Constitution in an article that it belonged in.

Mr. NOBLE. I move that the word "four" be stricken out of the third line and the word "five" be inserted.

The amendment of Mr. NOBLE was lost.

The section introduced by Mr. MILLER was adopted.

Mr. MOER. I move that we now proceed to consider File No. 123.

Mr. CARLAND. I would ask that the reports of the committees be taken up according to their precedence they have on the table. In regard to the report of the Judiciary Committee I would say that there have been certain propositions made with a view to the committee coming to some agreement and thus save a good deal of time to the Convention. That is the only objection I have to taking up the report of the Committee on the Judiciary Department at this time.

Mr. LAUDER. There are some gentlemen, attorneys, who are supposed to be specially interested in the consideration of File No. 121 who are absent to-day, attending the meeting of the Joint Commission, and they would like to be present when the report of the Committee on the Judiciary Department is being consid-

ered. In deference to their wishes I should like to have this report laid over till to-morrow.

Mr. POLLOCK. I think the same might be urged in reference to any File. They are interested in all the Files—probably in one as much as in another.

Mr. LAUDER. I think hardly so, Mr. CHAIRMAN. I think the gentlemen are particularly interested in the report of the Committee on Judiciary, and they have expressed a wish to be heard when this matter is considered, and I should at least like to have time to send them word.

Mr. PURCELL. The members of the North Dakota part of the Joint Commission have expressed a desire to be present when the Judicial Bill is being discussed, and as we are now about completing our report, we do not like to be disturbed, and if it can be laid over till to-morrow we shall be glad.

Mr. CARLAND. In view of the expressed wish of the gentleman I would ask that it be laid over till to-morrow.

The File was laid over.

ELECTIVE FRANCHISE.

File No. 123—the Elective Franchise—was then brough up for discussion.

Section one was read as follows:

SECTION 1. Every male person of the age of 21 years or upwards belonging to either of the following classes, who shall have resided in the State one year, in the county six months, in the precinct ninety days next preceding any election, shall be deemed a qualified elector at such election. First, citizens of the United States. Second, persons of foreign birth who shall have declared their intention to become citizens one year and not more than six years prior to such election, conformably to the naturalization laws of the United States. Third, civilized persons of Indian descent who shall have servered their tribal relations two years next preceding such election.

Mr. FLEMINGTON. I would move to amend section one by striking out the word "ninety" in the third line and inserting the word "thirty."

Mr. MILLER. I second the motion.

Mr. COLTON. I would say that I hope no such an amendment will carry. If a man has got to live in the State and county a required time he certainly, if he is a *bona fide* settler, can be in the precinct ninety days. This shinning around at election time is too much practiced all over the territory and has been for years, and I would like to see it left ninety days.

Mr. FLEMINGTON. It seems to me that the provision which just precedes this—that a person shall have lived in the county six months, sufficiently protects the people in that respect. This provision making it ninety days in the precinct would prevent many people from voting who are constantly moving from one precinct in a county to another. I think that with the provision to the effect that they must have resided six months in the county, thirty days in the precinct is enough.

Mr. MILLER. I agree with the gentleman from Dickey that thirty days in the precint should be sufficient length of time. To allow the section to stand as it is at present would have this effect: Most city elections occur in the spring about the time people are moving, and a large number of people who occupy tenement houses move about once a year and that in the spring. It would require them to change the time of moving or lose their votes. A citizen of the State and the county who has become a *bona fide* resident by a long residence in the State should not be deprived of his vote because necessity requires him to move from one ward to another, or from one township to another. It seems to me that thirty days should be sufficient time for a man to reside in a township.

Mr. COLTON. The remarks of the gentleman would be all right if we had small counties, but where we have counties bigger than two or three states, in the east, it is a very easy matter for a man to say when he comes to vote: "I have lived in the county six months, but I just came here thirty days ago." Nobody can tell whether they have or not, and for that reason I should like to see it left to the precinct, for almost everybody can tell whether they have lived the length of time in the precinct.

Mr. FLEMINGTON. I would say further in connection with this matter that the time here, of ninety days, is longer than I know of any precedent for. It has been the custom until lately in this Territory wherever I have been, to only provide for ten days residence in the precinct. We now have a law on our statute book that provides for thirty days. It would be well, it seems to me, for us to conform to the present established law of the territory.

Mr. WILLIAMS. I agree with the remarks of the gentleman from Ward. I think this provision was put in here to secure honest elections, and it is about as the gentleman says—in the spring of the year when the municipal elections are being held there is a good deal of activity, and I think it is well to require a

pretty long residence in the ward in order to protect the cities from illegal voting. I think it is a very wise provision and I am in favor of requiring this length of time in order to stop if possible all illegal voting at municipal elections.

Mr. LAUDER. I agree entirely with the remarks of the gentleman from Burleigh. Of course the provisions of this Constitution are of general application, and in particular instances hardships may be worked. But I believe that taking it altogether that it would be better for the territory if the law remains as provided in this section. In the spring the people flock into the cities, and as everybody knows, hundreds of people vote there who really have no interest whatever in the city, and who perhaps the next day are gone, and the same in the fall. It seems to me that we would have a purer election if we allow this provision to remain as it is.

Mr. NOBLE. I move as an amendment to the amendment that the amendment read "not less than thirty days," thus leaving the whole matter to the Legislature.

The amendment to the amendment was accepted by the owner of the amendment. The amendment as amended was then put to a vote and lost.

Mr. MATHEWS. I move as an amendment that the word "sixty" be substituted for the word "ninety" in the third line.

The amendment was seconded and lost.

Mr. ROLFE. I move that there be added to the second subdivision of section one the following proviso: "*Provided*, That at the expiration of five years from the admission of this State this subdivision of section one shall become inoperative and void." I make this motion in justice not only to our foreign population, but to our native American citizens. It has been the custom in most of the states, and perhaps in all the territories, to make the qualifications of a voter those of actual full citizenship, and partial citizenship. It would be an injustice to our present foreign population who are now taking a hand in the formation of this Constitution in this new State, by any act of ours to deprive them of their votes in the formation of this State, and the formation of the Constitution and the election of the officers provided in it. But every citizen of foreign birth who is with us now can, at the expiration of five years, become a full citizen—can have taken out his second papers and be standing on the same basis with American born citizens. I believe it is contrary to the prin-

ciples of good government, generally speaking, that any person who has not resided in the commonwealth for a sufficient length of time to become well acquainted with our institutions and laws and the basis upon which our government rests, should have an equal voice with those who are, so to speak, to the manor born. But I say, it would be an injustice to those of our population who are only partially citizens now, to make this limitation at this time, but I think it is for the benefit of the American portion of our citizens and our foreign citizens, that there should be some time when no man should have a voice in the government of this State who is not a full citizen. It is for that reason, in justice to our native born citizens, in justice to our foreign born citizens who have already taken out their first papers, and in the interest of good government I have offered this amendment.

Mr. BELL. It seems strange to me that the gentleman should wish to debar from voting those citizens who shall come to this country hereafter. If the State was fully settled up it might be different, but as we all know the State is not one-quarter settled, and the new comers to this State, coming in as they have heretofore, are entitled to vote. These counties will in a great many instances be settled with at least two-thirds of people of foreign birth. I don't think it is right that these people should have to wait five years before they can vote—before they can have a say on matters concerning the welfare of the State in which they will be interested. Therefore I am opposed to the amendment.

Mr. JOHNSON. I am of the same opinion as the gentleman from Walsh. Why should we now, at this period of our history, embark on a new, untried and revolutionary system. If I remember right it was this morning or yesterday morning that we read in the dispatches that an amendment similar to this offered by the gentleman from Benson was defeated by the Constitutional Convention in Montana. Why should we be less liberal than the makers of the Montana Constitution? Ever since we first begun to build on these prairies we have been inviting people to come here—to take out their first papers disavowing all further allegiance to any foreign potentate, swear eternal fealty to our government, and identify themselves with us—cast in their lot with ours. The government of the United States has by repeated acts of Congress, notably the Homestead and Pre-emption laws, invited those people to come here, take lands and become for all practical purposes and duties of citizenship, fully equal

with us and equally responsible for the conduct of this government. A large percentage of our population are now voting under the principles laid down in the report of the committee under the acts of Congress and the laws of this Territory, and all the territories from the foundation of our government to the present day. Look at the justice of the thing. Large numbers of our people have come here under the invitations that have been extended to them. They have read the Constitution of the United States, have studied it thoroughly and know its provisions; they have read the Declaration of Independence and the laws of the Territory of Dakota, and they have invested their money in lots; have taken homesteads, built up homes and make these prairies blossom like the rose. They have to pay taxes. They have always up to this time had a say in the matter of the government—they have not been taxed without representation so far, and why should we now at this late day turn back the page of history and establish the principle against which the founders of the republic fought, bled and died—namely taxation without representation? Why should we tax these people and at the same time give them no voice in the affairs of the government? I can point you to many a township where you would deprive of a right to vote on school questions, for example, intelligent people who know what they want, and who are just as anxious to establish schools and build up township and county governments as any people in America—people who can read and write and study and work just as intelligently as anybody else. Why deprive these people of a right to vote? Why tax them? Why invite them to come here without giving them the ballot and the power to build up these institutions, schools, townships and county governments? Why not encourage them to obey those laws that they aided in making. Why not extend to them the privileges that they have always had before? I think the amendment is hardly in keeping with the spirit of American institutions.

Mr. COLTON. I hope nobody who lives in a county that is pretty well settled will vote for this amendment, for if they do, it will tend to keep settlers out of those counties that are but sparely settled. If there is another place in the United States that they can go where they will have a chance to vote, they will not come to this State with such a provision in our Constitution as the gentleman from Benson wants to put in.

Mr. STEVENS. I hope that this amendment will not prevail,

for I believe that if it does prevail and goes into the Constitution, Ransom county will be robbed of a thousand settlers that we are expecting there, but who won't go if they are to be disfranchised.

Mr. ROLFE. I did not expect that this amendment would be popular in this Convention. But it is in line with the policy we pursue in this government and in this Convention when we make a limitation of the period of citizenship for our public officials. There is not a report here that provides for the election of a public officer which does not provide for a certain length of time that he shall have resided here before he can become eligible. The Constitution deprives a foreigner from occupying certain offices until after he has been in the country a certain number of years. If we believe that we should say that no person should become eligible to the office of Judge of the Supreme Court until he has resided here five years, why not put a limitation also on the voter? If it is wise in the one particular it is in another. Why debar a foreigner in the filling of any office if you don't limit his participation as a voter? I don't expect that my amendment will be popular, and I am inclined to think the time I have named in the amendment is too short. But I do believe that it is right that the time should come when none but full citizens should participate in the government of this State, and I honestly believe that it is the opinion of a vast majority in this House that that should be the case. If I had any idea that this amendment in any form would prevail, I would like to substitute the word "twenty" for "five," and with the consent of my second I would ask that that substitute be made.

Mr. MOER. With the substitute of the word "twenty" for "five," I am willing to support the amendment. I am surprised that more gentlemen have not risen to their feet in support of the original amendment. I have heard a large number of the delegates express themselves outside of this hall in favor of the proposition. Why don't they do it on the floor of this House? Is it that they are afraid of the foreign vote? Is that the question that keeps them from saying here what they say in private? It seems to me that the time has come when it is just as necessary that foreigners should be as familiar with our institutions as the Americans are. We limit every American born citizen to twenty-one years before he is allowed to vote. Why then should a foreigner be allowed to vote in six months or a year? There is no

reason in the name of good government. It is impossible for any man or class of men to become familiar with American institutions and ideas in six months or a year. Now with the proposed amendment of twenty years, it seems to me that no man could have any objection to the amendment as proposed. It will allow every one now in the country and those who come here for the next eight or fifteen years to become voters under our present system. It seems to me that in the interests of good government it is right to begin to restrict the right of suffrage to a limit of time. We have this question before us—shall we allow people to vote who know nothing about the institutions of the country—who come here and in one year start in to exercise the rights of suffrage? The right of suffrage is a right conferred by the government for the public good. It is not a right inborn in any individual. It is simply a question whether it is for the public good or not that this amendment should prevail. Won't the honest answer from every man's heart be that the best interests of good government require that the voters shall have sufficient knowledge of American institutions to cast an intelligent vote when they go to the polls, and does not that require a moderate residence, and is not five years sufficiently short?

The amendment was put to a vote and lost.

Mr. CARLAND. I move to adjourn.

The motion prevailed, and the Convention adjourned.

TWENTY-EIGHTH DAY.

BISMARCK, *Wednesday, July 31, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. NOBLE. File No. 130 is of considerable importance, and the arguments and remarks made yesterday showed that there were a great many questions in it of a judicial nature, and I would move that before the adoption of the report and before it goes to the Committee on Revision and Adjustment, that it be recommitted to the Committee on Judicial Department.

Mr. BEAN. I move the adoption of the report.

The motion was seconded by Mr. COLTON and carried.

Mr. SELBY. I move that we now resolve ourselves into the Committee of the Whole for the purpope of considering the article on the Judicial Department.

The motion was seconded by Mr. LEACH.

Mr. MOER. I amend by making it the report of the Committee on Elective Franchise. It is still before the committee and should be finished.

The amendment of Mr. MOER was carried.

Mr. NOBLE. The minority report of the Committee on the Elective Franchise turns out to be a majority report, and I would suggest that the clause recommended by the minority be read instead of the report of the minority.

Mr. PARSONS of Morton. Is File No. 123 before the house for consideration ? I would like to ask for the minority report. As an act of courtesy the minority report should be before each member as well as the majority report. I would like to state that the majority report was made in good faith, but it would appear that a majority of the committee signed what is called the minority report, and I would move that this section two in the minority report be substituted in the place of section two in the majority report.

Mr. POLLOCK. I think the gentleman from Morton is laboring under a slight misapprehension—at least I judge that from the statement he makes. This question that is touched on in regard to both of these reports was considered in committee, and a clear majority was in favor of the report which was made as the report of this committee—File No. 123. Subesquent to that time and before the matter was reported to the Convention, work was done outside of the committee by which a majority were induced to sign the minority report. It must not be construed that this matter was considered hastily in the committee. The change was made by reason of some work that was done by some of the members of the committee after the adjournment of the committee and before the report was submitted to this Convention. I state this so that there my be no misunderstanding on the part of this Convention. I would like to say further, that I hope this amendment will not prevail for the reason that the question of extending the right of suffrage to women, making that right equal with men, is one that is being considered by the people not only of this Ter-

ritory but by all the people of the United States. It is a question on which considerable advancement may be made by us, and it is a question that can be safely trusted to the Legislature. Our Territorial Legislature has had control of this matter ever since we have had a territorial government. They have not abused that privilege. I understand that several states, notably New York, have had the same power. But the time may come when the Legislature should have the power to submit this matter to a vote of the people, or to extend the franchise without the submission, or to take such action as they may think is right and proper. I am anxious that this amendment should not prevail for these reasons.

Mr. LAUDER. I should like to know where this so-called minority report may be found.

The CHILF CLERK. In the Journal of the 25th.

Mr. MOER. I don't understand that the motion of the gentleman from Morton to substitute the minority report for the majority report settles the matter. He means to make it a part of the majority report, and then the majority report may be adopted or rejected by this body.

Mr. PARSONS of Morton. The gentleman from LaMoure has the correct idea, and I would not choose now to enter into a further discussion as to the merits of the question. It seems right that if a majority of the committee has agreed on anything it should be incorporated in the main report. I repudiate any insinuations that have been made on the floor of this House as to any influence having been brought to bear on any members of the committee. The minority report was drawn up at my desk, and various members of the committee signed it, and I don't know of any member that signed that minority report who has expressed himself as having had influence brought to bear on him. They signed it deliberately, of their own free will and choice, and it seems to me to be poor courtesy to cast any insinuation on any member of the committee who has a right to vote any way he chooses. Any man in this Convention has a right to cast his vote as he chooses and change it when he likes. I don't believe that there has been any wire pulling, nor that any one has used undue influence one way or another. I deny the accusation. The minority report was on my desk and was signed, and if there is any member who has had any undue influence I wish he would stand up and say so. I hope the motion will prevail in justice to the majority of the committee.

It is not a question of the merits of the case, but to substitue one section for another.

Mr. POLLOCK. Putting the question on that ground, I wish to say that I did not and don't now, intend in my remarks to reflect on the gentleman from Morton, but I intend to state that I am credibly informed that one of the gentlemen who signed this minority report stated that he signed it under a misapprehension, and he signified his willingness to remove his name from that report. I think when the argument is based on the fact that seven names appear on that report the gentleman from Morton is laboring under a misapprehension, and he asks to have one clause substituted for another when such substitution should not be made.

Mr. SPALDING. It seems to me that there is a misunderstanding in regard to the action of this committee, and it occurs to me that this Convention is no place to settle it in, and I move as a substitute that when this committee rise it recommends that the respective reports of the Committee on Elective Franchise be re-referred to that committee for such action as they may see fit.

The motion was seconded.

Mr. WELLWOOD. I cannot see where this would help the matter any. I don't see that it makes any difference one way or another. The committee has worked over that thing and talked it over, and it has got to be an old matter with it, and it cannot accomplish any more. It is only wasting time to refer it back to the committee. The Committee of the Whole can act on it now as well as any other time.

Mr. CAMP. The sentiment of the gentleman who has just spoken is precisely mine. The Committee on Elective Franchise is, evidently, very nearly evenly divided on this point, and their report, whether minority or majority, can but little affect the action of this House, simply because they are about evenly divided. It seems to me that this House can fairly take it out of the hands of the committee and act on it, and whether they act on it under the name of majority or minority report is of very little consequence to anybody.

Mr. BARTLETT of Dickey. I cannot see the objection to putting it as it i . If the minority is in the majority, so fix it. I don't see w y that is not right. The report that has the most rs shor l be the majority. I think that is right and what the House ough to do.

Mr. CARLAND. I move as a substitute that section two read as follows:

"The Legislature shall be empowered to make further extensions of suffrage hereafter at its discretion to all citiezns."

And that this section be adopted.

The motion was seconded.

Mr. MOER. I move an amendment to the substitute that after the word——

The CHAIRMAN. The Chair is of the opinion that this amendment is out of order.

Mr. NOBLE. It seems to me that the amendment offered by the gentleman from Burleigh is identical with section two of the majority report. I cannot see how a substitute can be offered.

Mr. CARLAND. I made the motion for this purpose. There are two reports, and this Convention was being agitated by the question as to which is the majority and which the minority, and my motion was to make section two the same as it appears in File No. 123.

Mr. ROLFE. I trust the substitute of the gentleman from Burleigh will not prevail. I believe that it is the right of the majority of the committee to have their section considered first as the actual work of the committee, and I have not yet heard any member whose name appears here as having subscribed to this proposed section, testify or repudiate his signature. The presumption must be that they signed it, and that they signed it with their eyes open, and they intended to have their names there. Until this is proven to be a mistake it is certainly a majority report under whatever name it may be called. It seems to me that such being the case it has a right to be considered here now, and have the prestige which belongs to a majority report.

Mr. SCOTT. I hope the substitute of the gentleman from Burleigh will not preveil. It is rather an anomaly to see a minority report before this Convention as a majority report, and therefore I hope the motion of the gentleman from Morton will prevail.

Mr. TURNER. As a member of that committee I wish to state to this House that at the last session of that committee there was a clear majority of one on the final vote to adopt section two as contained in the report of the committee, and as contained in File No. 123. This File has been submitted to this House as the majority report of this committee. How to account for a minority report with seven names upon it, when no such

minority report was presented before that committee, and when a clear majority of one for the adoption of the other report was recorded, I cannot say. The question was discussed in the committee and a majority of one was in favor of the report. What has been done in getting seven names on this report was done outside of the committee room and independent of any knowledge the committee had. I hope the work done and submitted as File No. 123 will be recognized by this House as the majority report, whatever inducements may have been used to induce members to sign the minority report afterwards.

Mr. LAUDER. It seems to me that we are wasting a good deal of time in discussing a matter that is practically of very little importance. It can make but very little difference in the final result which of these reports is considered the majority or the minority, because in either case it will have no particular binding force on this Convention. It seems to me that the report that is signed by a majority of the committee, as none of them repudiates the signature, should be regarded as the majority report, and it seems to me that the most speedy way out of this difficulty will be to sustain the motion of the gentleman from Morton to have that considered the majority report which is signed by a majority of the members of that committee.

Mr. CARLAND. I am not particular as to which is called the majority report. I made the motion I did for the purpose of getting the matter before the House.

Mr. NOBLE. I made the point of order that a substitute could not be made, for we must first decide which is the majority report, or whether there is a majority report, and then the minority report may be substituted for the majority report.

The CHAIRMAN. The Chair is of the opinion that the substitute is in order.

Mr. BARTLETT of Dickey. I have never known a time that great men did not have the right to change their minds. This man signed the report, and after consideration he thought that he had done wrong, and it is a true sign of greatness to see a man who has done wrong, to change his mind and sign again. That signing or that change made the minority report the majority report, and I can't see any reason why all this argument should follow when the gentleman is here to explain the matter himself.

Mr. FAY. At the meeting of the committee there was a majority in favor of what is called the majority report. Several of

the members of the committee were absent. It was then stated by those opposed to the majority report that a minority report would be made. It was prepared and signed by some of the members that were absent from this meeting. That accounts for the situation. There is no complication about the matter, and it occurred in this way.

Mr. TURNER. There were two members absent, and one was on each side of the question. I hope the motion of the gentleman from Burleigh will prevail. I don't think we do well in commencing the work of the new State to take a step backward. Since 1862 the Legislature of the Territory of Dakota has had the power to grant the suffrage to women, and yet they have been conservative enough not to do it. There is sufficient protection in the veto power of the Governor, and I don't see why a matter of this kind should necessarily be submitted to the people, requiring all the machinery of an election for the purpose of determining it. When the Legislature becomes sufficiently convinced that the people require the law they should be empowered to pass it. I think no Legislature that may be elected as a Legislature of the State of North Dakota, will at any time be willing to extend the franchise beyond a reasonable desire of the majority of the electors who send them here. I think the matter will be safe and better left as it is now in the File as reported, and as it has been during the Territorial government.

Mr. CARLAND. I understand the question before the House to be whether or not this committee will adopt section two of File No. 123 and recommend its adoption as section two of this article. That is the question before the House. That motion has been seconded and it is open for discussion. It is not necessary for any delegate who advocates this motion to champion in any degree the right of women to the suffrage. It is sufficient for the delegate to be satisfied that he is doing right to citizens of North Dakota, whether male or female. By glancing at section one of File No. 123, it will be seen that this committee has adopted a provision making civilized persons of Indian descent voters in North Dakota. They have by section one in the first sub-division allowed the negro to vote. They have allowed every description of animate male humanity to vote in North Dakota. What is asked in section two? It is asked that the Legislature shall be empowered to make further extension of suffrage hereafter in its discretion to all citizens of mature age and sound mind, not con-

victed of crime, without regard to sex, but shall not restrict suffrage without a vote of the people. Of course the intention of that section is to empower the Legislature at some time to grant the right of suffrage to females. Now I understand that we have assembled here for the purpose of forming a Constitution for the citizens of North Dakota. The citizens of North Dakota include the female portion, as well as the male. If you are come here for that purpose of making a Constitution for one-half of the people of North Dakota, or perhaps for a minority, then you ought to declare it in your preamble, and not say "In the name of Almighty God" you are making it for the people of North Dakota. There is another view of this section, and it is this: It has been guaranteed by the Constitution of the United States and it has been the fundamental principle in all bills of rights that I have ever studied since bills of rights were demanded—by the Parliament of Great Britain or formulated in the states of this Union—that the citizens have a right to petition for the redress of grievances. Now what do you do if you adopt a section which will prohibit the Legislature forever from extending the right of suffrage to females? You practically deny the right of one-half of the citizens of North Dakota to petition for the righting of grievances. You deny to them something you have advocated, and that has been advocated by this government during the last century, and for a long time in the country from whom we have our existence. Another view of this case: The minority report, as we call it, says the Legislature shall at some future time submit this question to a vote of the people. Now I call on any person who has any knowledge of the use and effect of the word "shall" in that minority report to state whether or not that has any more than a moral influence on the Legislature. There is no human power that can ever compel them to submit it to a vote of the people. This section says they may have the power. Your section says they shall have the power. I claim that so far as the actual enforcement of the provision is concerned the one is not any more binding than the other. It seems to me that this section two is a very reasonable provision. It is just; it is right that the question of this kind that depends on the varying policy of state governments as to whom they will admit to the right of suffrage, should be left to the law-making power, and there is no right, no justice in saying in this Constitution that the Legislature of North Dakota shall

never extend the suffrage to any but male persons. What is this for? What is the reason? If I should vote against this proposition in the face of the knowledge of the world in regard to the ability, the integrity, the morality of the citizens of North Dakota who compose the female sex, and at the same time my constituents see that on the day previous I had voted to let the civilized Indian, and the negro, and every ignorant class known vote, and I had debarred the women—and not only that, but had voted to prevent the Legislature of North Dakota from ever extending the suffrage to them, I would go out of this hall with my head cast down as a man who was not a friend of justice, or a friend of right, or a friend of fair dealing between man and man.

This of course is not a new question. It is a question that has been discussed pro and con for a long time by all people, and whether I am or not an advocate of woman suffrage—I say it does not depend on that or enter into the solution of the question whether this section shall be passed or not. A man's advocacy of this section can be defended and rest solely on the question whether he is an advocate of justice and fair dealing to one-half of the population and citizens of North Dakota that you are making this Constitution for. This minority report, as it is called, kindly says the Legislature shall submit this question to a vote of the people. Who are the people? Who are you in your generosity to submit the question to, whether or not women shall vote? Why to yourselves, and call yourselves the people. I say in justice and fairness no person ought to advocate the submission of a question to himself when he is the most interested party. It violates every principle which obtains in judicial dealings—a man should not be a judge in his own case. We do not ask to have this matter submitted, but we ask that in the future if such a thing should be decided to be right and a matter of good public policy, that the Legislature should grant this privilege. Now you have got to trust the Legislature in a good many things, and they ought to be trusted in this. I am in favor of leaving it to them for their decision. I am satisfied that whatever they do in the matter will be right. It is bound to be right in theory if not in practice, or else our form of government is a sham and should be abolished. With these remarks I hope the section will be adopted.

Mr. PARSONS of Morton. I was not aware that the question of woman suffrage was before the House, and was not expecting that the question would come before the House. The question as

it seems to me is simply a question whether the matter of extending the right of suffrage shall be left to the Legislature or left in the hands of the people. We have had quite a number of remarks on this question, and on the question of woman suffrage. I would not say a word were I sure the motion before the House would be lost, but it seems very strange that we have existed as people for over 100 years and the gentleman from Burleigh, who has had the honor of being one of the judges of the district of this Territory, asks—who are the people? I would like to ask the gentleman who were the people in 1776, when the glorious Declaration of Independence was signed, and who were the people that voted to establish this government? Let me ask him who were the people in the civil war when our country was torn in twain? Who were the people who fought then to maintain our system of government? It seems to be a strange question for a gentleman of his enlightenment to propound on this floor. I don't wish to discuss the question of woman suffrage here. I would, however, make one reference to the matter, and I hope you will pardon me for it. I have been so fortunate in life as to be a married man, and so fortunate as to have these relations pleasant and agreeable. I have the honor of having the presence of my wife here to-day and I have too much deference to the institution which I believe was established by God Himself and above a civil contract—too much deference to that institution, to ever favor the proposition of woman suffrage and she is with me in this position. So far we will let that subject drop and proceed to the question before us. Shall it be left to the Legislature or the people? I am an American. The question seems to be, and always has been granted, that the sovereignty of this government rests in the hands of the people, therefore I am opposed to ever leaving the Legislature the unqualified power of extending the right of suffrage. The people—a term that embraces every one who casts a vote—have carried this government on through the past years to the present day. If we have made mistakes—if we have become helpless in misery and corruption, let us pull out and let the other side of the house run it for awhile. But if there is any honor left in us—if there is any responsibility, and we deem ourselves men, let us still as Americans have enough confidence in the sovereignty of the people to submit a question of so much importance to the people instead of the Legislature. It is a known fact that legislatures are susceptible to influences, and

since I have been here as a delegate, were my feelings in that respect not governed by a higher motive than simply a desire to please the fairer portion of my audience, I should have been carried away entirely in favor of woman suffrage. I am aware that the same influence has been brought to bear on every Legislature here, and it is a question that we should not decide in the heat of argument, but we should leave it to the people. No more serious question ever agitated the American mind than the question of franchise. It affects our whole government, and there are arguments pro and con.

It seems to me to be foolish to put a measure of this importance into the hands of the Legislature with power to extend the suffrage without limit, but without the power to restrict it. It seems strange that such a proposition should be agitated, or advocated here. I am proud that a majority of the committee have signed this report. If the motion of the gentleman from Burleigh carries, what does it defeat? It defeats the section which provides, as our sister state has provided, for the submission of this question to a vote of the people a year from now. We cannot compel the Legislature to submit it, but in all probability the Legislature would not disregard the wants of the people as expressed in the Constitution, and the provision is that it shall be submitted to a vote of the people a year from now at the general election. You may take this Convention, and you will find men in it who are opposed to woman suffrage, who are in favor of this submission to the people. You know that one of the principal arguments that these people use for woman suffrage is that it will help in controlling the liquor traffic. That is one of the arguments used. Let that issue come up by itself. There is one class in favor of the liquor traffic and one class against it. It seems strange to me that anyone advocating a reform—a radical change in our government should ask that the matter be left entirely in the hands of the Legislature. It seems most preposterous that such a proposition should be made here, and all I ask is that the methods which have been adopted since we were a government be adopted now—and that such an important matter as this be left for the people to decide. I wish to see no radical changes made without the consent of the people, and when we say "people" I refer again to my answer to the gentleman from Burleigh on this question. We are legal voters to-day, and it is a question whether we shall extend the franchise or not, and every man will be held free from

any imputation when he decides this question for himself at the polls. I hope the motion of the gentleman will not prevail, but that section two of the minority report will be inserted in the article. I say this as an American who hopes to see our institutions perpetuated in the same glorious manner as we have beheld them perpetuated for a hundred years.

Mr. LAUDER. The question before the House as I understand it is not whether the right of suffrage shall be extended to women, but the question is as to the manner in which it shall be extended if at all. The gentleman from Burleigh takes the position that the question should be left to the Legislature. In what I say I shall not express my opinion or make any argument for or against the right of suffrage for women, but I cannot agree with the gentlemen from Burleigh that the Legislature is the proper tribunal to decide this question. It is before the people. It has been discussed. It may be said to be one of the leading questions before this Territory the same as the liquor question is. In regard to all these questions, and which may be said to be leading questions, it seems to me they should be submitted to the people, and let the people finally pass on them, and then when they have been passed by the people they will be settled. Whereas, if by chance, or if by some combination, an act of the Legislature were passed granting suffrage to women, it would not be settled, for the people would say that was not the issue before the people when the Legislature was elected—our legislators did not express the sentiments of the people, and the next Legislature, if the other party have the majority, would reverse the acts of the former one, and it would go on in that way just as Legislation on the whisky matter has gone on in Dakota and other States, where it has not been definitely settled by the people.

The gentleman says that in referring this matter to a vote of the people we refer it to ourselves in our magnanimity. The women will have no voice in it. If the Legislature decides this question, to whom is it then referred? Any law, whether it be constitutional or whether it be the act of the Legislature, must go as the voluntary act of the male population of this State, and there is no way in which you can get around it, unless it is provided here that on this question the women shall vote themselves. But before this is done it must be by a constitutional provision to be adopted by the male voters. The question, anyhow you put it, is to be settled by the male voters of the state. The gentleman

asks—has it come to this that the right of petition shall be denied—that the women cannot petition the Legislature? I say it has not come to that, and the position we take on the question does not bring us to that at all. The women may go before the Legislature with a petition—they may petition the Legislature to submit this question to a vote of the people, and the right of petition is not changed. The gentleman says that perhaps the Legislature will not submit the question. That is true. But are not they just as liable to, and far more so, to submit the question than they are themselves to grant the right to vote? If they may be relied on to grant the right to vote, may they not be relied on to submit the question to a vote of the people? These arguments are ingenius—they are not fair. I am in favor of having this question submitted to a vote of the people. If they want the franchise extended to women, let it be so extended. I would let the women vote on this question as well as the men. Let the women themselves say on this final vote when the question is submitted whether the suffrage shall be extended.

Mr. MOER. The proposed substitute is, I presume, the original report of what was supposed to be the majority of the committee. We then have the minority report which provides that this question shall be submitted to a vote of the people a year from now at the next general election. I am not in favor of section two as proposed by the gentleman from Burleigh, neither am I in favor of what is now called the majority report, for the reason that it forces a vote at a time next fall when there has been no demand for it on the part of the people. We have been here for a long time, and there has not been a petition placed on our desks or read to us, asking for this thing, from any source that I know of. There have been one or two parties here in the interests of the cause and that is all. There is no general demand on the part of the women of the State for the right to vote, nor should that question as to woman suffrage be discussed here, as it is not before the House properly. The question now before us is this—shall we empower the Legislature to extend the right of suffrage without having it ratified by the people who are now the voters? It seems to me decidedly that we should not. It is a proposed change in our system of government that we know little or nothing about. It may be good; it may not be. If the Legislature extends this suffrage they can never restrict it, and the query in my mind when the gentleman from Burleigh was speaking was

why the question to extend or restrict should not be left to a vote of the people. It seems to me in this matter that it would be a much better thing to leave it to the Legislature in the future—one year, two years or ten years, when the people ask that the right of suffrage be extended to women, so that at that time the Legislature should pass such a law and submit it to the voters for ratification or rejection. There is no question of more weighty importance to the people of this State that will come before us than this—no question that will come before the Legislature that will be of more importance than this question of doubling the vote of the country. Why do the advocates of woman suffrage object to having this question submitted to a vote of the people? Why do they want the Legislature to have the power to extend the suffrage, unless they fear the voters at the polls will reject it? In Dakota Territory we had the suffrage extended to women, so far as the Legislature was concerned, and yet we know that not one member in fifteen was elected on the question of woman suffrage, nor did it enter into the canvass, nor did the people ratify that action in any sense. I am against the motion of the gentleman from Burleigh; I am also against the minority report for the reason that it would force a vote in a year when there is no demand for it. I believe in leaving the matter to the Legislature to legislate upon at any time when there is a demand, but they must submit their work to the people to ratify it before it becomes a law of the State.

Mr. ROLFE. Do I understand that the Chair ruled out of order the amendment offered by the gentleman from LaMoure? If so, and the section of the gentleman from Burleigh is adopted we will still have an opportunity to amend it.

The CHAIRMAN. The chair so understands it.

Mr. SCOTT. Before voting on this I want to understand it. I understand that the amendment of the gentleman from LaMoure is out of order, and the substitute is this—that we adopt section two of File No. 123, and recommend its adoption. If we do that, then as I understand it, it cannot be amended unless some person can be found who will move to reconsider it.

The CHAIRMAN. The Chair understood that it was simply a substitute section to the majority report, and then the section would be read and discussed.

Mr. SCOTT. Under the ruling of the Chair it prohibits any amendments at this time. If we adopt this section it must be

exactly as it stands. For that reason I move that the motion of the gentleman from Burleigh be laid on the table.

The CHAIR ruled that that could not be done.

Mr. SCOTT. I move that further consideration of this question be indefinitely postponed.

The motion was seconded and lost.

Mr. BEAN. The substitute motion is the section of the gentleman from Burleigh. I understand that to be the case.

The CHAIRMAN. That is so.

The substitute of Mr. CARLAND was then put and carried by a vote of 39 to 24.

Mr. PARSONS of Morton. I give notice that there will be an amendment offered to the Convention to-morrow on this section.

Sections three, four, five, six and seven were adopted.

Mr. SELBY moved to strike out section eight, which reads as follows:

SEC. 8. Any woman having the qualifications enumerated in section one of this article as to age, residence and citizenship, and including those now qualified by the laws of the Territory, may vote at any election held solely for school purposes, and may hold any office in the State, except as otherwise provided in this Constitution.

Mr. JOHNSON. I move to amend section eight by adding after the word "school" in the fourth line the words "or municipal."

The motion was seconded by Mr. COLTON.

The amendment was lost.

Mr. CARLAND. I move that the words commencing in the fourth line after the word "purposes" be stricken out. I think the Constitution should speak for itself.

The amendment of Mr. CARLAND was carried, and the section was adopted as amended.

Mr. PARSONS of Morton. I move that when the committee rise they report recommending the adoption of the Australian bill at the end of this article, instructing the Legislature to pass it with such modifications as they may see fit.

Mr. MILLER. I move that when the committee rise they report recommending that the bill do not pass. It is simply in regard to the method of conducting elections—purely a matter for the Legislature.

Mr. PARSONS of Morton. I don't wish to occupy the time of the Convention at this time. I would like to say that we don't

deny that this is pure legislation, but this bill has passed the Legislature of the Territory of Dakota, and was purloined or stolen away in some manner. We desire to go on record as in favor of it, and I hope that the motion of the gentleman from Cass will not prevail, and that the bill may be incorporated in the Schedule. I believe that a majority of the people in North Dakota want it, and I should like to have the Convention bear the odium of defeating it.

The motion of Mr. MILLER was adopted.

THE REGISTRATION QUESTION.

Mr. COLTON. I move that section three of File No. 105 be added as section ten of File No. 123. It reads as follows:

"All electors must be registered ninety days before the day of election, and certified copies prepared by the Clerk or Auditor of each township, municipality or county for each polling place therein, and all lists must be certified to as being true according to the certified list of the court of examiners."

Mr. MILLER. I object to this amendment being added to this article for the same reason that I objected to the Australian bill. It has reference solely to the method of conducting elections and is a matter that should be relegated to the Legislature. If we seek to put in all the provisions for conducting elections, we shall have a very long Constitution. At its first session the Legislature must make provisions for conducting elections. If they deem it a wise thing they will undoubtedly provide for registration.

Mr. COLTON. I would say that where anything is for the good of the public I don't see that there is any great danger of being afraid of a little legislation. I notice there are some parties on this floor who are terribly afraid of a little legislation, and they seem to be very much against it. This registration provision is certainly what we need to secure an honest ballot, and if we want an honest government we must start at the foundation and have an honest vote. There is no way to secure this as well as to have the voter register. Then we know who are voters and who are not.

Mr. TURNER. I don't think this House can construe section three of File No. 105 as being legislation. I don't believe that that section makes any provision with respect to any method or manner of conducting elections. It merely requires the registration of voters ninety days before election, in such a way and man-

ner as may be provided by the Legislature. It so provides that every person who shall be a candidate for office will have the right by examining the files or records to know whether there are men on those lists who are not entitled to vote. The individuals who are candidates will have the right to examine those records and ascertain if parties who have a right to vote are on that record when the Board of Examiners meet, or not, and if their names are not there they can take steps to have them put on. It is not legislation, but it is placing in our Constitution a safeguard around the question of who shall vote at elections to be held in this state. It simply provides that individuals shall be ninety days in the precinct and shall have registered. The persons who have not registered will not have the right to vote. I think it is a question quite within the province of this Constitution we are framing as much as anything that is embraced in File No. 123.

Mr. BARTLETT of Griggs. I am opposed to section three, first because it makes the registration ninety days before election. I don't know why we should require them to be registered so long. In all the States that I know anything about where registration laws are in force the voters can reister up to within a few days of election, but to require them to register ninety days ahead seems to me to be unreasonable and unjust. I am also opposed to it because I don't dnow the meaning of the last line which provides that the lists shall be certified to by a "court of examiners." I don't know where we have provided for any such court and I think it would be almost impossible in this section to know where these polling lists could be found.

Mr. BARTLETT of Dickey. I am opposed to the whole clause for this reason—it would open the door to fraud. I suppose everyone is aware of the fact that many of us have to go seven or eight miles to vote in the different townships. Frequently there is only one voting precinct to each township. The people who vote there are simply working people, and none of them would want to be put to the trouble of going a long distance to register. It would result in some of the candidates scratching around and getting their friends to go and register and carry the election and leave the balance of the voters out in the cold. There is not one farmer in a hundred that would know anything about this, and then it would take half an hour to get it into their heads. We all know that the people don't want anything like this. They don't want to go seven or eight miles to register, and they are not going to do it.

They would be left out, and simply a few tricksters that wanted to get into office would go and get their friends to register, and five or six men would vote in a township. I should think that anybody could see that.

Mr. TURNER. I should explain something with respect to the question of registration. This section was made short that it might not occupy the position of legislation, and that the entire matter, almost, might be left to the Legislature. I am acquainted with the working of the registration law, and it provides that all persons who are assessed—who are on the assessment roll—shall be placed on the registration roll by the clerk of the township or by the county auditor, as the case may be. On the other hand parties who are not assessed, and who pay no taxes, may have their names placed on the lists of electors. Then it further follows that when the day comes for the board of examiners to pass on the roll, after which no names can be added, every individual has a right at that time to have his name placed on the roll, or to appear before the board and give evidence why his name or the name of any other person should be placed there or otherwise. If an individual desires to have his name placed there who is not a proper elector, and he is not entitled to vote for any reason, his name is left off. I am satisfied that this section would be one of the greatest safeguards of the ballot that we can have. It will show who are properly entitled to vote and who are not, and will do more to purify our elections than any other one thing.

Mr. WALLACE. I move as an amendment that the following be added as a section to File No. 123: "The Legislature shall pass a law providing for the registration of all legal voters."

The amendment was seconded.

Mr. BARTLETT of Dickey. I agree with you that it is necessary that your voters should be fit to elect the officers we need, but it does seem to me that this registration business would not be practicable. You who have run elections know that very frequently you have got to hire a team to bring the voters out to the polls. You have got to drag them out. You have got to almost snake them to the polls. It makes us feel sad to realize this, but you know it is a fact. There is a certain class of men who will go and vote, but if we had such a law as this a few tricksters would get a few to register and it would be the running in of a few men, and after it was all over and the tricksters were elected the voters who did not register would be very sorry that they did not turn out and attend to it.

Mr. WALLACE. I think that in actual experience the fears of the gentleman are unfounded. I think he has no reason to fear anything of the sort. A registration law has always been looked on with great favor wherever I have lived. As to the farming population understanding the necessity of getting registered, I think the gentleman speaks for a very small number. His remarks don't apply generally. I am opposed to the section that has been offered, because it seems to me to be indefinite, and I don't fully understand it, but I am in favor of providing that the Legislature shall pass some law providing for the registration of all voters.

Mr. MATHEWS. I am in favor of a registration law, and am in favor of this section introduced by the gentleman from Ward. I lived under a registration law, and every voter had to go and see that he was registered. Another party could not go and do it for him, and he had till the Saturday before election, which came on Tuesday, but Saturday was the last day. I am in favor of the registration law, but I think two or three days before election is enough.

Mr. COLTON. I would say this about the Legislature passing a law: The Legislature has passed several such laws, but for some reason they have always left a clause at the last end which killed the whole thing—that if they did not register they had got to swear their votes in. These voters that won't register we are trying to weed out—they have a capacity to swear to almost everything. The gentleman talks about dragging people to the polls. I admit that that is done. I have known them to drag people 300 miles to the polls, and we don't want this dragging business to go on any longer. They have got to be in the precinct ninety days, anyhow, according to the section we have adopted, and if they register that length of time before the election, we know that they are there. But if they register a few days before election—I tell you their consciences are made of rubber. They can say they have been there ninety days when they have not been there ninety hours. If we have this section go through as it has been introduced, I will defy you to have any illegal votes cast. They can't get their illegal votes in, and that is what we want. I don't care if it defeats me at the next election. I want to see fair votes and nothing else.

Mr. HARRIS. I agree with the gentleman from Ward when he says that if we adopt this section we would have a fair election

next time, if we could have an election. But our authorities who call elections don't call them ninety days before the voting is done. We cannot provide for registration until the election is called. In our municipalities they call elections twenty or thirty days before election, and registration can't be provided for until after the election is called. This refers to all elections, and I don't see how we could have any special elections. How could registration take place ninety days before a special election if the election is called only twenty days beforehand? A registration law may be good in our towns, but it is more of a question whether it is on our prairies. We have men in this county who have to travel fifteen miles to vote. Compel these men to leave their business and travel on a certain day to register and they would consider it a hardship, and they would not go and they would not be able to vote. They don't care enough for the question as to who wants office to put themselves to all this trouble. I am in favor of a registration law for our cities and towns. But for the country I am not, and especially a registration law which compels a man to register ninety days before the election. It would be impracticable and inoperative, and we could not hold an election under the law.

Mr. PARSONS of Morton. There is nothing whatever in the article as reported from the committee to prevent the Legislature from enacting a registration law. There is nothing in this article suggested by the gentleman from Bottineau to prevent the registration of every voter or name which appears on the assessor's roll. The ninety days business would have nothing to do with the special elections. If your name once went on the register roll you would not have to bother with it unless you changed your place of residence, and if you did this you could go to the county seat and have your name changed to your new precinct the same way as you would go to the postoffice and get the postmaster to forward your mail to some other point. It is supposed under this proposed provision that we will always keep a full register roll of parties in the county who are entitled to vote, and this list will go with the ballot boxes. When a person obtains a residence and becomes an elector he should see to it that his name gets on the register. When a man's name once gets there it will stay unless he changes his residence.

Mr. APPLETON. I quite agree with the views of the gentleman from Burleigh. I think the registry system is good in cities

or in thickly populated counties, but not in this country. I have had experience in the east—in cities and in the country. We have a statute in our territorial law at present that provides that any county that wants to adopt the registry system can do so. Pembina county adopted that system years ago, before I came to the Territory, but we found that it did not work well for the simple fact that the people would not get out to register. New settlers were coming in all the time, and one-third the people were never on the registry lists. On the day of election they would go to the polls, and would say—"If I have to swear my vote in I won't vote." I am opposed to the system, for we found it to be a nuisance.

Mr. TURNER. I think the remarks made by the gentleman from Morton county are very pertinent. I voted for nearly twenty years under the registry system, and I never was at the registry court, nor did I ever register my name in my life. The fact is that the Legislature can provide that all men who are on the assessment roll shall be placed on the register, and my name was always on the register and I never had to look after it. But in cases where farmers' sons had not any property they had to register and sometimes unless they were looked after their names would not be on the register. No man not on the assessment roll, and who did not pay poll tax would be on the registry list without he took some pains to get it there. These lists would be printed, and in the county in which I lived one would be hung up in every school house in every township for public use, and every elector could go to the school house and examine the lists and see if there were names there of people who were not entitled to vote, and if there were, there would be plenty of time and opportunity for him to appear before the board of examiners and give evidence and have the name of the unqualified elector struck off. I think the Legislature should be allowed to make a law under the guidance of that section.

The amendment of Mr. WALLACE was lost.

The motion of Mr. COLTON was lost.

THE SUPREME COURT.

Files Nos. 121 and 131 were then considered together, being the majority and the minority reports of the Committee on the Judicial Department.

Sections one, two and three were passed, and section four was read as follows:

"At least three terms of the Supreme Court shall be held each year at the seat of government."

Mr. PURCELL. I offer as a substitute for that section the following:

"At least three terms of the Supreme Court shall be held each year, one at the seat of government, one at Grand Forks in the County of Grand Forks and one at Fargo in the County of Cass, until otherwise provided by law."

Mr. JOHNSON. I move to amend by striking out the words "seat of government" and inserting the word "Bismarck."

The amendment was accepted by Mr. PURCELL.

Mr. WALLACE. I hope the motion will not prevail. I think that when we have a Supreme Court travelling around the State as is proposed we had better change the title to that of a travelling court.

Mr. STEVENS. I hope the amendment to the amendment will not prevail for this reason—if at any time the seat of government should be changed there would be no session held at the seat of government, unless it was removed to Grand Forks or Fargo, and I believe that one session at least should be held at the seat of government. While it is very nice for Bismarck, I have not declared yet that I am for Bismarck for seat of government, and this is not the place to do so.

The CHAIRMAN. The amendment to the amendment was accepted.

Mr. STEVENS. Then I move an amendment to the effect that the word "Bismarck" be stricken out and the words "seat of government" be substituted.

Mr. PURCELL. In view of the point made I would ask the gentleman from Nelson to withdraw his amendment as I think the substitute covers the point—"until otherwise provided by law," so in case the Capital is changed the Legislature might make provision that a term of the court should be held at Bismarck.

Mr. JOHNSON withdrew his amendment.

Mr. STEVENS. I desire to say this in justification of my action: When this question was voted on by the committee I voted in favor of three terms of court to be held at the seat of government. I am now going to vote for this amendment as introduced by the gentleman from Richland, and for this reason: In my county we have a bar association of twelve members, and that bar association has met and asked me as the sense of that association that I vote for this resolution, and I am going to do it.

Mr. O'BRIEN. When this matter was before the Committee on Judiciary Department it was taken as the unanimous sense of the committee that the section should stand as reported—that at least three terms of court should be held at the seat of government. I believe that the Supreme Court should not be a migratory court. I believe that a fixed place for the holding of all its sessions should be determined upon by the Constitution. It does not matter to me where the seat of government shall be finally fixed, but wherever it is fixed there I believe the Supreme Court should meet. It may turn out that in time the seat of government will be fixed at a point which will be available from all points by rail. When the court is fixed at the seat of government we will then have a State Library. The first Legislature which meets will probably provide for a State Library. Now that library will be of great assistance to the members of the bar practicing before the Supreme Court, and it will also be of great advantage to the members of the Legislature and the other officers residing there. When the members of the Supreme Court are compelled to go to Fargo or Grand Forks they have got to inflict themselves on the people of those localities for the use of the library which they are entitled to, and which they would have as a matter of right at the seat of government. I most certainly am in favor of having the Supreme Court at one point, and I say let it be fixed at the seat of government, wherever that may be.

Mr. PURCELL. My reason for offering this substitute to the fourth section of this article is this—as is well known the majority of the business for the Supreme Court of this Territory comes from the Red River valley, and the counties on the eastern part of the territory, and the probabilities are that for a number of years the counties on the eastern part of this State will furnish a majority of the business for the Supreme Court. It is likewise supposed that the Supreme Judges of this new State will be called from different districts—from the east, from the southeast and perhaps from this location. If these judges reside in their districts or live in the eastern part of the State, it will be a matter of no great difficulty for a judge who lives on this side of the territory to take the train and go to Fargo. On the other hand if the Supreme Court is located at the seat of government, and the seat of government is located at the City of Bismarck, it necessitates the travel of every attorney to the City of Bismarck. It seems to me that it is easy for the Supreme Court

to travel to the City of Fargo or the City of Grand Forks and there meet the men who furnish the business to the court—easier than it would be for all of them—judges and attorneys, to go to Bismarck. There is nothing in the statement that such a court would be migratory. The Supreme Court of the Territory of Dakota holds one term in Bismarck, one at Yankton and one in the Black Hills. The judges of that court are compelled to travel in many instances 2,500 miles to reach the Supreme Court, but it has been proven that the business of the different localities is brought before that session of the court which sits in those localities. When the Supreme Court of the State meets in Grand Forks the business of the country adjacent to that city will be disposed of there. When the court meets at Fargo the business immediately surrounding that city will be brought before it. It seems to me that in justice to the attorneys as we are now located, one term of the court should be held at each of the three points in the new State named.

Mr. MOER. In the matter spoken of by the gentleman from Richland, that the business will be transacted in each district, I don't see how it will be possible to do that except by consent of the attorneys. Heretofore when the court has sat at Yankton, business which arose in the Bismarck district, or any point along the line of the Northern Pacific railroad, was heard at Yankton. It seems to me that the court should have an abiding place, and not be compelled to go to Fargo and ask the charity of that city for rooms, or make the State furnish rooms in Fargo and Grand Forks as well as Bismarck. Litigants themselves do not go to the Supreme Court. There is no occasion for a litigant to go—nobody but the attorneys, and it seems to me that they can move around just as well as the court. The question of Supreme Court mileage, and the expenses incident thereto would be quite a considerable sum if you have this migratory court, and it strikes me that it is just as easy for the attorneys to go to the court as for the court to travel over the State.

The substitute of Mr. PURCELL was lost, and the section as reported by the committee was adopted.

Mr. BENNETT. I desire to offer a substitute for section four as follows:

"At least three terms of the Supreme Court shall be held each year at the seat of government until otherwise provided by law."

The substitute was seconded and lost.

THE SUPREME COURT JUDGES.

Section eight was then read as follows:

The Judges of the Supreme Court shall immediately after the first election under this Constitution, be classified by lot so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years from the first Monday in December, A. D. 1889. The lot shall be drawn by the judges who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the Secretary of the Territory and filed in his office, unless the Secretary of State of North Dakota shall have entered upon the duties of his office, in which event said certification shall be filed therein. The judge having the shortest term to serve, not holding his office by election or appointment to fill a vacancy, shall be the Chief Justice and shall preside at all terms of the Supreme Court, and in case of his absence the judge having in like manner, the next shortest term to serve shall preside in his stead.

Mr. CARLAND. The orginal draft provided that the judges should be elected at special elections. It was changed by the committee so that they are now elected at general elections. In that change from special to general elections, a change in section eight would necessarily follow so far as the term of the Judges is concerned, in order to have the election of their successors occur at the general election. It will be seen that in line three of section eight the first judge holds his office for the term of two years. He is elected this fall. That would make his term of office expire on the odd year, and his successor could not be elected at a general election, because there would be no general election on the odd year. It has got to be fixed in this section either that his term be one year or three, and the man who is mentioned in line three for four years has got to hold for three or five, and the other man who is down for six years has got to hold for five or seven years. To obviate any difficulty I would move to amend section eight so that the word "two" where it occurs in line three be stricken out and the word "three" inserted, and the word "four" be stricken out and "five" inserted, and the word "six" be stricken out where it occurs in the fourth line and "seven" be inserted in its place.

Mr. JOHNSON. Would it not be well to strike out the figures "1889" and insert in lieu thereof "1890" in the fifth line?

Mr. CARLAND. That would leave the Territorial Judges to serve till 1890.

Mr. JOHNSON. If you do this, as soon as practicable after the election the judges would meet and decide that one should

hold for two years from 1890, which would be equivalent to three years from 1889, and one would hold for four years which would be equivalent to saying five years from 1889. My object in this suggestion was to render unnecessary more than one change in the wording of the section.

Mr. ROLFE. It seems to me that the point would be all right which limits absolutely the term to six years.

Mr. STEVENS. If I am not mistaken it was the understanding of the committee that this matter should be remedied by the Chairman before the report was made. It was agreed that the terms as specified should be the ones to be adopted, but should not affect the first judges to be elected under it, and that matter would be attended to by the Committee on Schedule, providing the terms for the first judges, and this matter would go before that committee to be arranged.

Mr. SCOTT. Is there a motion before the House?

The CHAIRMAN. The motion is to strike out the words "two," "four" and "six," and insert in their places the words "three," "five" and "seven."

Mr. SCOTT. I would amend the motion by moving to strike out the words "two," "four" and "six," and inserting in their places the words "one," "three" and "five."

Seconded by Mr. STEVENS, and lost.

Mr. SCOTT. If the motion of the gentleman from Burleigh is carried, we will find that we have a section providing that the judges shall not be elected for longer than six years, and yet we will go and elect one for seven years. It does not seem to me to be good policy when we are experimenting and electing our first judges to elect one man for a longer term than any of his successors can ever be elected for.

Mr. CARLAND. It must be obvious to every delegate present that when the officers are elected this fall they must be elected for one or three years if it is decided that we shall have biennial elections. The report provides that the judges shall be elected at the general elections. You cannot do this unless you elect these judges one or three years, three or five years and five or seven years. You must make some such an arrangement as this, because your first election will occur on an odd year, and this provision in section eight was made so that the judges would not be elected at intervals of six years apart, but one would be elected at each general election. That was the intention of the section. In order

to have the election of judges fall at the time of the general elections you have got to provide that they will be elected for three, five and seven years.

Mr. SCOTT. You don't have to provide that way at all. You might provide for one, three and five years.

The amendment of Mr. CARLAND was carried.

APPOINT OR ELECT.

Section nine was then read as follows:

There shall be a Clerk and also a Reporter of the Supreme Court who shall be appointed by the judges thereof and who shall hold office during the pleasure of said judges, and whose duties and emoluments shall be prescribed by law and by the rules of the Supreme Court not inconsistent with law. The Legislature shall make provision for the publication and distribution of the decisions of the Supreme Court, and for the sale of the published volumes thereof.

Mr. JOHNSON. I move to amend by inserting after the word "Clerk" in the first line, the words: "Of the Supreme Court, elected by the people, whose term of office shall be four years."

The motion was seconded by Mr. BEAN.

Mr. JOHNSON. As I understand the rule of courtesy in this committee and in others, it was not necessary to introduce a minority report on every little matter that members of the committee may advocate. The Committee on the Judicial Department was far from harmonious on these several articles, and on this point particularly. If I remember rightly the committee was evenly divided—seven and seven, one being absent. I wish to repeat the protest which I made in the committee against this method of appointing officers. We here provide for one of the most important, pleasant, fat places in the government. The article as reported and read is un-American, un-republican, un-democratic. It is monarchial. I don't believe in appointing these officers for life, which this means we shall have done. He is to hold his office during good behavior. I believe in appointing or electing officers for certain specified terms. The clerk is not appointed according to the section, absolutely for life, but the phraseology is just what is implied here. During good behavior—the pleasure of the king or the judges. I am not in favor of appointing or electing any of our State officers for life, or during good behavior or the pleasure of the government or the Supreme Court Judges. Another thing—I am in favor of electing our State officers instead of appointing them. I am well aware that I subject

myself to the same rebuke that I received in the committee, but duty impels me, and I will make the statements here that I made there. One reason why I am in favor of having this officer elected is that a very large and representative body of our fellow-citizens met at Fargo a week before we met here, and passed resolutions on this question. I refer to the Farmers' Alliance. They said—elect as many and appoint as few of our public officers as possible. Now it is true that that society has no right to come here and dictate that you shall do so and so, but I say this—that every society and every individual, whether a voter or not, in North Dakota has a right in a respectful manner to express views and opinions on this subject. Now when the representatives of the farmers of North Dakota have met immediately on the eve of the meeting of this Convention, and have said earnestly and respectfully what they want, they are at least entitled to a respectful hearing. I don't argue for this on that account merely, but I take the position I do on the deeper principles of right—on the deeper principles of American policy—of the American genius. I say it is the policy and in accordance with the tradition of the American people to elect their officers and not have them appointed.

A hundred years ago when the machinery of our government was first put in operation, the men who made constitutions were afraid to trust the people to elect the President of the United States. They prepared the machinery of the electoral college—men who were supposed to meet and discuss the question as to who should be President, and it was supposed that with their greater attainments and enlightenment they could use better judgment in the election of a President. We have done away with that now, all except as a matter of form. As a matter of fact it amounts to the same now as if the people had voted for the President direct. If we had a Constitution of the United States to make now, all but a very small minority would be willing to trust the people to vote directly on the question of President. I say this without any fear of contradiction, that it is the rule in the northern states for the people to elect the Clerk of the Supreme Court. It is provided so in the Constitutions of Minnesota, New York, Ohio, California, Illinois, Indiana, Michigan, Iowa and last but not least in the WILLIAMS Constitution. We have abundant precedents for electing this officer by the vote of the people; on the other side of Mason & Dixon's line we have precedents the other way. But it seems to me that we should follow

the precedents of the people who live in the same parallels of latitude with us and the states from which our people have come. I do not say that the rule is uniform, for there are a few exceptions but on principle you will never go far wrong if in voting for articles here you follow the advice of Abraham Lincoln as given on the battle field of Gettysburg when he said—"Government of the people, for the people and by the people shall not perish from the earth." I believe in that principle of government of the people and by the people here in North Dakota, and not by favoritism or by appointment by the judges or the Governor. I believe there is a demand that Railroad Commissioners and the Clerk of the Supreme Court shall be elected by the people. I appeal to you to trust the people in this matter.

Mr. MOER. In the Judiciary Committee, as the gentleman has stated, it was a close question whether the committee would report in favor of the appointing of the Clerk of the Supreme Court or electing him. I think only a majority of one was for the appointing. It seems to me that the members of the Supreme Court would be better qualified to judge of the kind of a man that was needed for this place than the people. The Clerk is not brought into contact in any way, shape or manner with the people of the state. The attorneys and the Judges of the Supreme Court are about all the people that have any business with that official. Now the gentleman from Nelson quotes the different constitutions that provide for the election of the Clerk. I have a constitution in my hand which I am sure surpasses all constitutions ever made, because the gentleman from Nelson has introduced here numerous sections from it, the Constitution of South Dakota, the very essence of wisdom, in the estimation of a great many gentlemen, and it provides that its Clerk of the Supreme Court shall be appointed by the judges. It seems that it is not wise for the people to elect every officer that is to have a place under our Constitution or our laws, for the reason that in such an office as this it needs a man who shall have certain qualifications for the office, and certainly the judges of the court would know more as to the man's qualifications than the people would. I am willing as far as I am concerned, as a voter, to forego a vote at the general elections on the question of the clerkship to the Supreme Court, for what I believe to be the good of the public and the good of the service.

Mr. STEVENS. I have always, at all times and under all cir-

cumstances, been in favor of leaving to the people all questions that affect them directly, and while it is true that the people as a whole do not appear before the Supreme Court, it is also true that the Supreme Court and their Clerk in all their work affect the people. The gentleman says that this appointment should be made by the judges because they are better qualified to judge of the qualifications of the clerk than the people, or in other words, the creature is greater than the creator. The people create the Supreme Court—they elect them, and then you say that they are better qualified because the people have elected them, to say who shall be Clerk. Why not say that the Supreme Court after serving their term out should pick from the attorneys who have practiced before them, the men who shall be their successors on the Supreme Bench? The rule is as good in the one case as in the other. The fact is that in a republican form of government it is not only the tendency to-day, but has been from its establishment, that all questions that affect the people should as near as possible be settled by the people, and the whole people are affected by every public officer in the Territory. I was amazed at the gentleman's proposition, that he was always in favor of leaving everything to the people, after just voting that the people should be deprived of the right to decide this question. I think that every officer should be elected by the people, who is to hold a public office.

Mr. PURCELL. The gentleman from Nelson states, as I understood him, that this is one of the fat offices in the new state. This bill does not make it so unless the Legislature sees fit to create a salary or emoluments to make it fat. Under the territorial government of this Territory, the Supreme Court selected their own Clerk. In conversation with that Clerk I was informed that all the fees received by him from every source whatever in the performance of his duties as clerk of the court, did not amount to $400 per annum. That same clerk is the chief deputy of the United States Marshal, and working for him at a salary of $100 a month. Unless the gentleman from Nelson proposes to ask the next Legislature to make this office a fat office, under the existing laws it is not worth the occupancy. The fact is that under the territorial regime there have never been more than two or three applicants for this office. The fees which come to the Clerk are not sufficient to justify any man to become a candidate for the position. And, Mr. PRESIDENT, it is fair to presume that the liti-

gation which has taken place in the past in the court of the territory will be some criterion of the amount and character of the business of the future. Unless the business materially increases, or by operation of laws passed by the Legislature, it will not be worth a man's time to become a candidate for the place. The duties consist of receiving and filing papers and are simply ministerial. The decisions of the judges are handed down to the Clerk and filed; transcripts are sent to the different clerks, and those duties simply occupy his time during the sitting of the court. There are only three terms provided by this bill. These will not last more than three or four months at the outside. This office will take but a part of his time. He will have from five to seven months at his leisure. I do not mean to say, or would any man state, that the Legislature intends to make the emoluments or salary of this office sufficient to allow a man to live in idleness five or seven months out of the twelve. The work of the Clerk never commences till the work of the court is nearly done.

Mr. JOHNSON. The question last touched on by the gentleman from Richland does not enter into the matter of the amendment. I propose to leave the article just as it is, so far as the emoluments are concerned. They shall be prescribed by law, so that cuts no figure in this amendment. No matter whether the pay is large or small—it is the principal I am after. But the gentleman has well stated and spoken by authority, as he has himself been on the Supreme Bench of this Territory.

Mr. PURCELL. I understood that there was a rule prescribed by this Convention that there should be no personal remarks indulged in by members.

Mr. JOHNSON. I was mistaken—the gentleman from Burleigh was the gentleman who was on the Supreme Bench, but the domes of the two genleman are so much alike. My understanding of the rule as to personalities was to the effect that a complimentary reference to a man was not out of the way. I did not know that it was offensive for a man to be referred to as having been on the Supreme Bench of this Territory. The gentleman states that the duties of this officer are simply ministerial. That is the very reason why I have singled out the Clerk and left the Reporter to be appointed. Their duties are different. The duties of the Clerk are such that any fair man of average ability could pick it up. It does not require peculiar sagacity and long training on the bench to pick out a man to act as clerk. The article says as left by my

amendment that his duties shall be prescribed by law and the rules of the Supreme Court. There is nothing to be left to his discretion. With the reporter it is entirely different. My rule does not strike at the reporter. Their work is very different. The relations of the reporter to the judges is quasi-confidential. He takes the decisions of the Supreme Court, he will prepare the syllabus, giving the gist of the opinion. That requires special ability to see that the judges may be properly reported. The judges should be left to pick their own reporter, as he is to them what a private secretary is to a business man.

The amendment of Mr. JOHNSON was lost by a vote of 32 to 27.

Mr. PARSONS of Morton. I desire to have it recorded that I vote for this amendment, simply from principle.

A MATTER OF ELIGIBILITY.

Section ten was then read as follows:

No person shall be eligible to the office of Judge of the Supreme Court unless he be learned in law, be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this State or Territory of Dakota five years next preceding his election.

Mr. PURCELL. I move that the section be amended by striking out the word "five" in the fourth line, and inserting in its place the word "three."

Mr. BARTLETT of Griggs. I am opposed to this amendment. In the committee I believe that I favored three years, but a motion was made to increase it to five years and that was carried. I, as one member, objected to the increase, but it was almost unanimously carried and agreed to, that five years was the proper number and that we did not want any carpet baggers in our Supreme Court. Since it has been reported as five there has been a gentleman here, who I understand is a candidate for the Supreme Court Bench, and he has not been in the Territory five years. To that man I have no objection, and I should like to have the pleasure of voting for him for the Supreme Bench, but I do object to this Constitution being made to suit any one man. If five years was right, then it is right now, but some members of the Judiciary committee who were for five years are now supporting this amendment. I am opposed to making a Constitution for the purpose of letting in anybody. We are here for the purpose of making a Constitution for the State, and not let any one man in to some place. If three years is right, then it should be three years, but the reason

that the three-year plan is now sought to be adopted does not commend itself to me. I think it takes a good deal of gall for a man to come here and say we must change the Constitution, because if we don't we won't permit him to be a candidate for the Supreme Bench. I would like to vote for him for Judge, but I am opposed to changing this committee report for the sake of giving me that privilege.

Mr. LAUDER. I was about to rise and second this motion. I presume that when this question was under discussion in the committee I voted to have it as it now stands. I presume that the gentleman from Griggs has reference to me in his remarks as one of those who supported the five year clause and now am in favor of three years. I do not desire to say, or to be understood as saying, or meaning that the person or persons who prepared the phraseology of this article did not to their best ability and as they understood it, prepare it in accordance with the report or wishes of a majority of the committee. I think they did, but I want to assure this committee and every one of them, that I never intended to vote for the article as it now stands. My impression is that a number of other members of the committee, who are classed as belonging to the majority, and in favor of this article as it now stands, did not understand it that way, and I appeal to every member of the committee that the question was discussed at large as to whether or not the limitation provided here should applly to the first judges or whether it should be general and apply to all. My understanding was that it should not apply to the first judges. My understanding was, and I supposed that it was the sense of the majority of the committee, that a five-year limit was too long in providing for the election of our first judges, but after that, after our State became older, after members of the bar had been here longer, it would be well to make the limitation five years, and I think myself that so far as the first election is concerned, I don't care whether it lets one man in or twenty, and renders them eligible as candidates, I don't think that should prevent us from doing what is right in the premises. The gentleman says that we should not change this Constitution to let any man in. That is true, neither should we refrain from changing it if it ought to be changed, because the change will let someone in.

Mr. MOER. I would like to ask every member of the Judiciary Committee if there would have been a suggestion of a change if there had not been a gentleman here who desired the change

for his own benefit, and not for the good of the State. It seems to me that the point made by the gentleman from Griggs is a good one. We decided that the time should be five years. The point has never been suggested or raised by anyone that the time was too long, till a certain gentleman who comes here, asks that it be changed because he wants to be a candidate for the place. It seems to me that that is a very small reason to give for changing this committee's report. If five years is too long that is another matter, but it is strange that this did not occur to somebody here before this gentleman appeared. I have not a thing against the gentleman whom I believe this change is being made for, but it seems to me that five years is none too long, and if it is none too long for the second election it is none too long for the first. We want men on the Supreme Bench who have lived here, and it seems to me that five years is little enough time.

Mr. CARLAND. As to what occurred in the committee room, I have some recollection. This report was drafted by myself as a sub-committee, and I had in this line two years instead of five. The records show that Mr. SPALDING of Fargo, made a motion to increase it to five, and a vote was taken, and there was a large majority in favor of five. That is the way the vote stood in the committee. I was in favor of two years.

Mr. PURCELL. The purpose I had in moving this amendment was not to comply with the wishes of any one gentleman, but we all know from experience that there are many men among us who have come recently, who have considerable ability. For members of the Legislature a certain term of residence is required, and for other officers. What we desire on the Supreme Bench is as much ability as possible. It seems to me that there can be no objection to the passage of this amendment when we all know that two or three years' experience or knowledge of any man will enable us to judge of his qualifications for any position. There were many who thought that by enacting the five-year clause we were excluding men from aspiring to the Supreme Bench—men whom the Supreme Court records show have appeared before that court as often as those who have been here longer. The standing of our bar has been improved in this Territory during the past four or five years more than it has ever been before. There are men of experience, men of ability, wide knowledge, coming to the Territory every day. When they have been here two or three years, in my judgment they have fixed their residence and are entitled to

occupy a position on the Supreme Bench if the people want them there. If there could be an objection to this why not raise an objection to a man voting until he has been here five years. It won't take any of us long to become acquainted with the qualifications of any man for this position.

The amendment of Mr. PURCELL was put to a vote with the result that it was adopted by a vote of 30 to 19.

Mr. ROLFE. In view of the vote just taken, and in view of a vote taken by this Convention before, I move that all after the word "states" in the third line of this section be stricken out.

The motion was seconded by Mr. SELBY.

Mr. ROLFE. If we are so careless of the use of what we consider to be vital—namely, the right of suffrage, why should we not be fully as careless in regard to the qualifications which we impose on our candidates for the Supreme Bench. A carpet bagger can in our suffrage article, have a right to vote—a practical carpet bagger, then why not a Judge of the Supreme Court ? I don't see the necessity of making any distinction in the one case over the other. If we let down the bars in the one direction, why not in the other ? If there is no merit in imposing a limitation in the matter of the Supreme Court, there is none in the other case. If there is no merit in the one case there is none in the other.

The amendment of Mr. ROLFE was lost.

Mr. BENNETT. I offer an amendment as follows : After the words "Territory of Dakota" insert the words—"And is a qualified elector therein."

Mr. PARSONS of Morton. It is a quarter to six, and I would move that we take a recess till 7:30 p. m.

A member suggested that there were no facilities for lighting the hall.

The CHAIRMAN. I desire to state that there are large lamps and a sufficient number to light the hall properly.

Mr. STEVENS. I move that the committee do now rise, report progress and ask leave to sit again.

The motion was carried.

Mr. STEVENS. I move that this Convention adjourn to meet at 10 o'clock to-morrow morning.

The motion was lost.

Mr. BEAN. I move to take a recess untill 8 o'clock p. m.

The motion prevailed and the Convention took a recess until 8 o'clock p. m.

EVENING SESSION.

The Convention assembled at 8 o'clock p. m.

COMMITTEE OF THE WHOLE.

Mr. BENNETT. I move that in section ten of File No. 121, all after the word "Dakota" be stricken out, and the words "and qualified elector therein" be substituted.

Mr. PURCELL. It seems to me that no man should be eligible until after he has been three years in the Territory.

Mr. O'BREN. As I understand it, before we took a recess this matter came up, and was passed upon, and we left here with the idea that section ten had been carried. Does it come up as a motion to reconsider that vote? It seems to me that it is not proper to take up that section any more than any of the preceding sections.

The CHAIRMAN. There seems to be a difference of opinion as to whether or not we have adopted that section.

Mr. O'BRIEN. The question was asked the Chair before the adjournment if that section was adopted, and he replied that it was. That is my recollection.

Mr. PARSONS of Morton. I don't see why there should be any necessity for a motion. None of this is passed by motion—not one of these sections, and if there is no objection it was passed. I made a break here for a recess, and I did that when the motion of the gentleman from Grand Forks was before the House.

Mr. NOBLE. The question was asked before the recess whether section ten had been adopted. It was ruled by the Chair that it was adopted by the Committee of the Whole. The motion of the gentleman from Grand Forks had been put to the House and lost by myself as Chairman of the committee at that time.

Mr. MILLER. That is exactly as I understand it. I voted on the motion.

Mr. BENNETT. I understood that the motion to change from five to three years carried. Now I renew my amendment of that section by striking out the words after "Dakota" and inserting the words "and qualified elector therein." My reason is that a man who is a qualified elector in the State should be eligible to hold any position in the State.

Mr. MOER. My recollection is that the gentleman from Benson introduced as an amendment that all be stricken out after the words "United States." Then the gentleman from Grand Forks moved to inset the words that he names, and the motion was seconded but never voted upon.

Mr. STEVENS. I move that we proceed to consider section ten.

A vote was then taken on the amendment of Mr. BENNETT and it was decided to indefinitely postpone the same.

Section fifteen was then read as follows:

The judges of the Supreme and District Courts shall receive such compensation for their services as may be prescribed by law, which compensation shall not be increased or diminished during the term for which a judge shall have been elected.

Mr. STEVENS. I have no objection to the section with this exception, there should be some provision by which the first Legislature may fix the salary of the judges. I believe it has been held by the Supreme Court of this Territory that where the county commissioners set the salary of a county officer the incoming commissioners could not do it. I believe that the salary of the judges will be fixed by the Schedule that is adopted by this Convention, and the Legislature when it convenes this winter should have the privilege of fixing the salary of these judges, and the Constitution should not be fixed so that they cannot.

Mr. CARLAND. This section does not prohibit the Legislature from prescribing what the salaries shall be. The Judges of the Supreme Court and the District Court shall receive "such compensation as may be provided by law." That is what the section says. A provision of that kind has always been construed as not prohibiting the fixing of the salaries, but it prohibits increasing or decreasing the salary when once fixed, during the term of the officer. If it is so provided in the Schedule of this Constitution what the salary shall be, then it will come within the meaning of the expression "as may be prescribed by law," for it will be as much law in the Schedule as if it were an act of the Legislature. The amendment would be, if any were put in, that this section shall not be construed as prohibiting the first Legislature fixing the salaries of the judges.

Mr. STEVENS. If it is fixed by the Schedule it will be as much fixed by law as if fixed by the Legislature. I would ask the gentleman from Burleigh, who was, if I mistake not, a member of

the Supreme Bench at the time the decision was made—if it is not true that that Court held at Yankton that the county commissioners could not change salaries that had been fixed by the preceding board?

Mr. CARLAND. I was not a member of the Supreme Bench at that time, but that case was decided in this way—the county commissioners had fixed the salary, and the Court held that it could not be changed after the officer had entered on his duties. It depends on whether the Schedule fixes the salary as absolute or whether it provides "or as otherwise provided by law." If the Schedule fixes the salary for all time, the Legislature cannot change it.

Mr. STEVENS moved an amendment to come at the end of section fifteen as follows:

"Provided the salaries of the first judges elected under this Constitution may be fixed by the first Legislature of the State of North Dakota."

The amendment was lost.

ADDITIONAL SECTIONS.

Mr. WILLIAMS then introduced four sections which he moved be numbered sections seventeen, eighteen, nineteen and twenty. They read as follows:

SEC. 17. When a judgement or decree is reversed or affirmed by the Supreme Court, every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefor shall be conscisely stated in writing, signed by the judge concurring, filed in the office of the Clerk of the Supreme Court and preserved with a record of the case. Any judge dissenting therefrom may give the reasons of his dissent in writing over his signature.

SEC. 18. The Supreme Court shall have power to make rules for the government of said Court and the other Courts of the State, rules of practice and rules for admission to the bar of the Courts of the State.

SEC. 19. It shall be the duty of the Court to prepare a syllabus of the points adjudicated in each case which shall be concurred in by a majority of the judges thereof, and it shall be prefixed to the published report of the case.

SEC. 20. The Judges of the Supreme Court shall give their opinion upon important questions of law and upon solemn occasions, when required by the Governor, the Senate or the House of Representatives; and all such opinions shall be published in connection with the reported decisions of said court.

Mr. PURCELL. The last section introduced by the gentleman from Burleigh which requires the Judges of the Supreme Court to give their opinion, would conflict with No. 12, which reads :

"No duty shall be imposed by law upon the Supreme Court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided."

To give their opinions to a State officer would not be a judicial function.

Mr. CARLAND. I move that this amendment be taken up section by section the same as the report.

The motion was seconded and carried.

Mr. LAUDER. I think that section twenty introduced by the gentleman from Burleigh is unnecessary. The article provides for a Reporter who will do just what is required of the judges. If that prevails, then the other section which provides for a Reporter should be amended. There is no reason for both of them to stand.

Mr. WILLIAMS. I don't see that the two sections will conflict. The section that I have introduced requires that the court shall make the syllabus. This provision exists in some other constitutions which require that the judges shall make the syllabus and show what particular points they have decided.

Mr. MOER. I would ask what was the idea in taking the work away from the Reporter ?

Mr. WILLIAMS. It would then be more accurate and more satisfactory.

The section was adopted.

Section nineteen was then taken up, which reads as follows :

The Supreme Court shall have power to make rules for the government of said court and the other courts of the State, rules of practice and rules for admission to the bar of the courts of the State.

Mr. PURCELL. I move that the words "other courts of the State" be stricken out.

The motion was seconded by Mr. PARSONS of Morton.

Mr. CARLAND. I move as a substitute motion that the whole section be stricken out for the reason that the Supreme Court possesses the power to do what the section says they may do. It is a waste of time to adopt such a resolution, and it is mere legislation anyway.

Mr. WILLIAMS. It is true partially what the gentlemen says, but the latter part of the section is not within the power of the Supreme Court unless we put it in here. The latter part provides that they may make rules for admission to the bar of the State. I think this is a good idea. If it is left to the Supreme Court

it will have a tendency to elevate the bar. I think the proposition is a good one.

Mr. CARLAND'S substitute to strike out the whole section was carried.

Section twenty (now nineteen) was then considered.

Mr. PURCELL. That section will conflict with section twelve which we have already adopted. I move that the section be stricken out.

The motion was seconded.

Mr. WILLIAMS. I hope the motion will not prevail. I don't think it will conflict with the section which the gentleman refers to. It is a provision which I found in many constitutions and I think it should be put in here. I think it would have a tendency to save the people frequently large amounts of money. The people don't as a rule elect constitutional lawyers to the Legislature. The majority of every Legislative Assembly will be farmers, mechanics and laboring men with a small minority of lawyers. Frequently the people determine on a particular measure, and they send men to the Legislature here to carry out the wishes of the people. They are met by a small minority who tell them that the proposed measure would be unconstitutional, and they say this so many times till the farmers think that the minority is right. The Legislature—or the majority of it—is obliged to recede from its position, but if a member had an opportunity to offer a resolution calling on the highest tribunal in the State for their opinion on the construction of that bill, he would be perfectly independent, and equal to the best lawyer in the body. This resolution would place all the men in the Legislature on an equality, and I think, Mr. CHAIRMAN, you could put no better provision in our Constitution than this. It is a protection to the farmer, the laborer and the men unlearned in the law.

Mr. LAUDER. I hope this amendment will not prevail. The gentleman from Burleigh has evidently forgotten that in all human probability we will have in this State an officer designated as the Attorney General, whose peculiar business it will be to advise the State officers and the Legislature when called upon. Now no one knows better than the gentleman from Burleigh that when a question is presented to the court as these questions would if this amendment prevails, the Supreme Court would be flooded with these questions. Judges of the Supreme Court are simply men; they don't know all the law there is, and it is very unsafe

for any court or any person to pronounce the law on any proposition unless it has been argued before that court on both sides, and all the authorities presented. If the court should give an opinion, for example, in an *ex parte* case without having the law presented, argued, discussed, and that same question should be brought before the Supreme Court, it might put them in a very awkward position. They would not be free to decide that case as they then understood it, after the matter had been properly and exhaustively presented to them. They might be obliged to recede from their position they had taken up, and it is unfair to the court to place them in any such position. We elect an officer and pay him a salary to do the same work that the gentleman from Burleigh would have the Judges of the Supreme Court do. If this amendment prevails we have no need of an Attorney General, or very little, and we might almost abolish the office. But the Attorney General is the officer to advise the civil officers, and when questions come before the Supreme Court, that court is then untrammeled. The gentleman says that this provision is found in many constitutions. I grant it may be found in a very few, and I think I can safely say that there is not a state in the Union where that provision prevails but not only the Supreme Court but every other person who has an intimate knowledge of the workings of that provision would wish it were not there.

Mr. LOHNES. I don't agree with the gentleman from Richland. Take in Massachusetts—the Supreme Court there have always given their opinions to the Governor and the Legislature, although lately they refused to do so. Then follows the State of Maine. They made a legislative enactment to get a provision of this sort into their Constitution, and it saves a great deal of expense to the State. No one can object to this but the lawyers, because it will prevent their bringing suits in so many cases.

Mr. PARSONS of Morton. I think that there is a mistake on the part of some of the gentlemen. If you notice the section reads:

> The Judges of the Supreme Court shall give their opinion upon important questions of law and upon solemn occasions, when required by the Governor, the Senate or the House of Representatives; and all such opinions shall be published in connection with the reported decisions of said Court.

The entire language of the section seems to be one of solemnity, and it does not carry the idea that any little question that may arise will justify a person in running off to the Supreme Court

and demand a decision, but it must be demanded by the Senate or the House or the Governor, and an important case at that. Here is the Attorney General—a man to whom every officer in the State goes. He is busy. It very frequently happens that the Attorney General is in with the administration, his eyesight may be colored, prejudiced, and occasionally in rare cases it would be desirable that the Governor or the Legislature could go to the Judges of the Supreme Court. The understanding is that it should be used in rare cases, but I believe that the people should have the privilege of going to the highest tribunal without first passing a law and bringing that law before them. They should be able to go to them and find out if the law is constitutional, and give the judges time to look it up. This amendment does not pre-suppose that the judges will decide in five minutes. It seems to me to be a wise provision for the benefit of the members of the Legislature who have not the advantage of a thorough legal education.

Mr. CARLAND. In 1885 the State of Colorado amended her Constitution so as to put a provision of this kind in it, and I am sorry I have not the Reporter here, but there has just been issued in the Pacific Reporter, a series of publications published in St. Paul, a statement, and counted up about seventy-five acts of the Legislature of the State of Colorado that had been presented to the Court the last winter, and in some of them the Supreme Court showed the absolute uselessness of any such provision. They say—"You ask us to pass on these laws without any argument, on our own research." Sometimes they refused to do it and in some cases where they thought it was a clear proposition they answered it. It is an injustice that a man's rights may be determined in advance at an *ex parte* hearing, and the argument that they will not be asked except on solemn occasions for their opinions has nothing to it, for the Legislature is the judge as to whether it is a solemn occasion or not. The value of the Supreme Court as I understand it, depends on two things—first the ability of the judge or judges that compose the Court, and second the ability with which the case is argued. The opinion of the judge is not worth more than that of any other lawyer of like standing and ability. His opinion as a judge after he has heard the case argued on both sides, and had a chance to examine it is what gives force to the opinion. I sincerely hope that no such provision will be engrafted into the Constitution requiring the Supreme Court to perform anything but judicial duties. Section twelve was drawn to prevent this

thing, for no man desires to have his rights decided in advance by an *ex parte* opinion of the Supreme Court, however learned and respectable, without argument.

Mr. STEVENS. In furtherance of the argument I would state that a number of states have within a few years passed laws providing that a case shall not be determined by the court except it is in shape where one of the parties can appeal it. This amendment would practically cut off the right of appeal. It allows the Supreme Court to pass on a question and settle it, and cut off your right to carry it to the Supreme Court of the United States where it might have been reversed.

Mr. WILLIAMS. The point I desire to make is that we desire to have no unconstitutional laws go on our statute books. The farmers will meet in a convention—a convention representing thousands of farmers—and agree on a measure which they desire to have become a law. They have able lawyers draft the law, they send it to the Legislature, and a small minority says it is unconstitutional. They ask the opinion of the Attorney General—that is the opinion of one individual. It is no satisfaction at all, and they are forced to recede from their position rather than pass a law which they are led to believe was unconstitutional, because a few lawyers may tell them it is so. I can see no harm—where there is an important measure affecting the whole people of the Territory, for instance affecting the taxation of railroads, corporations—a law that affects the whole people—I can see no reason why the Legislative Assembly should not know in advance as to whether it is constitutional before they pass it and place it in on the statute books. To wait two or three years to find out that the law is unconstitutional is not wise. I tell you the Supreme Court has power enough. I think we should reserve some power to the people, and this is one way to reserve it. If this amendment is adopted the Legislative Assembly will have power to find out in advance whether an important measure will be constitutional if it is placed on the statute books, and not be compelled to wait after passing it, and then let three men sit up and say it is unconstitutional, notwithstanding a body of 125 or 150 men have said it was constitutional. The Supreme Court has power to say it is unconstitutional simply because this Constitution gives them this power. Why should not they say this in advance? So far as I am concerned I believe that when a measure passes both houses—passes the judicial branch, they come about

as near getting what is constitutional as the Supreme Court. I believe, Mr. CHAIRMAN, that it should go into our Constitution.

The motion to strike out the section was lost.

Mr. PARSONS of Morton. I move that we adopt this section nineteen.

The section was adopted by a vote of 33 to 25.

Mr. BARTLETT of Griggs. It seems to me that it is a necessity for us to reconsider section twelve, therefore I move that section twelve be reconsidered.

Mr. CARLAND. As neither one of these sections has been adopted by the Convention yet, I don't see the necessity of reconsidering number twelve.

Mr. FLEMINGTON. We have a Committee on Revision and Adjustment which will examine into this matter and if there is a conflict between the two sections they will probably report it back to the House on the final adoption of the Constitution. I don't think we should consider this section at this time.

DISTRICT COURT JURISDICTION.

Section seventeen was then read as follows:

The District Court shall have original jurisdiction, except as otherwise provided in this Constitution, of all causes both at law and in equity, and such appelate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of *habeas corpus*, *mandamus*, *quo warranto*, *certiorari*, injunction and other original and remedial writs, with authority to hear and determine the same.

Mr. BARTLETT of Griggs. I offer an amendment. After the word "jurisdiction" in the first line insert "each within its territorial limits," the object being to limit the jurisdiction of the District Court to its district.

The amendment was seconded.

Mr. BARTLETT of Griggs. I desire to say in support of this motion that I believe that no District Court Judge or District Court should have jurisdiction outside the limits of the territory of the court, unless in the absence or inability of the District Judge. That should be provided for, but if we have it as in the past so that an attorney can sit in Fargo and sue a man in any part of this Territory, then we want but one district, and let them sit in Fargo all the time. Last fall there were over forty accounts brought by one attorney in Fargo—brought against parties living in Griggs county. There is but little encouragement for attor-

neys or courts to exist in these outlying counties if the work is to be done in this way. They will say that this can be prevented by the Legislature. But we can do it here, and it seems to me that here is the place to do it. We have had an example of a mortgage being foreclosed in Cass county when the land was in Dickey or some other county outside of the district, and the Supreme Court has held that that was proper. If it is, then we want a provision here which shall say that it is not proper, and that a man can be sued only in his own bailiwick.

Mr. PURCELL. The statement that the gentleman makes with reference to a man sitting in Fargo and suing a man in Griggs county is in conflict with our statute. The gentleman well knows, or should know, that no man can be required to go outside of his county in answer to a summons, but if he is sued outside his county and the venue is laid outside, he can give notice of a change of venue and the court will grant it on his showing that it is brought in a county other than the one in which he lives. That objection of the gentleman goes for nothing, for our law provides and says that every man is entitled to have the trial in his own county.

Mr. BARTLETT of Griggs. I was not ignorant of the provision on our statute books, but we should not compel a man to go to the expense of asking for a change of venue. Why were the men of whom I have spoken sued in Fargo? Simply because the plaintiff wanted the defendants to compromise the suits. There were sixty of them, and they went to the attorneys and found that the attorneys would charge them from $5 to $10 apiece to get the change. This was a small matter—some of the notes were only for $5 or $10 each, and a compromise was effected. It was cheaper for the defendants in these cases to compromise than to go to the expense of getting a change of venue. No man should be compelled or obliged to pay an attorney $1 or 1 cent in order to have the right or privilege of being sued in his own county.

Mr. PURCELL. There are various cases where it is better to bring suits in a county outside of the district. Then if the defendant desires to have the case tried in his own county, he can make a motion to the judge and the request will be granted. Our present law provides for it, and we might just as well make a provision that these suits shall not be brought as to attempt to limit this power.

Mr. LAUDER. I agree with the gentleman from Griggs

county. I have had a little experience like my friend on this point. I have seen more than twenty-five persons residing in Richland county sued in Yankton, on notes averaging from $5 to $25—none of them larger. These men had the right to be sued and make their defense in their own county. What was the result? It would cost as much to hire an attorney to get a change of venue for these cases as it would to pay the debt in the first instance, and because of that, defendants are compelled and do pay unjust claims rather than incur the expense of fighting them in the courts. There were twenty-five cases brought for the insurance company down there in Yankton, and there was not a single one but had a defense, and not one of them felt that it would be to his financial interest to employ a lawyer to get a change and fight the case.

Mr. PURCELL. It seems to me that our statute contains a provision that suits brought on insurance notes shall be brought in the district in which the maker of the note resides. I don't know of any such suits as the gentleman speaks of. Even if they were pending and if they had a defense to make to the collection of those notes or the success of those suits, they would have to employ an attorney. I don't know of any attorney who will charge any more for asking for a change of venue if he is employed in the case. If he goes to the attorney and tells him that he wants the case tried in his own county, he will not charge any more for writing out the notice for a change of venue. He is not required to go to Yankton or to Fargo. There is nothing in it so far as I can see that should prohibit the passing of this section, for every objection that they have stated here is covered by the statute. So far as insurance cases are concerned, they must be brought in the county where the maker of the note resides. If it were otherwise it would cost no more to have the attorney ask for a change of venue than if he did not have it to do.

Mr. LAUDER. I am not ignorant of the existence of the statute referred to. I simply stated the case of these insurance notes as an illustration. There are a good many other notes, and I think that the statute requiring action on insurance notes to be brought in the county in which the defendant resides, is the only statute of that character. I know not what the gentleman's practice may be, but I know as for myself that I ordinarily do not prepare a notice or a demand on the opposite attorney, and he refusing that, give him notice that I will appear before the court

and ask for an order, and go myself to the court or employ some one else to go for me—I don't do this for nothing. Neither do I believe that my friend from Richland does it for nothing. I don't believe that it is the practice for lawyers to do all this for nothing, and every dollar a person pays out for this kind of thing is a dollar that he should not be compelled to pay out.

Mr. SELBY. It strikes me that we have somewhat left the line on which the section belongs. It is not a question of changing a place of trial from one county to another, but a question of districts. It is a question whether in the district of Fargo, a resident of that district shall be dragged into the District Court at Grand Forks. The simple idea of changing the venue from one county to another is not contemplated by the amendment or the section. Griggs county would stand in the district of Jamestown. The proposition is that a man shall not be taken from Griggs county into Fargo, which is out of his district. The Legislature can provide the methods as to changing the place of trial from one county to another if it is necessary. Under the statute as we have it, if an individual or resident of Griggs county happens to be in Fargo and a summons is served on him there, they try him there, and not in the county where he lives, unless he has witnesses or can give some other reason for a change of venue. If he is served in the county where he lives he is tried there. It seems to me that the amendment would be proper—that is, providing that every man residing within a district shall, if he is a defendant, be tried in that district and not drawn off somewhere else. He should not be taken to Bismarck or Fargo or Grank Forks, but should be tried in his own district.

Mr. STEVENS. In conversation with Judge Levisee in company with the gentleman from Griggs, he told us about a gentleman who had a suit brought against him in Fargo some hundred miles from where he lived, and because of that he lost his land.

The amendment of Mr. BARTLETT was put to a vote and carried.

Mr. MOER. I would like to inquire whether the amendment has placed the section so that the judges have no power to execute writs of *habaes corpus* or remedial writs outside their own districts. Do they want it so that a man cannot procure a writ from another judge because of the illness of one judge or for any other cause? It seems to me that we are going a little too fast.

COUNTY COURTS.

Mr. PURCELL moved the adoption of section twenty-four of the majority report which reads as follows:

"There shall be established in each county a Probate Court, which shall be a Court of Record, open at all times and holden by one judge, elected by the electors of the county, and whose term of office shall be two years.

Mr. MOER. I move the adoption of section twenty-four as reported by the minority committee as follows:

There shall be elected in each organized county a county judge, who shall be judge of the county court of said county, whose term of office shall be two years until otherwise provided by law.

Mr. ROLFE. I am in favor of section twenty-four in the minority report for various reasons. Section twenty-four of the majority report relates to probate courts. I undertake to say that it will be difficult for any member of the majority of the Judiciary Committee to defend the general system of probate courts as it is now administered in this Territory, and as it is administered in many other states which have no provision for county courts. I don't believe that any member of that committee, or any member of this Convention relishes the prospect of having the probate court as it is now constituted and administered pass on the questions that may arise on his death in the administration of his estate, be it large or small. I take it that the aim and object of most of us is to accumulate some small modicum of this world's goods to enjoy in the present, and to leave to our posterity and our family, and that the administration upon our estates should be in the hands of such an incompetent court as the probate court of this territory and in other states, is a shame to our judiciary system. As at present administered the officer who sits in adjudication upon some of the most intricate questions that arise in the practice of law, is not only unlearned in the law, but in common practice ignorant of the law. I don't know of any cases which can arise which will bring to the notice of the presiding judge of the district court any more complicated, or intricate, or important, or vital questions than those that arise before the generally incompetent men who sit as presiding judges over our probate courts, and I repeat the statement, that the system of probate courts as we now have it, and as we seem to like it, is a disgrace, not only to our judicial system but to the people who seem to hug it to their bosom. I believe that we honestly think this—every one of us.

I charge no judge of the probate court who now sits in adjudication on probate matters with intentionally sitting there to frustrate law, justice and equity, but from his previous training and from the nature of the case, and from the fact that any one is permitted to occupy that position, the result is inevitable that more injustice prevails in the administration of estates in the probate court than any matters of any other court, save that of the justice of the peace. The majority report proposes to continue this system. It is mysterious to me upon what ground they can defend the continuation of this system. There may be judges of probate in this Convention, and I wish to cast no reflection on them personally by attacking the system. I take it that there is a disposition on the part of this Convention to continue this outrage on justice and equity. We are supposed to be here undertaking to form a judicial system which shall not only be convenient for the lawyers, which shall not only provide a lucrative income for the lawyers, but I believe that we are more bound to arrange it so that the system which we establish shall result in substantial justice to litigants, to all widows and orphans, to all persons under guardianship—those persons who are least able to protect themselves—those persons whose interests we should protect first, last and all the time. We know that the system of probate courts now established, and which the majority report seeks to have enforced will never do this. It cannot from the very facts of the qualities of the man who will inevitably preside over these probate courts. The minority report proposes to substitute for the probate court judge a man learned in the law—a man who from his education, his tastes, his line of occupation and his preferences is fitted to pass on the intricate questions that arise in the probate courts. They propose to lift this court of probate from that of the most poorly conducted court under our system into that of a respectable court in which all litigants—in which all widows and orphans, in which all persons under guardianship may be assured of that their estates, both little and great, shall not be squandered—shall not be improperly passed upon.

I undertake to say that any lawyer, any average lawyer, is far superior in a position of this kind to the average citizen for the purpose for which we proprose to employ him. We are met with the assertion that if this system of county courts is adopted it will result in the elevation to the county bench of lawyers who

are not fitted to act in a judicial capacity, and the objection is true in some few cases, considering the state of affairs that prevail at present. But we should remember that we are not making a Constitution for to-day simply, nor for tomorrow, but for all time, and if we do not now institute proper reform in the matter of probate courts and practice, we cannot do it at all. It is for this reason that I am specially in favor of the minority report. But there are other reasons that appeal with nearly as much force to me, and I think must to the vast majority of the members of this Convention in favor of the county court system. I undertake to say that it is a cheap system of litigation. It would save money to the litigants, and as it looks to me it would be nearly if not quite self-supporting now, and eventually so in all the counties. It would save the salaries that we now pay to the judges of probate, and if the fees that would be paid by litigants in civil cases tried before this county judge are turned into the county treasury, they will nearly now, and eventually quite, make the court self-supporting. I take it also that the county court as contemplated by this minority report might be considered a court of the common people. In talking with some of the lawyers in regard to it, those who were opposed to the system might raise the objection that it would reduce their fees, and they say that under the county court system they will not be able to charge the same fees as in the district court. Why? Then they say that these courts will lower the dignity of the practice of law. They say that the county court would degenerate into a court on the same plane as the justice court, and the lawyers practicing therein would become a lot of pettifoggers. If this is an objection at all, it is an objection which should result in the establishment of county courts. I am a practicing lawyer myself, but I do not fear that the establishment of county courts would result in the reduction of lawyers fees, but if it did, then it might be considered a favorable step in the behalf of the common people.

There is another reason why I favor county courts. If given jurisdiction in criminal cases to any considerable extent, it would do away with a vast amount of expense, delay, and trouble in passing upon certain offenses which might be considered by comparison, petty. I cannot illustrate this better than by citing a case of injustice which arose in my own country. A man was arrested on the charge of obtaining $10 under false pretences. Under our code this offense was a felony—a case that could not be tried

except on a presentment or indictment found by a grand jury. The defendant had no defense. He would have been glad to have entered a plea of guilty at once and receive sentence, but under our law this was impossible. He must wait until the District Court met in the county, the grand jury be summoned and the case take its course. Thirteen months elapsed, and this defendant was immured in a six by six steel cell waiting the action of the grand jury. The question of expense to the county in such a case is insignificant in comparison to the injustice to that defendant, criminal though he was. The majority report would simply result in reducing the time—the period of such injustices. The majority report provides, if I am not mistaken, that the District Court shall hold at least two terms a year in each organized county. In any case then, provided the grand jury were summoned, a defendant could not be immured for a longer time than six months before his case would come before a grand jury. Nevertheless, if a defendant were willing and anxious to be tried immediately, he should have the privilege of a trial, have his case determined and settled. Let his innocence be established or his guilt, and let him then receive the punishment. If the county court were clothed with the authority to try these cases, which we might consider petty by comparison, county courts could at once determine such a case, and the counties be relieved of great expense, and defendants in criminal cases be accorded the rights which under the Constitution they possess of having their cases tried and settled without undue delay.

Mr. BARTLETT of Dickey. I did not expect to speak on this subject, and I don't speak as a lawyer, but as a farmer and with experience in this line of business. I will go into court as a client—my case is simple, but I have employed a lawyer. Suit is brought, court convenes after several months and the other side want a continuance. It is granted—always. The next time court comes around they furnish a witness that swears there is some other important witness and they have got out a subpœna for him, and due diligence has been used to find him, and they want to put it off for another term. It is put over, and in eight or ten months more court convenes again. Every time this is done your lawyer gets $10 to agree to have it put over. Court convenes again, and there comes along another witness who swears that they expect to prove by a certain witness certain things, and it runs right along, and the result is that it will frequently run

along this way when you have a good, first-class case, and you are two, or three or four years collecting it. I have one individual case that stayed in the court in Dickey county for three years right along, and I was pushing it all the time, and the result was that when I got that thing through, after lots of trouble, I paid my lawyer $125 in cash, whereas there was only about $700 pending. If there had been a county court there the matter would have been settled and adjudicated upon, probably in one month. I hope that the farmers here and the men who are liable to be led into just such performances as I have described, will put their seal on the question to-night, so that they cannot be imposed upon any longer. Suppose a man goes off with some stock that he has given a chattel mortgage upon. You send and get that stock back again by an officer, and before court convenes it is very common for that stock to be absorbed—its value—through the expense of keeping it. If we had a court there with jurisdiction it would be speedily settled. It might take some dignity away from the lawyers, but I tell you I know from my experience that the county court is what favors the poor man, and there is where my vote will go.

Mr. MILLER. It seems that the gentlemen who have spoken think that county courts would necessarily be a panacea for all the ills they have individually suffered by reason of some improper conduct in some court. I don't know what guarantee you have that a circuit or county court would not continue a cause as well as a District Court. If a judge is honest he will continue a case on the proper showing being made, and if you suppose that the judge of the county court will not continue the case when proper showing is made, then you are presuming that he is showing partialty. But I desire to refer particularly to the argument of the gentleman from Benson. It seems to be his theory that it is unsafe to trust the affairs of estates in the hands of the probate judge, but if you put them into the hands of the county judge, then your property will be taken care of. The judge of probate is elected by the county at large, because the citizens think him to be the most competent man for the place that they can select. Have we any right to presume that the county judge, who is elected within the same territorial limits will be any better man than the judge of probate, or any safer to leave the estate with? It is a question that rests with the electors of each county. The same electors elect the one and the other, and whichever they

elect he is expected to be possessed of the qualifications for the place. But they claim this county judge will be a better man and pay much better attention to the duties of the office than the probate judge does. What are the facts? They desire to give him civil jurisdiction to quite an amount; also criminal jurisdiction of what the gentleman from Benson calls petty offenses, and then he cites a case of felony, and then the surrogate court with jurisdiction of civil cases, criminal jurisdiction which must absorb a large part of his time and attention, and he is going to be better qualified to take care of estates of decedents. In some counties the probate judge is occupied every day in the 365 that it is possible for him to sit in a court, in conducting probate business of his county alone. He requires not only his own but the assistance of a competent clerk in order that he may keep up with business. Make a county court in his office, and have him annoyed all the time with civil and criminal cases, and every estate in such a county as Cass brought to him for administration would be sadly neglected, or else the civil and criminal business would be neglected.

It is the experience of the older states where probate law is the best managed, and where estates are the best managed, that it must be done through a good probate judge, who has the jurisdiction of nothing but the estates of decedents; makes them his special business, and if a competent man is elected, as is usually the case, other politics are sometimes forgotten when they think that they are electing a man who may have to take care of their estates. He is usually a competent man, because he gives his exclusive time and attention to it, and is not bothered with any of this other work. In most counties of this Territory the probate court will, in the near future, as the counties get settled up, have to give a large portion of its time to probate business alone. The gentleman claims that he desires a surrogate court because it will lessen the expense of litigation and that it will tend to lessen the fees of the attorneys. There is no greater absurdity than this. A surrogate or county court will increase the expenses of litigants beyond all account—beyond any comprehension of the gentleman who has not passed through that sort of business. An attorney will charge just about the same in all probability for going into the county court as for going into the district court, to try the same case. His case is begun, and one man or the other generally gets beaten. The fellow that is beaten is just as

sure nine cases out of ten to appeal that case to the district court, and have it retired, as he is to live, for it is right there in his own county, and he thinks he will take another chance. How many civil cases, even of the importance that go into the justice court, go up to the district court. The same thing will be true to a greater extent when you get into the county court where the jurisdiction is increased, and the amount involved is greater. So that in your county court you pay your attorney for the trial of the case in the county court, and in the district court, and your county court is but another step to get into the district court. You go through the county court instead of serving a summons and going direct into the district court.

The gentleman from Benson cites the case of a man who was compelled to lie thirteen months in jail awaiting the judge before he could be tried. That was undoubtedly when two judges undertook to do the business of the Territory and North Dakota. This applies no longer, for we are to have districts so arranged that the judges can hold court twice a year, and that trouble is obviated. I can see nothing but objection to the county court system. There will be nothing but added expense, added annoyance, and no return whatever to the litigant, the people or the attorney. It is true that if we were to have only two judges in North Dakota it might be desirable to have a county court, so that business might be done more frequently, but with six judges they will be able to do all the business, and have terms of court as often as will be necessary.

Mr. PARSONS of Morton. I wish to state a little of my experience in regard to county courts. The little State of West Virginia, in which my folks dwell, has more litigation in proportion to its inhabitants than any other state in the Union, but we adopted a system of county courts which was somewhat different from the one now under discussion, but it answered the same purpose. The argument has been advanced that it deteriorates and drags down the profession of the law. I have seen cases in that court in which the best lawyers of the state were engaged. It does not surprise me to hear the remarks of the gentleman from Cass. If all the counties in North Dakota were like Cass it would be different. We are differently situated than other parts of the State. We found down in West Virginia, instead of dragging the profession down it brought up the standard of the justice of the peace from being a byword and a matter to be scoffed at, until

honorable men—men that were competent to take the places—were elected. If we would add to the dignity of the probate court there would be an added quality to those who held the office. It seems to me that there is no one measure that has been tried in these United States as thoroughly as this, and it seems to me that we should adopt it for the purpose of getting some means of speedy justice at hand. If it were possible to pass such a measure here I would urge a measure that would make the jurisdiction of the county court $50,000 instead of one, give it criminal jurisdiction in most cases, and give it sufficient power to take in nearly all the cases we have. As a matter of fact where the county court system has been tried very few cases have been appealed. In West Virginia the president of the court is ex-officio chairman of the board of county commissioners. The added dignity gives us a court that is reliable, and it is not limited to a man who is learned in law. On the contrary I could refer you to Judge Hagan and Dr. Moore who have occupied the place, and nobody has ever given a better administration of justice than they have. One is a farmer and the other a doctor. Perhaps at the first session of the court there were some mistakes made, but their administrations were satifactory to the people, and favored by the people. If you could give us the county court the District Court would have far less to do as well as the Supreme Court. In nine cases out of ten the cases would stop at the county court.

The committee then rose.

Mr. LAUDER. I move to adjourn.

The motion prevailed, and the Convention adjourned.

TWENTY-NINTH DAY.

BISMARCK, *Thursday, August 1, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. ALLIN moved the following resolution:

Resolved, That all clerks of committees now in the employ of the Convention be and the same are discharged from and after this date, August 1st, 1889.

Mr. MATHEWS. I don't think it would be well for this resolution to pass. There is the Apportionment Committee, for example, which has done no work yet, and it will be necessary for it to have a clerk.

Mr. LAUDER. I hope this resolution will not prevail. It will be all very well for the committees that have finished their work to discharge their clerks, but as the Convention well knows there are some committees who cannot finish their labors—in fact can do very little of their work till the Convention has acted on the reports of other committees. I have not yet been able to get a meeting of the Committee on Schedule. I have prepared a number of sections, but the work of that committee is yet to be done, and it cannot be done till these other reports have been acted upon, and we know what there is to come into the Schedule. To do our work will require the services of a clerk.

Mr. PURCELL. I move that the resolution be amended by applying only to those committees which have finished their labors.

Mr. BARTLETT of Griggs. There is the Judiciary Committee which has handed in its report to the convention, but since that it has had other resolutions and matters referred to it.

The original resolution as amended by Mr. PURCELL was carried.

A QUESTION OF PRINTING.

The report of the Committee on Printing was read as follows:

MR. PRESIDENT: Your Committee on Printing to whom was referred the resolution introduced by Mr. PARSONS of Rolette, respectfully recommended

that the same be adopted, and that each newspaper in North Dakota receive $25 each for such services, and recommend that provision be made in the Schedule for the payment of the same by the Legislature.

ROGER ALLEN,
Chairman.

The adoption of the report was moved by Mr. ROBERTSON and seconded by Mr. ROLFE.

Mr. NOBLE. I understand that the report provides that each newspaper shall get $25 for publishing the Constitution. It seems to me that if it provides that, it should be printed, read a second and a third time.

Mr. SCOTT. It seems to me that it is not wise for this Convention to pass such a resolution as this. The better way in my judgment would be for this Convention to take steps to secure the printing of 100,000 or 200,000 copies, whatever may be determined on as necessary, and let those be sent to the delegates or to the county auditors or to the chairmen of the boards of county commissioners in the different counties. They could be very well distributed in that way. They will thus reach more people than if the Constitution is printed in every paper in the State, and the cost will not be one-fifth as much as it would be under this resolution. If my suggestion is followed the Constitution will be in pamphlet shape and can be preserved, whereas it won't be if it is printed in every newspaper in North Dakota. I am opposed to the resolution.

Mr. MILLER. I would like to inquire how many newspapers there are in North Dakota.

Mr. PARSONS of Rolette. There are about 150.

Mr. MILLER. I am opposed to the resolution. I think it amounts to saying that we will make a donation to each newspaper of $25. If we put it in this shape, and the respective editors say they need it, I would vote for the resolution, but for the matter of printing the Constitution I don't think we should do it. There is not a newspaper that will not print all that Constitution for the benefit of its readers. It is being printed every day, and if this report of the committee is adopted we shall be making an investment of $4,000 to have this document printed in the respective newspapers, more than two-thirds of which would be useless. I have papers in my mind that have not a circulation of more than 100, and to pay them $25 for printing the Constitution would be throwing the money away. It seems to me that the gentleman

from Barnes is correct. If we are to print this Constitution let us print it in pamphlet form.

Mr. ROBERTSON. I would ask that for the purpose of securing a full presentation of this matter, the gentlemen be requested to state what the cost would be to print the Constitution in pamphlet form as he recommends, that we may consider the cost of the one method and the other.

Mr. SCOTT. I don't know what it would cost, but if this Convention wish to give me $4,000 I will print all they want in pamphlet form, bound in morocco.

Mr. NOBLE. I wish to make an amendment to the proposition. $25 is too much for each paper in the territory, for the simple reason that they get a supplement from the Pioneer Press or some other paper, and the cost of them will be about eight cents a quire. I think that $5 would be the greatest plenty and leave a little to spare for the newspapers. I will move as an amendment that the figures $25 be stricken out and $5 inserted.

Mr. PARSONS of Rolette. There won't be a newspaper in North Dakota that will print it. The work cannot be done for any such figures. The sum of $25 is about half what was proposed to me by the newspaper men—a few that were here. The matter cannot be set up for $25. The usual fee for printing county commissioners' proceedings is 25 cents per folio. The price suggested for printing this Constitution is very much less than that. I differ with the gentleman who says that it can be printed for $5 for each paper, and I am certain that it can be printed by the newspapers at a very much less cost than by the pamphlet plan. It cannot be printed in pamphlet form in sufficient quantities for half that.

Mr. JOHNSON. Does the gentleman from Rolette imagine that if this resolution passes, that every country newspaper like his own is going to set up the type for this Constitution independently? I do say this—that nearly all the papers in Dakota—nearly all the country newspapers—have patent insides printed at St. Paul or elsewhere. I know that these printers of patent insides for the newspapers are now preparing to print the entire constitution immediately, just as soon as it is ready. I am myself in correspondence with one of the largest manufacturing concerns in those cities, for the purpose of furnishing them as promptly as possible a copy of a correct constitution. My idea is that whether this resolution passes or not the Constitution will appear in the news-

papers as interesting matter, as profitable matter for those newspapers to put in, just the same whether we pay them for it or not. I think that even the $5 would be a donation. They would publish it anyhow.

Mr. PARSONS of Morton. I am informed that a hundred thousand copies of this Constitution printed in pamphlet form would cost about $2,000, and it seems to me, as we have forty or fifty thousand voters, we could supply each one with two copies apiece, by having a hundred thousand printed, and this would be better than the adoption of the resolution or report before the House.

Mr. PARSONS of Rolette. You want to figure the additional cost of distributing them.

Mr. PARSONS of Morton. That would be a very small matter. Every man here would be pleased to put them into the hands of parties in his district who would distribute them. I never knew of any literature of that kind that lacked distributors.

Mr. STEVENS. There has just been a resolution passed here providing that a committee should be appointed for the purpose of drafting a letter or memorial to the people showing the reasons for the adoption of this Constitution. The object for introduction of that resolution was this—the Constitution will not in all probability be read as a whole by one-half the people—probably not more than one-third of them. A majority of them would rather read a synopsis of the important features, and it should be pointed out where it differs from the ordinary Constitution. At the same time I had in view that there would be printed in pamphlet form a sufficient number of the Constitutions that might be placed in the hands of the county auditors of the various counties, so that any person after having read a synoptical letter might go and get a copy of the Constitution and look it over if he desires for further information. That was the view that was taken when the resolution was drawn to which I have referred, calling for a committee.

Mr. CLAPP. I am not so particular about the original resolution, but I hope the amendment will not pass. For us to say that the newspapers of this State shall print the whole Constitution for $5 is an insult to every one of them, and I hope the resolution will be voted down.

Mr. ROBERTSON. I fully concur in the remarks of the gentleman that has just spoken. I believe that we ought to publish the Constitution through our newspapers, and I believe we should

not be niggardly in the matter. We ought to pay what it is worth to set up that type. We ought to remember the fact that the servant is worthy his hire, and we ought not to impose on our newspapers or compel them to set that up for nothing simply because it is a matter of interest to the public. If we choose the newspapers as the medium for bringing this Constitution before the public, we ought to pay them every cent it is worth.

Mr. NOBLE. The question before us here is whether this expense should be borne by the new State—whether $25 is not more, in connection with the other necessary expenses, than the people should bear in the formation of the new State. There is no question but that the setting in type of such a Constitution as we will have, would be worth more than $25 to each newspaper in the State if they were to set it up themselves, in their offices; but I have had enough experience in the newspaper business to know what it costs to get a Constitution set up and printed. The patent inside of a newspaper costs about eight cents a quire, and that is for good sized papers. This Constitution will be distributed at the same rate. $5 will leave $2.50 clear to the newspaper if my amendment carries, in my opinion. If the newspapers were to set it up it would be worth more than $25, and it would be more of an insult than to give $5.

Mr. BARTLETT of Griggs. This Constitutional Convention is in a peculiar position when it is dependent on the patent insides of the newspapers to distribute their Constitution. Let us print it in circular from, or take some method to have our papers print it. If we print it in circular form it will cost more than if we pay the papers $25 each to print it. The gentleman says that 100,000 would cost $2,000. We should need at least 500,000. We have a population of over 200,000. South Dakota provided for 500,000 copies of her Constitution in two languages—the Scandinavian and the English language. It seems to me to be absurd to say that we shall only need 100,000 copies, when that is not as much as our population. If we pay the newspapers for it, it is easily circulated, and the money is distributed. We should not then be giving any one printing institution $2,000 or $3,000 for doing what should be more generally distributed.

Mr. ELLIOTT. The suggestion of the gentleman from Barnes would give more than two to every voter. I think that that should be sufficient, and there should be some left out of that for future use. If we had this Constitution printed in the newspapers it would

soon be out of print, and we would not be able to find a copy except those that would be printed in the law books or the school books. There are other people in the United States who are just as much interested in this Constitution as some of us are, and they would like to see what we have done here. If we fail to publish them in pamphlet form we cannot furnish anyone on the outside with copies. Before this convention met I wrote to the Secretary of the State of Kansas for a copy of the constitution of that state, but he could not send me a copy because it had not been printed in pamphlet form. I wrote to the Secretary of California, and got one back by return mail. I think we should make some provision by which we could circulate some outside the state for the benefit of people in other states. They are interested in our work here, and they want to see what kind of a production we are getting up.

Mr. MOER. This matter of the printing the Constitution is, presumably, for the benefit of the people of the territory or state, so that they may know what they are voting upon. It strikes me that a question of $2,000 or $3,000 or $4,000 cuts but little figure as against the fact that the people must know what they are voting for or against. I would be willing to favor the proposition that the Constitution should not only be printed in the way recommended by the committee, but I would also have it printed in as many different languages as we have got people to vote on it. I believe that the thing we want to do is to put it before the people, and it does not matter whether or not it costs $2,000 or $4,000. The gentleman from Ransom county says that he has introduced a resolution for the purpose of having a committee prepare reasons why the voters should vote for the Constitution. It seems to me that the voters will do their own reasoning if they have the Constitution before them, and that they are fully as capable of deciding why they should vote for it as we are. It may be that $25 is too high a figure to pay the papers, but certainly $5 is too low. I therefore move as an amendment that the figure be made $15.

Mr. FLEMINGTON moved as an amendment that the figures $10 be substituted.

The amendments and the motion to adopt the report of the Committee on Printing were all lost.

THE SUPREME COURT JUDGES.

Mr. CARLAND. I move that the report of the Committee of the Whole in regard to the session of yesterday afternoon be

adopted with the exception of section nineteen, which reads as follows:

"The Judges of the Supreme Court shall give their opinions upon any question of law and upon solemn occasions when required by the Governor, the Senate and the House of Representatives, and all such opinions shall be published in connection with the reported decisions of said court."

Mr. PURCELL. I also move to strike out of the report of the committee the whole of section four:

"At least three terms of court of the Supreme Court shall be held each year at the seat of government."

Mr. CARLAND. In support of the motion so far as section nineteen is concerned, I desire at this time to again renew the same objections that I urged in the Committee of the Whole to the adoption of that section. I believe it to be pernicious and unwise to have it in the Constitution, and in support of my view I desire to read to the Convention the expressions of the Supreme Court of Colorado in regard to a similar provision which they have in their Constitution, and which was put in there by amendment in 1885. There were numerous questions referred to the Supreme Court, and they are included in this pamphlet. In answer to the Senate resolution on the subject of Irrigation, the court says:

"The resolution before us purports to have been framed under the authority conferred by section two, article six of the Constitution, as amended in 1885. The amendment in question reads as follows: 'The Supreme Court shall give its opinion upon solemn occasions, when required by the Governor, Senate or House of Representatives; and all such opinions shall be published in connection with the reported decisions of the court.' It is obvious that this constitutional provision will become a medium of great abuses unless its purpose be clearly apprehended, and its spirit be strictly obeyed by both the General Assembly and the court. In acting thereunder the peculiar functions devolved upon each of the three departments into which the State government is divided should always be kept in view. It could not have been the intention to authorize an *ex parte* adjudication of individual or corporate rights by means of a legislative or executive question. Parties must still adjudicate their rights in the ordinary and regular course of judicial proceeding. Nor could the purpose have been to enact, in response to a legislative inquiry, a wholesale exposition of all constitutional provisions relating to

a given general subject, in anticipation of the possible introduction or passage of measures bearing upon particular branches of such subject."

"The questions propounded by the resolution under consideration call for a construction of sections five to eight, article sixteen of the Constitution. These sections comprise all of that instrument dealing with the subjects of water-rights—a subject second to none in its importance and intricacy. Our answers to the questions would necessarily affect vast property interests, and profound questions of public policy. We are not apprised by the resolution that the various matters mentioned are covered by any act or acts pending before the General Assembly. There are now in this and other courts of the State actions through which some of these matters are in process of adjudication. To anticipate these cases, and pass in this summary manner, upon the rights involved, and no apparent rights or interests of private parties directly without the parties before us, and without the aid of counsel, is something we should not be asked to do, except upon the greatest and most urgent necessity. It is not improper for us to further suggest that a satisfactory response to the resolution would require vast research and extraordinary caution. In view of the fact that we must act both as court and counsel, and in view of the other duties which we must necessarily perform, the period of time provided for a legislative session would hardly be sufficient to return safe and satisfactory answers to more than one such inquiry. We shall always most cordially co-operate with both Houses of the General Assembly in their work, so far as such co-operation may be proper under the Constitution. But the foregoing, and other considerations that will readily suggest themselves, constrain us to respectfully request that your honorable body consider the propriety of withdrawing the questions embodied in this resolution."

Mr. CARLAND. There was no opinion obtained, and there was no human power that could compel the court to do anything further than they did. In another case as regards Senate Resolution No. 65 the court says:

"The framers of our constitution specified the jurisdiction to be exercised by the court. They declared that, with certain designated exceptions, this jurisdiction should be purely appellate and supervisory. A few writs and proceedings were named, in connection with which the court was clothed with original jurisdiction. Sec-

tion three, Art. six. The section mentioned has been construed by this court as applying only to cases where questions *publici juris* are raised, thus excluding from this branch of its jurisdiction all controversies wherein private rights alone are involved. Wheeler vs. Irrigation Co., 9 Colo. 249, 11 Pac. Rep. 103. The reasons for this construction are obvious and potent. They are considered in the opinion referred to, and will not be here re-stated. The provision authorizing legislative and executive questions was not originally a part of the constitution. It has been in effect less than three years. It is an enlargement of the original jurisdiction of the court conferred by said section 3 of the judiciary article. It adds to the list of writs there specified an unique and important proceeding—unique, because as we shall presently see, it is devoid of nearly all the usual indicia of judicial proceedings; important because of its consequences. All of the reasons relied upon for confining the writs specified in section three of article six to questions *publici juris* apply with even greater force to the novel proceeding authorized by the provision before us; for while this provision is original, and in that respect similar to the other original proceedings referred to, yet it possesses characteristics peculiar to itself. Not only should its operations be confined to questions *publici juris* but as we shall endeavor to show, every question of this character should rarely be thus presented or considered. It will be observed that the authority conferred is accompanied by an express limitation. While the question must be one relating to purely public rights, it can only be propounded upon solemn occasions, and it must possess a peculiar or inherent importance not belonging to all questions of the kind. It is impossible to state any absolute rule by which the sufficiency of this importance and the degree of this solemnity can be determined. These are matters that rest largely in the discretion of both the legislature and the court; for while the legislature is first to judge of the relative importance and solemnity justifying a given question, it has been held that the justices have also a voice in deciding whether jurisdiction should be entertained. Opinion of Justices, 49 Mo. 216. The court will seldom question the action of the legislature in this respect, but the right so to do should not be denied. It is submitted, however, that for reasons hereinafter stated, the greatest caution should be employed, both by the legislature and court, in exercising the discretion just mentioned. As already suggested, there are peculiar reasons for excluding from the purview of the provision before us legislative

and executive questions affecting private and corporate rights,—reasons not applicable in the exercise of the original jurisdiction of the court in connection with the other original writs or proceedings provided for.

"Only five states of the entire Union have ventured to adopt and retain constitutional provisions in any way analagous to this constitutional amendment. At one time there existed in Missouri a provision somewhat similar, but the framers of the Missouri Constitution of 1875, profitting, we suppose, by experience, excluded the same therefrom, and we are not aware that any effort has since been made looking to its restoration. But Colorado has gone further than the states referred to in this doubtful and perilous experiment, by adding two peculiar features, one of which at least seriously increases the danger. By the express words of the corresponding provisions in each of the other states the questions are limited to questions of law, and the justices, not the court, are to respond. These officers appear to be merely legal advisors, occupying much the same relations in this regard to their respective General Assemblies as does the Attorney General of Colorado to the State Legislature. Their written responses, when questioned, are not always published in the reports. They are not pronounced by the court, and hence are not technically judicial decisions, nor do they necessarily constitute judicial precedents. In this State, on the other hand, the interrogatories are not expressly limited to the questions of law, and it is the court, not the justices, that must answer. For obvious reasons, we hold that the intent could not have been to authorize questions of fact, but our responses must be reported as are other opinions, and they have all the force and effect of judicial precedents.

"It is a principle declared by our Constitution, section twenty-five, article two, and of universal recognition, that no person shall be deprived of life, liberty or property without due process of law. But there cannot be due process of law unless the party to be affected has his day in court. Yet a careless construction and application of this constitutional provision might lead to the *ex parte* adjudication of private rights by means of a legislative or executive question, without giving the party interested a day or voice in court. When this tribunal exercises its original jurisdiction by entertaining any of the other proceedings specified in the Constitution, process must issue, the parties to be affected must have notice, and they must be given an apportunity to appear and

be heard, both in person and by counsel; so that even though the primary and principal purpose of the proceeding be to adjudicate a matter *publici juris*, yet there is a compliance with the fundamental requirement relating to due process of law. This consideration greatly reinforces the proposition that it could not have been the purpose of those who framed the amendment to permit such *ex parte* adjudications by means of executive or legislative questions. We have no hesitancy in reaffirming what we have already declared, that 'parties must still adjudicate their rights in the ordinary and regular course of judicial proceedings.' In Senate Resolution on Irrigation, 9 Colo. 621, ante. 470.

"Nor could it have been the intention of the authors of this amendment to permit the presentation of questions relating to the policy of proposed legislation. A proper regard for the constitutional arrangement of the different departments of government, and the constitutional powers and duties devolved upon each department forbids the conclusion that this court can have anything to do with such matters. It is clearly not authorized to give its advice upon any question of fact or of policy. It is the peculiar and exclusive province of the Legislature, so far, at least, as the judiciary is concerned, to judge of the necessity or desirability from a political or economic standpoint of each and every act proposed. The history of this constitutional amendment may be consulted with advantage in the endeavor to discover its purpose. The successive Legislatures meeting after the admission of Colorado to statehood encountered great difficulty in the enactment of laws, on account of numerous wise, but troublesome, limitations contained in the Constitution. Perplexity and confusion arose in consequence of legislation which this court was ultimately compelled to hold invalid. It was deemed expedient that each house should have the privilege of submitting questions so that the injurious consequences arising from constitutional legislation might be avoided, by having the validity of proposed legislative acts thus determined in advance. Corroborating the conclusion that the foregoing was the primary and principal purpose of the amendment, we have the contemporaneous construction of the Legislature. All the questions propounded by the General Assembly of 1887, which was the first to meet after the adoption of the amendment in question, rested upon legislative doubts as to the constitutionality of certain proposed acts or parts of acts. This consideration is peculiarly significant, because it tends

strongly to show the view entertained by the legislative representatives of the people chosen at the same election at which the amendment itself was adopted. It must be presumed that these representatives comprehended, and by their action expressed, the understanding of the people in relation thereto.

"Upon mature investigation and reflection, we are of the opinion that executive questions must be exclusively *publici juris*, and that legislative questions must be connected with pending legislation, and relate either to the constitutionality thereof, or to matters connected therewith of purely public right. We believe that the accuracy as well as the wisdom of this interpretation will commend themselves alike to the legislative judgment and the legal mind. But even with this construction there is danger of grave abuses. Efforts will still be made by private parties to anticipate judicial rulings in the ordinary course of litigation, by inducing the submission and decision of questions ostensibly *publici juris*. We feel constrained to repeat and emphasize the thought heretofore expressed that the utmost vigilance and caution be exercised by both the General Assembly and the court in acting under this novel constitutional authority. There cannot well be too much moderation in the premises. We note that in those states which permit consultation with the justices, the privilege seems to be less often invoked than it has been here. The Attorney General is the natural, as well as the statutory, legal advisor of the Executive and Legislative Departments. His counsel should be solicited, and only as a dernier resort, upon the most important questions and the most solemn occasions, should the court be requested to act.

"It must always be remembered that we are compelled to discharge the duties of both court and counsel; that the exigincies which of necessity require speedy answers, render it impossible to bestow upon these questions the research and deliberation usually given to judicial proceedings by courts of last resort; and that for these reasons our embarrassment is seriously enhanced, while the possibility of erroneous decisions is, of course, augmented. Although no questions be propounded or answered save those which relate to the constitutionality of legislation, or to other matters purely and exclusively *publici juris*, and although there be no causes pending in the courts that are directly affected, and no apparent rights or interests of private parties directly involved, yet it is obvious that a false interpretation by us of a con-

stitutional provision, or a mistaken opinion upon a question purely *publici juris*, may indirectly lead to the most grievous consequences.

"The question presented in this case suggests, neither through the preamble nor the resolution, any matter of constitutional difficulty; nor is it such a matter otherwise *publici juris* as would warrant our entertaining jurisdiction upon that ground. It does not even, so far as we can perceive, relate to the action of either branch of the General Assembly upon the bill mentioned. We are asked to construe the future effect of the proposed bill in its application to the fees of certain public officers. The matters specified are proper subjects for judicial action, and will doubtless be litigated through judicial proceedings. The court has always conscientiously endeavored to observe the requirements of all constitutional provisions, including the one now under consideration and it will in the future, as in the past, ever take pleasure in rendering such assistance to the Executive and to each House of the Legislature as shall be consistent with its position as a separate and independent branch of the government, and also in harmony with what is deemed a sound exposition of the Constitution. But in view of the foregoing considerations, were the General Assembly still in session, we would respectfully ask that the question be recalled."

Mr. CARLAND continued: Without taking up the time of this Convention any longer, I would say that I am satisfied that a constitutional provision of this kind is open to grave abuses, and I would ask that it be stricken from the report of the Committee of the Whole.

Mr. PURCELL. I move that the report of the Committee of the Whole be adopted by sections.

Mr. STEVENS. Does the adoption of this report adopt the sections?

The CHAIRMAN. No, sir.

Mr. NOBLE. Then if the motion prevails, what is to be done with the report of the Committee of the Whole prior to the report of the Judiciary?

WHERE TO HOLD COURT.

Mr. PURCELL. My objection is to section four which reads as follows: "At least three terms of the Supreme Court shall be held each year at the seat of government." I hope that the report of the Committee of the Whole with reference to that par-

ticular section will not be adopted. In our territorial form of government the Supreme Court held three terms a year at three different cities, and in conversation with many of the attorneys in those cities they one and all agree that it was a most excellent thing, and they cited this as an illustration of the benefits that were derived from the Supreme Court coming into their localities. In many instances poor people are litigants—people who have cases against corporations for injuries, and many of these cases are taken by attorneys contingently, their fee depending on recovery of damages in the case. When recovery is had, if an appeal is taken to the Supreme Court, the plaintiff or the poor man, may not be sufficiently able to follow that court to its location if permanently located at some far off point, but if that court in its movements will come within a reasonable distance of his district, his attorney can go there and argue it and have it disposed of at a less expense than if he had to pack up his papers and travel to the seat of government. There is nothing degrading in the Supreme Court holding its terms in different cities. It is done in Iowa. They have done that way for a number of years, and the same thing is done in a number of the states of the Union, and all who have tried it agree that it is beneficial to the people who are unable in many instances to follow their cases from the District Court to the Supreme Court, but who can do so if the court comes within easy reach of them. As I said yesterday a major part of the business of the Supreme Court in North Dakota comes from the Red River Valley, and the tendency is for litigation to come this way. If the Supreme Court can hold a term at Bismarck, one at Fargo and one at Grand Forks, the different litigants living in these localities can have their matters heard at less expense than if they are required to go to Bismarck. No one can be injured. There is no additional expense to the State, for if the Supreme Court Judges get mileage the presumption is fair that two of them will reside in the eastern part of the State and that mileage will amount to more to go to Bismarck than that of the Bismarck judge to go east. It seems to me that for all these reasons this section should not be passed as it is, but an amendment should be made so that one term will be held at Bismarck, one at Fargo and one at Grand Forks.

Mr. MILLER. Do I understand that you offer that amendment?

Mr. PURCELL. I offer that amendment.

The amendment was seconded by Mr. MILLER.

Mr. SCOTT. It seems to me that the section as adopted by the Committee of the Whole is as it should be. The gentleman from Richland refers to the fact that now, while we are a territory, we have a migratory Supreme Court, and that it proved satisfactory. But I venture to say that there are not four states in the Union that have a Supreme Court of that character. It is something unusual—almost unheard of except in the territories. Now we have a Capitol—a seat of government, and there are supposed to be suitable rooms in the Capitol for the use of the Supreme Court. We are supposed to have, we should have, and we in all probability will have, a State Library for the use of the Supreme Court and the general public. It will be necessary to have chambers at the Capitol or the seat of government for the use of the court, and as stated by a gentlemen yesterday, if the court meets at Fargo and Grand Forks the first thing we shall be called on to do will be to fit up chambers or some other place for holding the Supreme Court in Fargo and Grand Forks as well. The gentleman also refers to the fact that it is a very great convenience that the Supreme Court should be held at these different cities—that it will be cheaper for litigants in the Red River valley to have the terms held there rather than at Bismarck. I venture to say it will not cost a litigant one cent more, whether his case is argued here or at Grand Forks or Fargo. I don't presume that the gentleman from Richland will say that a case that is appealed from a county to the Supreme Court will be passed over by that court for the term which is to be held here. The attorneys must be here anyway to attend to their cases, and when they are here they might as well argue then as to take it on to some future term. So that it will not be one cent additional expense to any litigant who goes to the Supreme Court, whether all the terms of that court are held at Bismarck, or whether it is migratory and the terms are held one at Bismarck, one at Fargo and one at Grand Forks. But it will be more expense to the State—there is no denying that. When we elect three judges they should hold their chambers at the Capital of the State, wherever that may be. They should be here, and I don't suppose they will be entitled to any mileage, for they are not expected to run all over the territory. Their business is here, and when they are not here they are not working for the State. If they desire to go home, they cannot expect the State to pay their mileage, but if we make the terms of the Supreme Court at these

three different places they will be entitled to mileage, and unless the gentlemen in Grand Forks and Fargo are benevolent enough to extend to the State the use of their court rooms, the State would be obliged to furnish some place to meet. I think the section adopted by the Committee of the Whole is just as it should be, no matter where the future Capitol of the State is finally located, whether it be Bismarck, Fargo or Grand Forks.

Mr. O'BRIEN. I don't see any good and sufficient reason why the report of the Committee of the Whole should not be adopted, so far as this section is concerned. The gentleman from Richland places it entirely on the ground of the expense of the litigants. He does not take into consideration, as the gentleman from Barnes has just suggested, that the expense of a term of court at these different places will fall on the State more heavily than a term would at the seat of government. I claim that when a man chooses to go to law the expenses of the litigation should fall on him mainly. The State should not bear the expenses of private litigation, and we will be arranging it that way if we place these terms of court at three different points as is contemplated by this amendment. We, as a state, are willing that every man shall be given an opportunity to be heard in the Supreme Court, but we don't desire, we don't want, to have the methods made more expensive than are necessary to the State. We will be required to have a Supreme Court room at Fargo and Grand Forks, and we will also find it necessary to have all the required appliances for holding a term of court at the seat of government. There will be at all these points the expense of a court room, the expense of the travel of the judges and the travel of the court officers. I cannot see any particular reason why we should do this for the purpose of accommodating the gentlemen who live in the Red River valley. Are we legislating for the present merely, or the future? If in course of time the center of population move to the West, why are not the people of the Missouri slope entitled to just as much consideration as the cities in the Red River valley, and if you are going to make it so convenient for litigants, why not hold that it should go to the door of each litigant, and there determine any matter which may be in process of litigation? If you are to save expense to the litigant, that would be the way to do it; but so far as expense is concerned I don't agree with the gentlemen who are arguing for this amendment. You will find in states where the Supreme Court is stationary—is

held at one point—that the most of the business before the court is done by briefs—briefs printed at the home of the litigants, and that is an expense that they would have to incur anyhow. As has been suggested here, there is nothing to require the litigant to go to the court himself. All that is required is the attention of his attorney, and in all cases if the attorney is doing business of any importance he has a number of cases to attend to at the session of the Supreme Court. In the case of a poor man, he can very easily, if he has got a good case, submit his case to the Supreme Court upon printed briefs and the court will give him just as much consideration and as fair a hearing as if he was represented by an attorney in the court.

Mr. MILLER. The gentleman suggests as an objection to the court being held in three places, that when the population changes it may be necessary to change the court to accommodate the public. The amendment offered by the gentleman from Richland provides that the terms of court shall be held at the seat of government, Fargo and Grand Forks "until otherwise provided by law." If it is found that the population is changed so as to require a change in the places to hold the court it is in the hands of the Legislature. I supposed that the object of all courts was to make them of the most convenience for litigants, that the greatest good to the greatest number might be secured. It is a fact that no one disputes that the population and the litigation is very much nearer Grand Forks and Fargo than the Capital. To subserve the interests of these people who have got to have the litigation and sustain the court, we ask for the terms of court at these places. I can see no possible objection to it.

Mr. PARSONS of Morton. The matter of expense has been mentioned, and I think there is one point to be considered. If we are to consider the matter of expense merely, why don't we select some city in the center of the State which is readily accessible to all, and locate there the Capital, and around it all the other public institutions of the State? Have them all right in the center, because they will be the most accessible there, and it would be the most economical. Who ever heard of any such scheme as this? Is there any state in the Union that has ever done it? And yet, following out the doctrine advocated by some of the gentlemen here, that would be the thing to do on the ground of cheapness. There is one argument that has not been referred to—and that is that it is a great honor for a town to have a session

of the Supreme Court, and wherever the seat of government is —whether it be at Grand Forks, or Fargo or Bismarck, the people of that place will be entitled to that distinction. As to the fitting up of rooms for the court, I would say that I have not had the pleasure of visiting the city of Grand Forks, and have not seen their court house, but judging from the looks of the gentlemen here from that city, I have no doubt but that they have a very fine one. I doubt sincerely if the Supreme Court were to hold a session at Grand Forks or at Fargo if the people of either city would want to tax the State for allowing the court to hold a session, any more than any one of us as individuals would want to charge the President of the United States for a night's lodging if he did us the honor to stay with us. As far as libraries go, I believe that there are just as many volumes accessible to the court in Fargo or Grand Forks as there would be at the seat of government. It is a well-known fact that the attorneys in those two cities have very fine libraries, and it seems to me that it would be well to distribute the honors.

Mr. PURCELL. The objection to the substitute that I offered, as made by the gentleman from Barnes and the gentleman from Ramsey, seems to me to have no weight. Particularly the argument used by the gentleman from Ramsey, because I take it that sarcasm and ridicule are never an argument. I do not here seek by this motion to ask the Supreme Court to go to the door of any litigant. I simply ask that this court may hold one of its terms a year at Fargo, and there be installed in one of the finest buildings that this territory possesses, and it is no condescension on the part of the Supreme Court of this State to go there and hold one of its terms of court. I also ask that it hold one of its terms of court at Grand Forks. I have had some experience in the court house in Grand Forks, and it will compare favorably with any building in the Territory. There is nothing in the proposition they make and urge against this substitute. The library is not necessary for any lawyer attending the Supreme Court, nor is it necessary for the judges, as they will have at hand all the books they need. The gentleman says that briefs are prepared in all cases. Cases are frequently argued on briefs, but frequently there is a good deal more to a case than the mere submission of a brief. There is no place in the Territory to-day that has so fine a library as either one of the cities of Fargo and Grand Forks. Every book that would be needed is possessed there by the law-

yers, and collectively, the lawyers of those two cities possess a library as good as any that will be found in the State during the next ten or fifteen years. Everything will be accessible to the court, and as to the objection urged as to the court room, I simply say that I believe that neither Grand Forks nor Fargo will exact $1 on account of the expense of the court in occupying their court houses. The expense of the traveling will be little or nothing. All that will be necessary will be for the Clerk to go and take what papers pertain to the litigation about to be heard. It will not require a freight car to do this, and the item of expense will be nominal, if anything. The gentleman asks why we don't establish the court on the Missouri slope. We don't establish one on the reservation, because we don't need it there. Every man knows that nine-tenths of the business in the Supreme Court comes from the Red River Valley counties, and we proposed this substitute so that the people can be convenienced. The gentleman from Ramsey says that when a man goes into court he must stand the expenses of the litigation. That idea is in conflict with our bill of rights. We have courts established for the purpose of hearing every man's case, so that every man, be he rich or poor, can go and avail himself of the protection of the law, and see that his just rights are protected. We say that this substitute is just and right, and that is the basis on which we place it.

Mr. SELBY. Residing as I do, between the two principal towns of the Red River valley, it might appear that I was taking or assuming an attitude that would be contrary to my interest, and to the interest of the people of my county, and to the interests of that valley, if I would oppose a traveling Supreme Court. The gentleman from Richland tells us that if the Supreme Court holds a session once a year in the City of Fargo, that the people of my district can save expense by going there and having their matters determined. So then all the cases arising in that district or locality would be submitted to the term of court to be held at that particular place. Now, sir, I have, we will say, an action of importance. It is determined in the district court; I appeal the case to the Supreme Court; they sit in May; I am not early enough to get in at that term, and the result is that I have to wait till a year from that time before I can have my case determined. But if I could have taken that same case to Bismarck I would not lose all this time. This proposition was raised squarely in the committee when we were discussing it, and the committee by a ma-

jority took the position that for the very reason that these cases would be districted in that manner, it was decided that it would be better to have the court held in one place, where every case goes and is there determined in order. There would then be no passing over and waiting till the court would get to Fargo or Grand Forks. They claim, and it is true, and I am proud of the fact, that Fargo has got as good a court house as there is in North Dakota, but it does not follow from that fact that the officials of that county, if we provide in the Constitution that the Supreme Court shall be held in that town, that they will say: "You can have the use of this court house free of charge." If we make a provision of this kind they are in a position then that they can say: "Gentlemen, come down." We are not supposed to go upon the assumption that because it is an honor for a city to have a term of the Supreme Court that they will open the doors of their public buildings and say "you can come here," and especially when you are fixed in such a way that you have got to go there as it is proposed to fix this Constitution. If the people of that town or county would say "come down" it may be said that the Supreme Court would be taken away from them, but gentlemen we are here making a Constitution—an organic law—and let us go on and do that, and if it is right that the Supreme Court should hold its sessions at the seat of government, let us adopt that plan. I believe that it is right, and therefore I vote for the report of the committee.

Mr. LAUDER. It seems to me that the gentleman from Traill county has raised up here a man of straw for the sake of the amusement that it would afford him to knock it down again. His objection to having a migratory court is that litigants would practically have but one term of the Supreme Court a year instead of three. Now, Mr. PRESIDENT, you will see at once that that is an unwarranted assumption. He has no right to make that assumption, and then base an argument on it and draw a conclusion from it and ask this Convention to accept that conclusion. There is no rule laid down here and no provision, that the litigation shall be conducted in that way. Any man who has a case can demand that it shall be tried in its order, but this proposed substitute does give litigants who live in that vicinity and who for economy's sake consent that their cases be tried at a certain point, the privilege of trying them at that point. There is no compulsion about the matter whatever. He raises the objection that when the court is estab-

lished in this article at Fargo and Grand Forks, then these cities will be in a position to make the State "come down." Mr. PRESIDENT, and gentlemen of the Convention, there are a great many ways in which a city can make the people "come down." The small expense of a room is not the only way in which the public may be bled, and when you get this court established unchangeably, so that it will hold three terms of court in a particular place, I want to ask if that place is not in a position to make the public "come down?" What is there to prevent that place from charging extraordinary fees, expenses, hotel bills—everything else that the public wants? They can make the public pay and you can't help it, for you have got to go there. I would ask the members of this Convention not to forget that the State is simply the people in the aggregate, and when you take a dollar out of the pocket of a citizen you have got it out of the State, and hence if Fargo charged $50 for the use of its court house for Supreme Court purposes for the term, and by holding the term there you save to the attorneys, litigants and the public $200 in railroad fare and hotel bills, is not the State ahead? It seems to me that it requires no great arithmetician to demonstrate this. I don't see how any gentleman can oppose this substitute on principle. I don't wish to insinuate that any gentleman is actuated by any improper motive, but it seems to me that the interest and welfare of the public demand this. The Red River valley furnishes three-fourths of the business for the Supreme Court, and I would like to ask upon what principle the attorneys and litigants of that valley shall be required to travel clear across to the Missouri river in order to do business that they have a right to do nearer home? It is a right they have to have the court near them.

Mr. SPALDING. I desire to say just one word on this subject. There has been a great deal said about a migratory court. It has seemed to me, as the gentleman from Richland has said, that it was a good deal like setting up a man of straw for the purpose of knocking him down. In no article in this Constitution, or proposed article, is there any provision requiring the Supreme Court Judges to reside at the seat of government. If there were such a provision there might be a little sense in the argument, but assuming that the judges will be elected, as they naturally will be, one from the lower Red River valley, one from the upper Red River valley and one from the Missouri slope or somewhere in that vicinity, where is the migratory Supreme Court? In the one

instance we have a term of court held every four months near the residence of one of the judges, while in the other case we have none of them held except at the residence of one of them. One word in regard to the dignity of the matter, which has been touched upon. I resided for some time in a state that held a term of the Supreme Court in every county in the state. That would not be practicable here, owing to the large number of counties and the large number of small counties, but place it on a principle as nearly equal to that as possible, and owing to the vast extent of our domain, this point of placing the Supreme Court at three different centers comes as nearly as possible to such a proposition. In that state every litigant can go into the Supreme Court with comparatively no cost to himself. Here in this Territory we have been in the habit of paying for our expenses of attending the litigation in the Supreme Court, from $50 to $100 and $200 a case, simply because of the inaccessibility of the court. We need to do away with that as far as practicable. We cannot do away with it altogether, but let us put the Supreme Court where it will be the most convenient for the greatest number. The gentleman from Traill may have a case that he gets a decision on in the district court, too late to get into the next term of the Supreme Court, and it may be that he will have to go to Bismarck. But there is only one chance in three that he would have to do that—only one time out of three, and twice he would not. Here he proposes to cut off his nose to spite his face and go to Bismarck with his cases three times when there is no need for him to go more than once. I think that remarks in this Convention as to what occurred in the committee room are somewhat out of taste, and ordinarily I would not refer to them, but inasmuch as the gentleman from Traill has seen fit to bring in the position of members on this question in the committee room, I would say that I think that when section one of this article comes to be acted upon, the gentleman from Traill will take a position that is somewhat inconsistent with the position he has taken now.

Mr. SELBY. Very briefly in answer to the gentleman from Cass, I don't suppose that a member of this Convention transgresses the rules of proper decorum when he makes reference to a discussion that had occurred in a committee, having the matter under advisement that was before the Convention for discussion. If so, I must certainly beg the pardon of the gentleman. Nevertheless, my proposition was simply this—the gentleman from

Richland made the statement that if the Supreme Court was itinerant, that then the cases would be distributed, and the litigants would save expense. I took occasion to make the remark that that was discussed in the committee, and I took occasion to state to this Convention that that was the very reason why I oppose an itinerant court, because the Supreme Court can make a rule and say that in a certain district the cases will be tried in Fargo, and I shall not be able to get my case before them at Bismarck if I want to.

Mr. NOBLE. Is it provided in this motion that the names of these places will be substituted in place of the report of the Committee of the Whole? I would make the point of order that the report of the Committee of the Whole cannot be amended by the Convention. It can simply be rejected, or that portion of it, or accepted.

The Chair ruled that the point of order was well taken.

Mr. MILLER. The motion of the gentleman from Richland was to substitute.

Mr. O'BRIEN. The report of the Committee of the Whole is before the Convention for adoption or rejection, and the gentleman from Richland asks to substitute something for that portion of the report which is section four.

Mr. PURCELL. My intention was to offer this as a substitute for section four. The matter was argued yesterday in the Committee of the Whole and every delegate was acquainted with the substance then, and although I did not write it out and hand it in every one knew what was the nature of my substitute.

Mr. PARSONS of Morton. Do I understand that the Chair rules that it is impossible for the Convention to amend the report of the Committee of the Whole?

Mr. PRESIDENT. You must adopt the report of the Committee of the Whole or reject it, but the Chair holds that this substitute is in order.

Mr. ROBERTSON. I would like to inquire if the action we are now about to take extends to sections three and two?

Mr. MOER. Under the motion to adopt the report of the Committee of the Whole it is necessary for those of us who don't favor the proposed substitute to vote against two and three.

Mr. ROLFE. We passed a resolution providing that we would adopt one section at a time, and then we proceed to take four sections at once, and this results in confusion.

Mr. JOHNSON. I call for a division of the question. We are entitled to a division of the question.

Mr. PURCELL. At the commencement of the consideration of this matter I made a motion that this report be considered section by section, but some one raised the point that unless some one objected to the sections as they were read, they would be considered adopted. I withdraw my substitute for the present.

Sections two and three were then adopted.

Mr. PURCELL. Now I move my substitute for section four.

Mr. PRESIDENT. We must adopt section four as reported by the Committee of the Whole or reject it.

Mr. PARSONS of Morton. I wish to speak on a point of order. I understood yesterday that it was impossible at that point to offer an amendment to anything in the Committee of the Whole, and it was distinctly understood that it would be possible that the report of the committee should be amended. The proposition is this—can a report of the Committee of the Whole be amended? The report of the Committee of the Whole has no more prestige than the report of any other committee before this House. It seems to me to be the most preposterous proposition put before a body that a report cannot be amended. There is no gag law known to man that would be any more tyrannical than that. We have been amending reports ever since we began our sessions here. We have cut and slashed them in every direction, and now we have a report before us and the question is raised whether or not we can amend it. Mr. PRESIDENT, we have adopted a set of rules here to govern us, and I call for the rule on this point.

Mr. STEVENS. I move that section four of this report be recommitted to the Committee on Judiciary.

The motion was seconded.

Mr. JOHNSON. It occurs to me that there will never be so good a time to pass on this question as now. We have discussed it thoroughly, and we know exactly what the point at issue is. It seems to me that affairs have got to a pretty pass if we cannot pass on this because it will inconvenience the clerk. What are clerks for? We are not here to take their orders—to be gagged in that way. It is very evident, and perfectly clear to my mind, that a decided majority of the delegates here are in favor of the amendment offered by the gentleman from Richland. Are we to be denied the privilege of voting on this simply because the clerks

will get confused in keeping the records? It seems to me that it would not be very difficult to get a clerk that is competent to write down that a substitute was put in, in place of this section.

Mr. O'BRIEN. It seems to me that this is purely a question of procedure, and it is not necessary to say anything about gag law. It resolves itself down to this—the Chair rules that we must first accept or reject this section. Then after that action, the amendment or the substitute of the gentleman from Richland would be entitled to be brought before this Convention.

Mr. PARSONS of Morton. We have passed quite a number of articles and have sent them to the Committee on Revision. The understanding is that they will come back for adoption or amendment. If it is not possible to amend the report of the Committee of the Whole, we had better settle that question now, and I call for the ruling of the Chair on this question whether we can amend the report of the Committee of the Whole.

Mr. BENNETT. Is there a question before the house?

Mr. PRESIDENT. The Chair will rule that the substitute of the gentleman from Richland is in order, subject to appeal and that it can be placed in this report of the Committee of the Whole.

Mr. STEVENS. If that is the ruling of the Chair, I will withdraw my motion to recommit.

Mr. MILLER. I want a roll call on that motion if we have got to it.

The vote was then taken on the substitute of Mr. PURCELL to section four, and the substitute was adopted by a vote of 48 to 26.

Mr. SCOTT. I move that the words "one," "three" and "five" be inserted in place of the figures "3," "5" and "7" in section eight.

The motion was lost by a vote of 51 to 17.

Mr. JOHNSON. I have an abiding conviction that the people of this state want their officers elected for a definite term, and therefore I offer this amendment to section nine: After the word "clerk" in the first line insert the words "elected by the people, who shall hold his office for the term of four years."

The amendment was lost by a vote of 46 to 25.

Mr. RICHARDSON in explaining his vote said: I vote no. Yesterday when the same question came up I voted yes. My reason for voting no is that every delegate who had a resolution up yesterday that was defeated has run it in to-day. There has been noth-

ing accomplished to-day yet, and I think it better to let the report of the Committee of the Whole go to the Committee on Revision, and take action when the articles come up for final adoption.

Mr. CARLAND. I renew now my motion made in the early part of the session, that the report of the Committee of the Whole, as far as section nineteen is concerned, be not adopted.

Mr. WILLIAMS. I hope that the motion will not prevail. My colleague read a decision from the Supreme Court of Colorado, and I think it is easy for the members to understand why that court gave that decision. The Legislature did not submit to the judges, as it will appear, a particular bill, and ask their opinion on that. It seems to me that this provision should present itself to every member of this Convention. It places every member of the Legislature on an equality. It places a man unlearned in the law on the same footing as the man learned in the law, and it avoids forcing on the statute books an important law which may affect the whole people of the State, and afterwards have it declared unconstitutional. It seems to me that the motion of the gentleman from Burleigh should not prevail.

Mr. MILLER. I raise a somewhat different objection to the article from that which has been stated. The fundamental principle of our constitutional government is that it should be divided into three departments—legislative, executive and judicial. Under the article as adopted by the Committee of the Whole yesterday the Legistature may at any time, or any faction or bare majority, may ask the Supreme Court for their opinion. Suppose the Supreme Court were politically inclined towards the minority of that Legislature, if they gave their opinion they would shape it so as to help out their political friends. It would be political judicial legislation that would follow, and the Supreme Court would legislatate from the fact of their being called on to advise the Legislature. That is what it would amount to. It would interfere with the division of the government into its three departments. I object to it also because it would be burdensome to the Supreme Court; would result in no good to the people; would make the Supreme Court the legal advisers of the Legislature, and they would have to pronounce in advance on questions and without a trial, that would afterwards come before them to decide where the rights of parties would be involved. They would thus almost feel forced in some cases to abide by their original opinions, and the litigant would not get his rights nor would the law be administered as it

should be. I object to it on that ground—that it binds the Supreme Court in advance. The Supreme Court would become, when they had rendered an opinion, the attorneys of the party in whose favor they had rendered their opinion, they having rendered it without hearing the evidence on more than one side. When I go into court with a case that involves the same opinion, they have already expressed their views, and yet they are sitting on the bench as a Supreme Court to decide my rights. It would result in the gravest of wrongs; injury to the poor and the rich man alike, and would thwart the ends of justice.

Mr. MOER. I can't let this question go by without uttering my protest against the adoption of the section as it came from the Committee of the Whole. It seems to me that all we have to ask ourselves is—what will the Supreme Court do? Will they simply be an addition of three more lawyers to the legislative body? That it seems to me is all there is in it. Their opinion on these supposed questions will be *ex parte*, and without a hearing, and will be entitled to no more weight than that of the lawyers who may be present as members of the Legislature. A gentleman stated yesterday that a large amount of expense would be saved. But if even there was any expense saved it would be to the litigants. The State does not pay the expense for fighting these laws that it is claimed are unconstitutional, or for taking them before the court. The litigant will bear the burden of the expense, and it is a matter of small concern to this Convention whether they do or not. The gentleman stated that a small minority of lawyers in the Legislature, in the interest of the corporations, would get up and tell the majority that the law they were about to pass was unconstitutional. I venture the assertion that if a majority of lawyers get up on the floor of the Convention and say that a proposed bill is unconstitutional, it is just as safe to believe them as it would be to believe the Supreme Court if they said so. The lawyers in the Legislature, for the sake of their reputation, would desire to be right on the proposition, and they would investigate a question, look it up, and when they said it was unconstitutional their judgment would be entitled to some weight. The Supreme Court might not be able to investigate the matter and give you an off hand opinion. To place all men on the floor of the Legislature on an equality is something that nobody can do but Almighty God. It cannot be done by law. If men are unequal there is no law that will make them equal. The

decision of the Supreme Court in such a matter would simply be an addition of three more members to the Legislature.

Mr. LAUDER. The whole argument as advanced by the gentleman from Burleigh proceeds on the assumption that some of the members of the Legislature are in great danger from the lawyers. I am an humble member of the profession myself, and I don't believe that there is anything in the record of the lawyers of Dakota that warrants any such assumption. They don't need any defense at my hands; their record defends them, and I venture the assertion that of the same number of men, there will be found no greater integrity, no greater virtue than there will be found in the lawyers of North Dakota. This idea of talking about the lawyers as being tricksters is simply wrong. It is done for a purpose, and it is no credit to the intelligence of the men for whose benefit it is said, that it should be said. It is said that the lawyers will be interested in the corporations. They won't all be interested. There may be corporation lawyers in the Legislature, but I venture to say that all of them won't be corporation attorneys. Lawyers will have divers ideas, the same as other members, and if it is sought to have the impression created that the lawyers will be bought, I would suggest to the gentleman from Burleigh county that the lawyers are no cheaper than parties belonging to some other professions.

Mr. CLAPP. I cannot expect to add anything to the discussion, but I do want to place myself on record as being in hearty sympathy with the motion that this section be not adopted. It seems to me that we need stronger reasons than any that have yet been mentioned why this section should stand. The gentleman last night referred to a body of men who would meet and pass resolutions, and petition the Legislature to pass certain laws; and then some one would rise in the Legislature and say that the law was unconstitutional, and then it should be referred to the members of the Supreme Bench for their opinion. The gentlemen on the Supreme Bench, will be, perhaps, the peers, but not the superiors of the lawyers of the Legislature, and unless the case is tried before the court, and argued before them, they are just as liable to make a mistake as anybody else. Suppose an action is proposed that would be a benefit to the people, and they on their *ex parte* testimony, declare that it is unconstitutional, and the arguments, if properly brought before them, would have convinced them that

it was not unconstitutional. Then, in that case, the people would be deprived of a law that they needed and were entitled to.

Mr. JOHNSON. There is another view of the case which has occurred to my mind, and which has not been thoroughly discussed, and it is this—the premises of the gentleman from Burleigh are perfectly correct, namely, that the officers of the State and the Legislature, should have some guide in legal matters. So far, so good; we concede that, but his logic is wrong—his conclusion is fallacious. He draws the conclusion that the only way to get this legal advice is to put it in the Constitution that the appeal for legal information shall be made to the Supreme Court. We have a department specially provided to fill that—it has come down from the tradition of our fathers. What do we have an Attorney General for but to give this advice? His occupation would be gone if we were to adopt the report of the Committee of the Whole. The only advantage that the Supreme Court has over the justice of the peace is that it has the last of the case. They are no more likely to be right than men who are not clothed with official positions. They are no more likely to be right than the Attorney General. He will be elected for his integrity, ability and reputation he has obtained in a professional way. The Legislature should have some right. The men who come here to make the laws should be clothed with some power to put them on an equality with those who are learned in the law. The only question is, what department of justice shall they call on. You take in our counties. Here in Dakota very few of us have had any experience beyond county politics. I hold the office of district attorney, and it is the duty of the district attorney to furnish legal advice to the county officers and the county commissioners when called on. That is exactly the province of the Attorney General in the State—that is the province of the Attorney General at Washington. In order to harmonize and be consistent throughout, we should adopt the amendment offered by the gentleman from Burleigh.

If there is one principle we have become familiar with, and that the people believe in, and that our history and our laws and Constitutions have been adjusted upon, it is that a judge should not sit on the bench to try a case in which he is personally interested, or in which he has given counsel. In this very report we have provided that where a Judge of the Supreme Court has been interested in a case the other judges are to call in a District Judge to

sit in his place. Our Supreme Court will be made up of practising attorneys that have practised law in the courts of the Territory. Many of their cases that they have been interested in will come before their court, and we have foreseen this. The same argument applies here. They should be free and untrammelled when the time comes for them to decide a case, to decide it according to the law and the evidence and the letter of the statute, without being warped by any opinion that they may have had to give in an hour of excitement possibly, or political anxiety—in an hour when the authorities were not given and the argument was not made. The Attorney General, the proper man to dispose of these questions and give this advice, would be in a different attitude altogether. His position would not be compromised. He would have one side. The people who would say that it was unconstitutional could in no possible contingency call on the Attorney General, and he would consistently make the best fight he could.

Mr. WILLIAMS. The gentleman in criticising my remarks insinuated that I had cast some reflection on the lawyers of the Legislature. I heartily agree with the gentleman when he said that the lawyers elected as a rule are quite as honorable as any other men chosen, but there are always in attendance at every session of the Legislature a great many lawyers who are not members and who almost always represent corporations. They appear before the legislative committees and make arguments and work with members privately, and in the committee rooms, and in that way confuse and annoy the members. Now my understanding of this provision is this—that the Legislature will only on very extraordinary occasions ask the opinion of the Supreme Court and that will be on measures affecting the whole people—very important pieces of legislation. They will be asked to give their opinion on the constitutionality of proposed bills.

Mr. CARLAND'S motion, that the section as reported by the Committee of the Whole be stricken out, was adopted.

Mr. PARSONS of Morton. I have serious objections to section seventeen (in the original File) as it now stands. The judges are human, and may be sick. They may be unable to attend to their duties, and under this provision none of the other judges can issue a writ or interfere in any way. All legal processes in that district must be at once stopped till the judge returns from the visit he is making or gets well. It seems to me that there should be a provision made here whereby if a judge is interested

in a case, there may be an exchange of judges, and another judge can occupy his seat, or if a judge is unable to attend to his business they may apply to the judge of another district, not to try cases necessarily, but to issue remedial writs and so forth. I don't believe that the mover of this section ever intended that it should work the hardship that it will work if allowed to go as it is.

Mr. BARTLETT of Griggs. I would refer the gentleman to section thirty.

Mr. PARSONS of Morton. I withdraw my objection.

THE SUFFRAGE QUESTION.

Mr. POLLOCK. I move that the report be adopted without further reading.

Mr. MOER. I move that the report be adopted, except as to section two of the Franchise report, which shall be made to read after the word "sex," (striking out all thereafter)—"But shall not extend or restrict the right of suffrage without first submitting the question to the voters to be ratified by a majority vote." Then the substitute which I move for that recommended by the Committee of the Whole will read as follows :

SEC. 2. The Legislature shall be empowered to make further extensions of the suffrage hereafter at its discretion to all citizens of mature age and sound mind, not convicted of crime, without regard to sex, but shall not extend nor restrict the right of suffrage without first submitting the question to the voters to be by them ratified by a majority vote.

In offering this I do it with the view that all questions involving so much to the people as the extension of the right of suffrage, of fully extending it, doubling it in fact, should be submitted to the voters to be ratified. I believe the voters should have a chance to say whether they want it or not, and that it should not be left to their representatives, who may not represent them on that issue. The effect of the adoption of this section in the Constitution would be to place it in the power of the Legislature at any session to pass a law granting the right of suffrage to women, but before that law would take effect—before they could exercise the right of suffrage—the question would have to be submitted to the voters for their ratification. If it were defeated, then at the next session, or the second, or third or fourth, they could again submit it. So the matter is left in the hands of the Legislature to submit the question to a vote of the people, once or forty times. It leaves it so that when any demand is made on the Legislature

to extend the suffrage to women it is within their power to grant it so far as the legislative power goes, but the people must ratify it. I believe that that is what we should have, and I don't believe that anybody can consistently or logically defend any other position, for whatever great changes we want made should be first voted on directly by the people. We have a prohibition question, and it is universally agreed that the people should be the ones to say whether we shall have prohibition or not. The Legislature can enact a law, and if it fails of ratification they may again at some future time enact another law to be again submitted.

Mr. SCOTT. I was not in favor of the resolution or the section as it passed the Committee of the Whole, and under the form in which it was discussed and the manner in which it came up it admitted of no amendment whatever. The section had to stand as a whole or fall altogether. I believe that this is a matter of great importance—that the question as to whether or not there shall be woman suffrage is of equally as much importance as anything that will come before the people of this State. I regard it as being a matter of far greater importance than prohibition, which we will submit to the people for their acceptance or not. If we consider that the question of prohibition is of so much importance that it should be submitted to a vote, why should not this question of woman suffrage also be submitted? I would as soon, and rather, see the word "male" stricken out of the first section right here and now, and extend suffrage to women right in the Constitution, as to have the clause as it now stands form a part of this Constitution. I am satisfied if this clause as it now stands becomes a part of the Constitution, it is only a question of a very short time—from now to the next Legislature, or perhaps a year longer—when it will become a law. The question is not one that has been sufficiently thought of by the public, or demanded sufficiently by the public for us to take this step at this time. There has been no serious discussion of the question—it has only been agitated by a few, and so far as I am personally concerned I should be willing to leave it to the women of the State themselves, provided they would get out to vote—to leave it to them to say whether or not there should be woman suffrage.

Whether we want woman suffrage or not is not a question to be discussed here, but when we adopt section two and leave it in the shape it is now in, with the number of people who come here year after year for the purpose of influencing the Legislature, we might

as well just strike out the word "male" and have woman suffrage at once. I don't believe that it is a fair proposition that we should confer on the Legislature the power to enact a law that they have no right to repeal, and that is just what we are doing if the section which we carried yesterday is adopted. We say that the Legislature shall be empowered to make further extensions of suffrage at its discretion. If they pass a law of this sort, it is gone beyond their control, for the words of this section provide that they shall not restrict the suffrage without a vote of the people. Why should we give to the Legislature power to extend the right, when we take from them the power to restrict it? Is it not equally fair that the people should vote as to whether or not it shall be extended, as that they shall vote as to whether it shall be restricted? I am in favor of the proposition of the gentleman from LaMoure, and if section two passes as it is now, I would rather have the word "male" stricken out of the section, and let us have woman suffrage at once. I don't believe that it is demanded except by a very few people who live in the State. It has not been agitated; it has not come up sufficiently for discussion, and we should be careful. I believe in letting the people vote, and if they desire it I don't know of any better judges as to whether or not we should have it than the people. The Legislature is certainly not superior to the people. Why, then, should they have superior wisdom that they should say what the people want, whether they have been elected on that issue or not?

Mr. POLLOCK. I have very little to say for the reason that this matter was thoroughly and ably discussed in the Committee of the Whole yesterday, and it was passed by a good vote. It seems to be unnecessary that we should go over all this ground to-day before proceeding with a vote on this report. But I desire to refer to one or two of the objections urged in connection with this amendment. In the first instance the gentleman from LaMoure says that no matter of importance should be intrusted to the Legislature. I would ask why permit the Legislature of the incoming state to pass any law of importance without submitting the question to a vote of the people? If it is good in one instance it is good in another. It may be urged that this is of greater importance than many other questions that will come before the Legislature; but no Legislature is going to pass on a subject of as great importance as this without knowing the will of the people is behind them. They may determine that it is in ac-

cordance with the will of the people, that the matter be submitted to a vote of the people for ratification. It is in their power under this section to do that, or to pass on it in some other way in their discretion. The further objections urged that they may pass a law that they cannot appeal. In the first place they are acting as representatives. If they are required to submit it to the people they submit it, not to the whole people, but to a portion, taking in as it does the negroes, the naturalized citizen, the civilized Indian, and the man who may have declared his intention of becoming a citizen—in fact to all except those who are vitally interested in the matter. On the other hand if you restrict the Legislature, and prevent them from repealing the law of their own motion, then they must submit it to a vote of the whole people to determine whether or not the women shall continue to exercise the franchise. I hope that no amendment to this section will be permitted. If it is to be amended, it might as well be stricken from the Constitution altogether, for if we are to have a vote of the people and it is to be necessary to vote on it, we might just as well have a constitutional amendment substituted as to the question of woman suffrage. This is as long as it is broad, and if the amendment prevails we might as well exclude the section entirely.

Mr. ROLFE. The gentleman from Cass refers to the point made by the gentleman from Burleigh that we permit negroes, ignorant negroes, full citizens, partial citizens, persons of Indian descent who have severed their tribal relations to vote, and therefore they are not capable of passing on this grave question. But we must not forget that the Legislature to which he proposes to relegate this problem, are elected by the very class of citizens whom he thinks are not capable of self-government Yesterday when this section was passed, the vote by which it passed surprised me, and I cannot yet believe that all who voted in favor of the section as it now stands clearly understood that they were voting for the incorporation of this in the Constitution, thereby taking it out of the power of the people to settle this matter except through their representatives in the Legislature. I desire to remind the gentlemen of the Convention that the amendment of the gentleman from LaMoure simply and solely leaves this grave question to be settled by the people and all the people, rather than by a small body—often times not clearly representative—namely, the Legislative Assembly.

Mr. HARRIS. I don't propose to take up the time of this Con-

vention, but I have one objection which has not been mentioned. I am perfectly willing that the Legislature shall have the power to give the vote to women, but I am not willing that one Legislature shall enact a law which another cannot repeal. This section says that the right of suffrage may be extended, but shall not be restricted without a vote of the people. For that restriction I am not in favor of the section.

Mr. BARTLETT of Dickey. I am aware that there are a great many things in theory that are very good, as long as they are theories, and I am also aware of the fact that we heard a very earnest speech in favor of female suffrage here—a subject that I did not know was before the house. I am also aware of the fact that in all my travels wherever I have been, if the question was put to a promiscuous crowd of ladies as to whether or not they wanted to vote, they have always said no. The answer to that made by the advocates of the theory is that the ladies are enslaved. They have lived so many years and they don't know what they do want, simply because they are enslaved. I ask every gentleman here, and every woman here, if by their experience there is true happiness in those families where they are calling for female suffrage. What is your life's experience? Echo answers every time, that where two parties fight with one another in the same family, that happiness does not follow. In some churches they prohibit marriage because of differences in religious views. Do you know a family where one of the members of that family is strongly orthodox and the other is strongly liberal, that in nine cases out of ten it does not make sorrow in the family? Certainly it does—it is the history of the world. The only way we can tell about this thing is to take experience—what we have seen in life. Three years ago in St. Paul, the women of America who believed in woman suffrage met in convention and they had a lady reporter that reported that convention. There were there 500 of the most talented women in America. I don't deny their talent and ability, but I do deny most emphatically that the principle they advocated would bring any happiness into the world. The lady who reported that meeting wrote me and, said she: "In their countenances you could see intelligence, but you could also see sorrow and woe. They are anything but happy people, and their countenances show that their homes are not happy." Show me one single individual family that is in favor of woman suffrage —I mean those who make a business of it—and how are their

children? Do they raise a family equal to those who don't believe in it? No. That is life's experience of those who have noticed these things. Do you believe for one moment that where a man and woman are living together and they are both seeking for greatness—has not your life's experience taught you that they do not get along well together? Are you not aware of the fact —every gentleman here—that in such a case they won't pull in unison together. They may be both republicans or both democrats together, but the moment there is a discord, and unfortunately it will come in a great many cases, that very moment if the man is a republican the woman will become a democrat, or if the man is a democrat the woman will become a republican. That is the history of the world, and there will be bickering. Anything that brings discord and sorrow into the family is not for the best interests of the people.

Mr. PARSONS of Rolette. I move the previous question.

The question as to whether the main question should be now put was carried.

The amendment of Mr. MOER was adopted by a vote of 35 to 25.

Mr. HARRIS in explaining his vote said that he was in favor of giving the Legislature the power to extend the franchise to women, but thought it should also have the power to repeal the law.

Mr. SPALDING. I move the following amendment to the substitute of Mr. MOER:

SEC. 2. The Legislature shall be empowered to make extensions of suffrage to females of mature age and sound mind, not convicted of crime, and if such extension is made, may at any time thereafter restrict the same.

I move this because in private conversation with members I have heard them express themselves as willing to vote for this, provided the Legislature is given power to repeal such a law as a previous Legislature may have passed, and such was the tenor of the remarks of one or two gentlemen.

Mr. LAUDER. I hope this motion will not prevail. It seems strange that in regard to this particular question the advocates of woman suffrage are so very much averse to leaving this question to the people. I am opposed to this amendment for the same reasons that I stated here yesterday. If we leave it to the people to determine it will be settled finally as the policy of the State, but as long as it is left to the Legislature it will be up this term, and next term and the Legislature will be overwhelmed

with petitions and lobbies and their work will be obstructed. I don't care to criticise the advocates of this measure here, but my impression always has been that any proposition, the mover of which was afraid to submit to the people, was not a proposition that should be received with favor. The people are the source of power in this country, all the power is vested in the people, and it seems to me that in a question of this importance the people should be allowed to speak, and when they do, be it one way or another, it should be final. That question is then settled and accepted as the policy of the commonwealth. I would not oppose an amendment here providing that when it is submitted by the Legislature all persons over 21 years of age should vote, women and all. I would give them a chance in the Constitution—in the document we are forming here—to vote on this question as well as the men. I don't want the Legislature to go to work and pass this law without saying a word to the people about it until after it is done. Probably there will be a lobby to repeal it and then another lobby to pass it again. Leave it to the people—that is the tribunal to which this question should be referred for final adoption.

The amendment of Mr. SPALDING was lost by a vote of 26 to 34.

Mr. TURNER. I move that the report of the Committee of the Whole be amended so as to read:

"The Legislature shall be empowered to make further extensions of the suffrage hereafter at its discretion to all citizens of mature age and sound mind, not convicted of crime, without regard to sex, but not to hold office, but as otherwise provided for in this Constitution, without being submitted to a vote of the people."

Mr. TURNER. I rose twice before to say something on this question, but there seemed to be an effort to shut off anyone that had something to say on the side that I take. It has been argued that if this matter is left to the Legislature to grant the privilege or right of suffrage to women, and also the privilege as so provided in the last amendment, of restricting that at their pleasure, it would lead to the enactment at one session of the Legislature of a law that would be repealed at the next session. I submit that that has not been the case where this question has prevailed in other states—in those states where the suffrage has been extended to women. In Kansas where suffrage has been granted to women in municipal matters, it has met with such favor that it has not been a matter for the Legislature to deal with at one session since

it was granted. It has been argued here that if the elective franchise was granted to ladies, the result would be unhappiness in the home, and to prove that position it was presented before you as a consideration that would influence your votes that at a large gathering of ladies that met at St. Paul some time ago, they were described as being very unhappy in appearance. Now, Mr. PRESIDENT, I want to present to you the fact that persons who are enslaved are not usually very happy. Some time ago an individual was down in the Southern States when slavery prevailed there, and he saw a slave girl on the block to be sold. The tears were running down her cheeks—her eyes were fixed on the ground, and she was the very picture of misery and unhappiness. The gentleman went up near the block, and when bids were invited he bid, and the girl was sold to him. He then said to the poor creature: "Now you are free." She did not understand the meaning of the term. When he began to give her advice and tell her what she should do, saying that she was free, the thought dawned on her mind what was meant by the gentleman's purchase. As he moved away she ran after him exclaiming: "I'll serve him for ever; he redeemed me." Is there any reason why these women should be happy when they are deprived of their just rights and privileges, and are compelled to obey laws in which they have no right to cast a vote or say whether these laws shall prevail? Is it not reasonable that these women should be unhappy when they see their sons dragged from their protection, under the influence of those who are following what they hold to be an unlawful business, dealing out that which destroys the manhood of their sons, and which curses and blights——

Mr. NOBLE. I think that the gentleman should confine himself to the amendment.

Mr. PRESIDENT. The gentleman will speak to the amendment.

Mr. TURNER. It has been argued on this floor that the right of suffrage should not be granted to women by the Legislalature on the ground that the Legislature would have no power to withdraw that suffrage, under the article that is being considered. I hold that when the privilege has been granted to a people of exercising the franchise, that then after exercising that privilege, after having lived in the enjoyment, it is improper to take away the privilege granted to them without giving them a voice to say whether they should have it taken away or not. I hold that when

the suffrage has been granted to men who may come to this Territory who have not become citizens of the United States—that privilege should not be taken away from them except by a vote of the people. I hold that when Indians have severed their tribal relations and they become proper citizens, and are given the enjoyment of the franchise, they should not be deprived of it without having a voice in the question as to whether they should suffer that deprivation or not. When the suffrage is granted to females they should have a voice to say whether that privilege should be restricted, and whether they should further enjoy that privilege or not. Holding these views as I do, I am anxious that this amendment should pass, so that the right of the franchise may by the Legislature be extended to women, but not the right to hold office unless the voice of the people so declare.

Mr. FLEMINGTON. It seems to me that this question has been very thoroughly discussed, and the two sides represented, and I move the previous question.

The motion of Mr. TURNER was lost.

The article as amended by Mr. MOER was then adopted.

EVENING SESSION.

Mr. RICHARDSON. If it is in order I would move that the Convention resolve itself into a Committee of the Whole and take up the report of the Legislative Committee in reference to the number of senators that there shall be.

Mr. PRESIDENT. The unfinished business is the report of the Judiciary Committee.

Mr. PURCELL. I presume the purpose of the motion of the gentleman from Pembina is to allow the Apportionment Committee to get to work. They have delayed in getting their report out till the Committee on Legislative Department have reported.

Mr. SCOTT. Would it not be well for us to complete the adoption of the report of the Committee of the Whole of yesterday? We have still a part of that before us.

Mr. WILLIAMS. I think we would expedite matters by following the resolution of the gentleman from Pembina. The Committee on Apportionment desire to get to work and they cannot proceed till the Convention has acted on section two of the report of the Legislative Committee. I think we would do well to dispose of that question.

Mr. MILLER. I move to amend the motion in this—that we proceed to the consideration of section two and eight of the legislative article as it now exists without going into the Committee of the Whole. I think that our experience has been that the work in the Committee of the Whole has been almost useless. We spent the entire day yesterday and the evening in considering matters in the Committee of the Whole, and we have spent all today in undoing what we did yesterday. I object most decidedly to going into Committee of the Whole. I see nothing to gain by it except procrastination and delay. Our rights are all protected in this body more fully than they can be in Committee of the Whole, and when we do something here we have got it done ready to go to the Committee on Revision and Adjustment. If we do it in the Committee of the Whole it will be taken up here again, and spend more time over it, which will be wasted.

The motion was seconded by Mr. BARTLETT of Griggs.

Mr. ROLFE. I think that the Committee of the Whole has acted on section eight, and the Convention has adopted the report of that committee on section eight.

The motion of Mr. MILLER was carried.

Section two of the report of the Committee on the Legislative Department was then read as follows:

"The Senate shall be composed of not less than thirty nor more than fifty members."

Mr. PARSONS of Morton. I move the adoption of this section.

The motion was seconded, and carried.

Mr. STEVENS. I understand that section two is adopted. Does that adopt it as one of the articles of this Constitution?

Mr. PRESIDENT. The Chair is of the opinion that under the rules that takes it to the Revision Committee. It has to be adopted again as the Chair understands it after it comes back from the Revision Committee.

Mr. PARSONS of Morton. I suppose it is generally understood that when we use the word "adopt" we adopt it as a proposed article or section, and it goes to the Revision Committee, and then comes back to us for third reading.

LEGISLATIVE APPORTIONMENT.

Mr. NOBLE. I understand that the Chair rules that section eight of this report has been adopted. I would like to ask if that

section is adopted as reported by the committee in the Journal page eight, July 31st.

Mr. ROLFE. The report of the Committee on the Legislative Department was withdrawn except as to section eight, and the report that was subsequently introduced is File No. 129. File No. 129, section eight, reads as follows: "The House of Representatives shall be composed of not less than sixty nor more than 140 members."

Mr. SCOTT. I am laboring under a mistake if that is the fact. Has the last report of the Legislative Committee been printed and laid upon our desks?

Mr. ROLFE. It has.

Mr. SCOTT. That is certainly not the section that was reported by the Legislative Committee. The report had been submitted, but the members had not signed it, and the Chairman requested leave of the Convention to withdraw the report and section eight was amended.

Mr. FLEMINGTON. As I remember it the Chairman of the Legislative Committee simply asked leave to withdraw the report of the committee except these two sections, and these two sections remained before the Convention as first submitted, and as considered by the Committee of the Whole.

Mr. NOBLE. If that is the case there must be a supplemental report of the committee to the report that was adopted by the Committee of the Whole. What I am opposed to is this section eight as amended by the Legislative Committee before the new report or the supplementary report being considered here, as adopted by the Committee of the Whole. I would like to know whether this portion of section eight reading—"who shall be apportioned and elected at large from the senatorial districts" has been adopted by the Committee of the Whole?

Mr. PRESIDENT: That is not as I understand it.

Mr. SELBY. I understand that the proposition was that the Legislative Committee requested to withdraw the article with the exception of sections two and eight. If you will turn to page fifteen of the Journal of Thursday, July 25th, you will find the matter was discussed in Committee of the Whole and the recommendation was made that the Convention adopt section eight. The report was adopted by this Convention with the recommendation that section two be postponed till a future time.

Mr. CLAPP. We find the final determination of the subject

in the next day's proceedings on page two, in which Mr. WILLIAMS is reported to have asked for the unanimous consent to withdraw the report of the Committee on the Legislative Department except sections two and eight, which request was granted.

Mr. SCOTT. The Legislative Committee were acting under a mistake and did not know of the fact, or if they did know, had forgotten. A majority of the committee reported section eight with the amendment which will be found on page eight of the Journal of the 25th of July. The manner in which the section came to be amended was this—we had amended section five—it was the bone of contention, and was the reason the report was asked to be recalled. We amended section five and would have inserted in that the part that we put on to section eight, but we thought it was better arranged and in a better place to add it to the end of section eight. We had it all prepared and added to section five, but at the suggestion of Mr. WILLIAMS and some other gentlemen of the committee we came to the conclusion that the better place for it was at the end of section eight, and therefore I would move if it is in order that section eight be amended by adding to it the following words: "Who shall be apportioned to and elected at large, from each senatorial district."

Mr. NOBLE. This seems to me to be amending the report of the Committee of the Whole which I think we have had a ruling upon. Section eight has been reported back from the Committee of the Whole and adopted. Now it is proposed to amend that section.

Mr. SCOTT. I will withdraw that motion and put it in this form: That the following words be added to section eight of File No. 129: "Who shall be apportioned to and elected at large from each senatorial district."

Mr. NOBLE. Then you will be amending the report of the Committee of the Whole. That is a point of order I shall make. I will say further that at the proper time I shall object to that clause, but I want to do it at the proper time.

Mr. SCOTT. I don't see why we cannot add anything we choose to something that is before the Convention. As section eight originally stood it was adopted by the Committee of the Whole and the report of the Committee of the Whole was adopted. The Committee of the Whole is discharged so far as that is concerned. Now the section is before the Convention for consideration. I don't

ask that any portion of the section that we have adopted be reconsidered, but merely that something be added on to that section. The section is all right so far as it goes, but it does not go far enough.

Mr. ROLFE. I think the gentleman from Barnes is all right in the position he takes. The first portion of section eight has been adopted by the Committee of the Whole, and their report has been adopted by the Convention. Now the gentleman from Barnes proposes to add a clause to the section which has been adopted by the Convention. It cannot be considered as being an amendment to the report of the Committee of the Whole at all, because as he states, that which he proposes to amend, if you please to call it so, is the action of the Convention and not the action of the Committee of the Whole, and it does not come within the ruling of the Chair of a few minutes ago.

Mr. NOBLE. It seems to me that this matter ought to be plain enough. Section eight originally was adopted by the Committee of the Whole and the report of the committee was adopted by the Convention. Under the rules that portion of the article that was adopted is now before the Revision Committee. It is not before us at all.

Mr. PRESIDENT. I think the report of the Committee on the Legislative Department has not been adopted yet. It is still in the hands of the Convention—is unfinished business.

Mr. PARSONS of Morton. Look on page fifteen of the minutes of July 25th.

Mr. CARLAND. I move that the Convention proceed to consider the report of the Committee on Elective Franchise, and let the Legislative Committee find out in the meantime what has been done.

SCHOOL AND PUBLIC LANDS.

Mr. MILLER. I move that the report of the Committee of the Whole be adopted with the exception of section eight and that section eight be re-referred to the Committee on School and Public Lands. I do so for this purpose. In brief it is provided by the Enabling Act under which we are building this Constitution that there shall be a half a million acres of land in addition to the school lands, sections sixteen and thirty-six, set apart for educational and charitable purposes. Now then as to the school lands, sections sixteen and thirty-six in each township, the En-

abling Act or Omnibus Bill provides that they must not be sold for less than $10 per acre. This is all proper enough, for these lands are in localities where they can be sold. As to the half million acres of land which may be used as an endowment for various educational and charitable institutions, the Enabling Act fixes no price at which they may be sold. In section seven of this article it provides that:

"All lands, money or other property donated, granted or received from the United States or any other source for a University, School of Mines, Reform School, Agricultural College, Deaf and Dumb Asylum, Normal School, or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such land as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased, but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the State, and the State shall make good all losses therefrom that shall in any manner occur."

This covers, of course, all of the lands donated to the State except the 50,000 acres donated for the purpose of constructing buildings at the Capital. In section eight which I move to have re-referred to the committee, occurs the following:

All lands mentioned in the preceding section shall be appraised and sold in the same manner and by the same board, under the same limitations and subject to all the conditions as to price and sale as provided above for the appraisal and sale of lands for the benefit of common schools, but a distinct and separate account shall be kept by the proper officers of each of such funds.

The point raised is this—we might just as well provide that the 450,000 acres of land donated for school and charitable purposes in addition to the school lands proper, shall never be sold, as to put in this clause here that they may be sold on the same terms and conditions as the school lands—to-wit, at $10 an acre, for we all know that a large portion of that half million acres has got to be selected west of the Missouri river, in what is commonly known as the Bad Lands, or in the poorer district east of the Missouri river, and they will never bring $10 per acre during the lifetime of any member of this Convention. I desire to have this section re-referred to the committee and ask them to make an amendment leaving the price to be paid for these lands to be fixed by the Legislature, or in some way not to take them forever away from the purpose for which they were intended.

Mr. GRAY. I move that sections nine and eleven also be referred back to the committee.

Mr. STEVENS. The object of the gentleman from Cass in having this section eight re-referred to the committee is this—it has been provided that the land may not be leased to any one person, company or corporation in greater amounts than one section. That was done because the Enabling Act prescribes the same thing. Now the gentleman from Cass desires that remodeled so that in the Bad Lands or places where the lands will be used solely for grazing purposes, if Congress should be induced to pass a provision allowing us to lease more than one section to an individual, we would be able to do so without having an amendment to the Constitution. If we put it in this Constitution we can never get the relief by merely getting it from Congress, for the Constitution will still tie us up. That as I understand it is the object of the gentleman from Cass in getting this re-referred to this committee.

Mr. MILLER. I will add to my amendment that sections nine and eleven also be referred back to the committee.

Mr. CARLAND. No one will say that any institution is mentioned in section seven except educational institutions—to-wit: the University, School of Mines, Reform School, Agricultural College, and Deaf and Dumb Asylum. Section eleven of the Enabling Act says that all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than $10 per acre. It involves the determination of what those institutions are for in section seven. Most of them are for educational purposes.

Mr. MILLER. I thought at first that this covered all lands granted for educational purposes. I don't now believe it bears that construction.

Mr. ROBERTSON. I would invite Mr. MILLER'S attention to that word "herein" in the Enabling Act in section eleven. I think that word is broad enough to cover the whole act. I don't think there is an attorney in this room but will say that in his opinion it covers the whole act—every section in it.

Mr. MILLER. If that is a fact, it could do no harm to have these three sections re-referred to that committee that this specific question might be carefully considered by them and other members of this Convention. If we pass these sections as they are, we irrevocably tie up this land.

Mr. ROBERTSON. I have no objection to having it re-referred, but I do object to have the minds of delegates misled in regard to the meaning of section eleven of the enabling act. That is all. If I had any objection to re-referring this it would be on the ground that it is taking up time to no purpose.

The amendment of Mr. MILLER was adopted.

Mr. TURNER. I wish to call the attention of the Convention to the report of the Committee of the Whole which is now under consideration. It states that after the word "saleable" in line eight, the words "at not less than $10 per acre," should be stricken out, and that when so amended the section should pass. I would say that that will be in direct conflict with the Enabling Act. The Enabling Act says that, "All lands herein granted for educational purposes shall be disposed of only at public sale and at a price not less than $10 per acre."

Mr. MILLER. That is all very clear. The words "not less than $10 per acre," were stricken out of the File because they were superfluous, and served to make the whole File a little doubtful as to construction. The whole point is covered in section six of the same File, "No lands shall be sold for less than the appraised value, and in no case for less than $10 per acre."

Mr. SCOTT. I don't see why, if the report of the Committee of the Whole is not adopted, this should go back to the Committee on School and Public Lands. It will be some time before it can be reported back again to us, and then it will come to the Committee of the Whole again, and will then be reported by the Committee of the Whole to the Convention. Why can't we consider this just as well in the Convention, and decide what we want?

Mr. BEAN. I agree with the gentleman from Barnes. The Committee on School Lands considered this question, and they have been unable to find how they can sell lands for less than $10 per acre. I see no reason for re-referring this ——

The point of order was called on the speaker by Mr. BARTLETT of Griggs, who said: "It seems to me that this Convention went over this report the other day very thoroughly and adopted it, and now a week later we want to refer it back to the committee. I say let us adopt this report of the Committee on School Lands. If we became convinced that we have committed an error, we can remedy it when it comes before us again after it has gone to the Committee on Revision."

Mr. BEAN. I would like to know if I am in order.

Mr. PRESIDENT. You are.

Mr. BEAN. I am entirely opposed to referring this back to the committee without some reason being given. The supposition has arisen in the mind of one man that perhaps we can sell these lands for less than $10 per acre. If there is any ground for that supposition I would like to have the ground brought forth. If we can so sell them I would be glad to receive this report back, but until there is some ground, something brought up in the Omnibus Bill, I don't think there is anything but loss of time to refer it back.

Mr. MILLER. Section eight provides that you shall not sell for less than $10 an acre. The Omnibus Bill does not say that you shall sell these lands for no less than $10 an acre. I am satisfied that if the Omnibus Bill does not require that they shall be sold for $10 an acre, that the committee does not desire that we shall fix the price at that high figure. I think we would all like that the Legislature should fix the price, and if possible so fix it, with the consent of Congress, that more than one section can be leased to one party. We may want to ask Congress, if the Omnibus Bill does really fix the minimum price at $10, to change it by a new congressional enactment as to price, but if we put this in the Constitution, then we shall have to change the Constitution to be allowed to sell them for less than $10, in addition to getting the congressional enactment. It is not necessary that we should have sections eight, nine and eleven to conform to the Omnibus Bill, for if we are debarred by the Omnibus Bill from selling these lands for less than $10 an acre, where is the sense in our adding another obstacle by putting it in this article? We all concede that it would be idle to appraise these lands at $10 an acre, and I would like to have these go back to the committee.

Mr. McKENZIE. For what purpose is section eleven re-referred to the committee? I can see no good reason for so doing.

Mr. MATHEWS. I don't object to section eight being referred back to the committee, but I do object to having sections nine and eleven referred back.

Mr. STEVENS. The motion to refer these back has already been carried, and the question is now whether we shall adopt the report with the exception of these sections which have already been referred back to the committee. In relation to what the gentleman from Cass says, that these lands, if they cannot be sold

for less, Congress might be induced to reduce the price, I would also say that we have already stricken those very words, or words similar, from another section because they were considered, and were shown by the gentleman from Burleigh to be surplusage. If it is true that we can sell these lands for less than $10 an acre, and not conflict with the Enabling Act in so doing, then these words are surplusage and should be stricken out. It cannot possibly do any hurt to strike them out, and as I understand it, the only question before the house now is—shall the report of the committee as amended be adopted? If we do not adopt it, it is still before the House. The question is not before us now as to whether these sections shall be referred back, for we have already voted on that.

Mr. CARLAND. I would move that the report of the Committee of the Whole now under consideration be adopted with the exception of sections eight, nine and eleven. That will leave these sections before the Convention.

Mr. McHUGH. Has not that motion been already made? If so I move the previous question.

Mr. SCOTT. I call for a division of the question.

Mr. STEVENS. The amendment was that sections eight, nine and eleven be referred back to the committee, which becomes part of the original motion and the motion now stands—shall the report be adopted with the exception of those sections?

The main question was then put and carried.

Mr. PRESIDENT. The question is on the motion of the gentleman from Burleigh that the report of the Committee of the Whole, with the exception of sections eight, nine and eleven be adopted.

Which motion was carried.

PROBATE AND COUNTY COURTS.

Section twenty-seven of the report of the Committee on Judiciary was then read as follows:

There shall be established in each county a probate court, which shall be a court of record, open at all times and holden by one judge, elected by the electors of the county, and whose term of office shall be two years.

Mr. CARLAND. When the Convention adjourned we were considering this matter, and the pending motion was to strike out section twenty-seven in File No. 121 as just read and substitute therefore section twenty-four of File No. 131 which reads as follows:

There shall be elected in each organized county a county judge who shall be judge of the county court of said county, whose term of office shall be two years until otherwise provided by law.

Mr. MOER. I made that motion. This question of minority and majority reports is simply on the question of county courts —the only question that is reported on by the minority. It seems that the committee was very nearly divided on this question, standing about eight to seven. The Convention, also, seems to be very nearly divided on the same question, and many who oppose the county court system are willing that it should be tried under certain circumstances and to-day, so as to avoid further conflict, I would move that the Convention refer the matter of county courts back to the Judiciary Committee, and that the Judiciary Committee be instructed to prepare an article creating county courts, but making a provision that any county desiring to adopt the county court system shall first submit the question to the voters of such county, and that in no case shall any county elect a judge of the county court before the general election of the year 1890.

The motion was seconded and lost by a vote of 28 to 29.

Mr. MILLER. I move the adoption of section twenty-seven of File No. 121.

Mr. STEVENS. There is a motion pending that section twenty-four of the minority report, File No. 131, be substituted for the original section twenty-four of the majority report.

Mr. PRESIDENT. But that was made in the Committee of the Whole.

Mr. STEVENS. But the motion that was made in the Committee of the Whole under the understanding of the resolution to-night, would be operative here, as it was said that we were not to go into Committee of the Whole because we would have our work to go over again. It was decided to be the sense of the Convention that we should take up these matters in the Convention instead of going into the Committee of the Whole. I move to amend the gentleman's motion by making it read that we consider File No. 131, section twenty-four.

The amendment of Mr. STEVENS was voted upon and lost.

Mr. PARSONS of Morton. To bring the matter before the House I offer as an amendment that File No. 131 be substituted in lieu therefor.

Mr. MILLER. We voted on that question once, and then we voted to take up and consider the File.

Mr. MOER. I do not think we are here considering this as the report of the Committee of the Whole. We are considering it as a Convention. As I understand the gentleman's motion from Ransom, he moved that we proceed to consider the minority report. The gentleman from Morton offers now section twenty-four as a substitute for section twenty-seven of the majority report.

Mr. O'BRIEN. As I understand the matter, last night or yesterday afternoon we went into the Committee of the Whole for the purpose of considering this and other matters, File No. 121. We proceeded with the matter down to what is now section twenty-seven of the majority report. At that time it was getting late, the committee arose, and a few minutes after we adjourned. No report has yet been made by the Committee of the Whole, or at least no consideration by the Committee of the Whole has been had of the sections from twenty-seven on down to the end of the File. Now it seems to me that the proper thing would be for us to resolve ourselves into a Committee of the Whole and take up these different sections, or do it as a Convention.

Mr. STEVENS. I desire to ask what was done with the report of the Committee of the Whole on the Judiciary so far as was reported ?

Mr. PRESIDENT. It was adopted.

Mr. STEVENS. Did not they also ask for further time to sit, and was not that time granted them ? How are you then to get this out of the Committee of the Whole, having granted them further time ?

Mr. FLEMINGTON. I move that we do now resolve ourselves into a Committee of the Whole for the purpose of considering the Judiciary report.

Mr. PARSONS of Morton. I will withdraw my motion, for I only made it for the purpose of placing these gentlemen in the same light as last night.

The amendment of Mr. FLEMINGTON was seconded and adopted.

Mr. BARTLETT of Griggs. I move that section twenty-seven of File No. 131 be substituted for the same section in File No. 121.

Mr. MILLER. The motion as made by the gentleman from Griggs was covered in the last sitting of the committee, for I at that time moved to substitute twenty-four for twenty-seven.

The CHAIRMAN. The Clerk says that the records do not so show it.

Mr. WALLACE. I wish to move an amendment—that in the minority report after the words "organized county" in the first line, these words be inserted: "In which a majority vote in favor of the establishment of the county court shall have been had."

The amendment was seconded.

Mr. BARTLETT of Griggs. I can see no reason why any man on the floor of this Convention should oppose this amendment. If this Convention or the members of it desire to deal fairly, certainly there can be no opposition to it. All we ask is—as all we have asked is—that those counties that desire the benefit of the county court shall have it, and those counties that don't want it, shall not be forced to have it. They have been saying that they don't want us to force the county court on them, and we have come here prepared to say that we don't want to do it. We will meet you half way and say if you will give us the benefit of the county court, we will give you the benefit of your probate court. We are not trying to create a new court. We are seeking to improve the character of the one we have now, and I hope this amendment will prevail simply in the spirit of fairness and justice.

Mr. MOER. Upon the report of the minority of the Judiciary Committee there might have been a question in the minds of some delegates whether they could support it. There might have been those who were opposed to it for the reason that it enforced a county court system on all counties in the State above a certain population. Now the amendment proposed entirely obviates that difficulty. It simply gives each county of the State the right to have a county court if the majority of the voters desire it. In the name of all fairness what possible objection can any delegate see to this proposition? It is a proposition to leave the matter to the people—not a proposition to force on them something that they don't want. Whether it is a good system or not enters but little into the case. What possible objection is there to be raised against leaving the people to say whether they desire a county court, or whether they desire to retain the probate court? It is useless to go into an argument as to the respective systems—it is a question whether you will let the people say what they want. Many counties desire it, many possibly don't. Then allow each crunty to have its say in the matter and settle it at home. It does not cost the counties of Cass, Grand Forks or the other large counties a cent if we have a county court in LaMoure county. If LaMoure county votes for it I don't see what concern it is of

Cass county. The opposition has come from the larger counties, the reason being that their probate courts are now full of business, and if they gave additional jurisdiction to the probate court it could not take care of the business.

Mr. ROLFE. I wish to say just a word. It was urged last night by the gentleman from Cass that the probate system was the system. I suppose he means that he thinks this, and bases his opinion on the experience he has of it; and his experience of the probate system comes during his residence in Cass county, which must always be presumed to have within its borders talent enough to fill the office of probate court with credit to itself and satisfaction to the litigants. The same is true probably of Grand Forks. We have in this Convention, as one of the delegates, the judge of probate of that county, and his record here has been a good one. It simply strengthens the position which we took, that the larger counties are enabled to have good probate courts while in the outside counties they do not have probate judges of sufficient intelligence to send here. It has been urged by members of the Convention from the larger counties here to-day that the Supreme Court should be a traveling court to accommodate litigants. Now that argument came from gentlemen whom, if I am not mistaken, oppose county courts. They live in the larger counties, want litigants in the larger counties accommodated, but they are not willing that litigants in smaller counties should be accommodated in their inferior and primary litigation. If the interests of the people are sufficiently important to make it requisite that the Supreme Court shall travel about the Territory to accommodate litigants who are supposed to have heavy interests involved, then certainly the county court should be granted to the lesser litigants who are less able to pay the heavy expenses entailed otherwise. We plead simply for fairness, and ask to impose nothing on the larger counties which they don't want, but simply that we in the smaller counties shall have the privilege of establishing a court in our own borders which can handle the comparatively insignificant business that we have.

Mr. BARTLETT of Griggs. I hope this Convention will not be misled. I speak from some little experience, and as a man who has had to put his hand down in his pocket. I know if I know anything that the farmer, the poor man, ought to have a county court. I know as well as I know anything that it will be the means of saving them a great deal of money. It will keep busi-

ness from centralizing, and save money that would be spent hiring lawyers to attend to cases between terms. If these gentlemen don't want a county court in their own counties they are not obliged to have it, but why not give it to those who do want it?

Mr. CARLAND. Perhaps it devolves upon me to say something in behalf of the report of the majority of the Committee on the Judicial Department. The majority of the committee have reported to this Convention a provision providing for probate courts. A minority of the committee has reported a system of county courts, and asks that it be substituted in place of the majority report. Now, of course we are all here for the purpose of doing our best towards making a Constitution which will be adopted by the people, and which will best subserve their interests on every particular subject that the Constitution treats upon. It thus becomes necessary for the gentlemen proposing the minority report to establish to the satisfaction of this Convention that they have substituted and presented a better scheme than that presented by the majority. Now let us look at the minority report. Even as amended—as the question is now put—providing that the people shall vote on this—of course on this amendment arises the whole question of the county courts; for if this amendment is adopted it virtually adopts the whole minority report, and it must stand or fall by its provisions. We have provided a probate court with ordinary probate jurisdiction in every county. We have provided a district court which shall hold at least three terms in each county. What is provided by this minority report? It starts off in section twenty-five with the following:

"County courts shall be courts of record and shall have a clerk and seal. They shall have original jurisdiction in all matters of probate guardianship and settlement of the estates of deceased persons, and in all cases of lunacy."

Up to that point the county court has the same jurisdiction as has been given by the majority of the committee to the probate courts. Then the section goes on and reads:

In counties having a population or 2,000 or over, these courts shall also have concurrent jurisdiction with the district court in all civil cases, wherein the amount in controversy or the value of the thing sued for does not exceed $1,000, exclusive of the interest and costs, except in matters of probate, guardianship and the settlement of the estates of deceased persons.

There are a few counties that that section is drawn to especially benefit. They are counties in which reside the advocates of this report on the floor. This minority report puts the county court

into these counties with the same jurisdiction that we have provided for the probate court. I desire to call the attention of the Convention to this fact in reference to the allegation of the gentleman from Benson—that these probate courts have become a nuisance to litigants before them, on account of the irregular manner in which proceedings are had. It is a fact that in every new county the proceedings in courts of justice are irregular, and it takes a great many years before they become systematic, and before everything is done in proper order, and I say that if there has been irregularity, and if there have been actions which would subject the probate courts to criticism, it has been in the new counties, and will continue under this minority report to be the same, for there is no change in it except to change the word "probate" to "county." It is further provided that the county judge shall have jurisdiction in civil cases of $1,000. It is also provided that:

"Writs of error and appeals may be allowed from county to district courts, in such cases and in such manner as may be prescribed by law; *Provided*, That no appeal or writ of error shall be allowed to the district court from any judgment rendered upon an appeal from a justice of the peace or police magistrate for cities and towns. County courts shall have such jurisdiction in criminal matters as the Legislature may prescribe."

So it appears that there is to be established a court between the district court and the justice court. In order to get from the justice of the peace to the district court, according to the minority report, you cannot get from the justice court into the district court direct, because it is provided that appeals shall lie from the justice court to the county court, and appeals shall not lie from the county court where they have rendered judgment on appeal from the justice court. Secondly, you have established an inferior court that has supervisory and appellate jurisdiction over justices of the peace, and it is possessed of such jurisdiction as to subject matter and territorial limits, that it will never command the respect of any person who is seeking to review the judgment of an inferior court, as you will be no more satisfied with the judgment of the county court than with that of the justice of the peace, and you are precluded from appealing from, and getting out of, the county court. I cannot see why this system of courts should be established in counties of more than 2,000 inhabitants—certainly it should not go into effect merely to change the name from probate to county, and make county courts instead of probate courts in those counties. In section twenty-eight it is provided:

"County judges shall receive such salary as the Legislature may prescribe, and the salary may be different in different counties but until so prescribed the salary of county judges in counties having a population of 2,000 or over shall be $1,500."

I say the salary is too high for a justice of the peace, and too low for a man of sufficient ability to hold a court any better than a justice of the peace in the county. As an item of expense, also, if these courts are established in every county, it would work greatly against them, in that they would be very expensive. These courts would be possessed of such jurisdiction that where a man has a district court in his own county that sits twice a year where he can go in the first instance, he will go and these county courts in such a case will only be engaged in trying petty offenses and petty civil cases, which would have been tried by a police magistrate or a justice of the peace. I don't agree with the gentleman from Dickey that these courts will obviate the expense of litigation so far as the attorneys are concerned, because if he starts in the county court it is a certain thing if it is a case that is litigated very closely an appeal will be had to the district court, and if it is fought there hard, there will be another appeal to the Supreme Court. I leave it to any gentleman of intelligent judgment whether he can go into the county court and appeal to the district court, and from there to the Supreme Court at as little expense as if the county court was not in the way. If we only have the justice of the peace or police magistrate, if the suit is commenced there—if the party desires to appeal he may appeal to the district court and from there to the Supreme Court. But here he would be obliged to appeal to the court of inferior jurisdiction. He would not probably be any more satisfied with this judgment than with the judgment of the court from which he appealed, especially if it is a jury case. Of course I can imagine how those gentlemen who advocate county courts, have been inconvenienced. I have experienced the same thing myself. It was because we have not had enough judges in the Territory for the last ten or twelve years, but that system is going to be changed. We must not judge the future by the past. It would be unfortunate for us if we were not going to better our condition by forming a Constitution. That is what we are trying to do, and we have made these judiciary districts with a term of court in each organized county twice a year, and I don't think the grievances will ever occur again, and I think, that if we were to-day practicing law under

the system proposed by the majority report, they would not be in favor of this county court system.

Mr. MOER. I want to call attention to one thing—the gentleman's remarks will, perhaps, call attention to some defects in the minorty report—things that should be remedied and perhaps changed. But the gentleman begs the whole question, because he pays no attention to the amendment of the gentleman from Steele. The change is to be made by a vote of the people. What objection can he raise to allowing the counties, if they see fit, to have a county judge? The objection is to the population. Possibly that objection would be well taken were it not that the amendment had been offered. Under the minority report it was proposed that the Constitution should fix county courts in all organized counties of over 2,000 population. Now, under this amendment, it merely fixes them in counties that vote for them. As to the salary, the gentleman thinks it too low. Perhaps it is. If so, the gentleman can make an amendment to raise it. As far as that is concerned, I know in certain states in this Union judges of the district court get only $200 or $300 more, and possibly they will compare very favorably in point of ability with the district judges that we will have. But the question resolves itself to this—will this Convention allow the people of the counties to say whether they will have a county court or not? Is there anything unfair about that proposition? I have talked with a number of gentlemen who have opposed the county court system, and their position has been based entirely on the question that it was to be forced upon them. Give the county court to those counties that want it, and to those only—give them the right to say whether they will have it. We are safe in leaving this to the people themselves.

Mr. BARTLETT of Griggs. I agree with the gentleman from Burleigh in this—that we are here for the purpose of giving the State the best judiciary system we can, but it strikes me that a man who rises and says that he opposes this amendment, is actuated by some other motives than the best interests of the State. The county court system has been tried before. It is in use in Illinois, Colorado, New York, Nebraska, Missouri, and several other states. I have letters from some of the most eminent lawyers in Colorado and Illinois. They say that it is unquestionably the most popular court with the attorneys and the people, and yet these gentlemen here say that the counties of North Dakota

that want to take advantage of the system shall not do it at their own expense. I think it is an outrage and unjust. We have had gentlemen wax eloquent in behalf of bringing the Supreme Court to their doors—we have had attorneys grow eloquent on behalf of sitting in their offices and suing a man anywhere in this Territory. Now it does seem to me in view of the fact that the opposition comes from where?—from solely and absolutely and entirely the counties that know they would be the centers of the judicial districts, and would always have the judges of the district right at their doors—it does seem to me in view of this, that something else enters into our deliberations other than the best wishes for the welfare of the State. Last winter I read some remarks made by Judge Walter Q. Gresham. The question under discussion was the relief of the higher courts. He said that Illinois suffered less than any other state so far as his knowledge went in that regard, and he said that it was due in a measure to the superior quality of their inferior courts. He said that a state could afford to pay $10,000 a year to a Cooley to sit on the county or district court bench, better than $5,000 on the Supreme Bench. I believe that the better the judge we get in the courts of original jurisdiction the cleaner and better is our litigation. We don't propose to put a Cooley on the county court bench, but we propose to get better men than we have as justices of the peace. We propose to try to improve and elevate our courts of original jurisdiction. That is all we ask. I want to read a portion of a letter from John P. Altgeld, of the Superior Court of Cook county, Illinois. I wrote him—I did not know him, except by reputation, and I wrote him particularly as to the popularity of the county courts throughout the state, and not in the City of Chicago. His words ought to have some weight with the members of this Convention who have not made up their minds on this question. He says:

"In answer to your letter inquiring about the jurisdiction, usefulness and popularity of county courts in this State, and whether they could not be made to take the place of justices of the peace, so as to do away with the latter, permit me to say that in this State, county courts have jurisdiction in all tax matters, insane cases, all probate matters, election matters and in civil cases where the amount involved is less than $1,000. In this county owing to the press of business, the Legislature created a probate court several years ago to relieve the county court. I may say that the county courts have jurisdiction in those matters which come

nearest to the people, and most directly affect them; and all things considered, I believe they are the most useful and the most popular tribunals in this State. So far as I can observe, business is usually done, not only in a legal, but in a businesslike and common sense way by them, and without unnecessary delay, the latter being something which cannot always be said of our higher courts. I would recommend the abolition of the office of justice of the peace, and give the county court jurisdiction in all such matters, taking care, however, at the same time, to provide that the county judge, as well as the clerk and sheriff, should be paid a fixed salary—should under no circumstances have any fees, but that all fees, where any are collected, should be paid into the county treasury. If you have justices of the peace you cannot pay all a salary, because of their number. And while there will be here and there one to whom the office will be incidental, there will be a great many who will depend largely on the fees for a living; and this leads everywhere to the same results, viz., injustice, oppression, extortion and frivolous lawsuits, ruinous in the expense and loss of time they entail. The courts become clogged with business, while the poor and ignorant suffer. Do away with both justices and constables, for they must depend on fees; and it is difficult to conceive of a worse demoralization and rottenness than usually grows out of the system. Provide for sufficient deputy sheriffs to do all the work required to keep peace and do the court work, and pay each a salary, and under no circumstances let any keep the fees. To permit any officer, whether judicial or executive, connected in any manner with the administration of justice, to collect and keep fees, is to offer a standing temptation, if not a bribe, to do wrong in very many matters. And it is asking too much of human nature to expect a hungry man to be very particular about the means or methods which will secure him bread.

"Have the courts easily accessible and always open for business. There is no sense in having terms of court, and these held only a few times a year, so that there must be delay in getting a trial, whether there is much business or not. If the same judge is to hold the court in several counties, or if there is but little business, he can easily arrange matters by having the clerk give notice as to when a case will be heard. There is no reason why the average case should not be tried in the circuit court in fifteen days after service, just as it would be before a justice of the peace.

"In regard to reforms in the administration of justice, I will say that last winter at the request of the Hon. Sherwood Dixon, then a member of the Legislature, I pointed out some of the most glaring defects, as well as the results following, and made some suggestions as to amendments. This was published at the time in all of the Chicago papers. * * * * Although no general amendment of the law relating to the practice in our courts was passed last winter, yet there is no doubt that it will soon be brought about, as the sentiment in its favor is becoming general."

Mr. BARTLETT continued: That testimony ought to be worth something. It should stand somewhere on a par with that of the man who gets up here and says we don't want county courts, and that the county that asks for them cannot have them. I have another letter here from L. C. Rockwell of Denver, Colorado. I wrote him asking the same question. Mr. Rockwell has a more extensive and lucrative practice than any attorney in Dakota or Minnesota. He is recognized as the leading civil lawyer in the city of Denver, and I venture to say that there is not a county in that state that he has not practiced in. He says:

"Your favor of the 8th inst. is at hand, and I regret the delay in answering, but owing to a multiplicity of duties, was unable to give it attention until now. I gladly reply to your inquiry, which is as to the working of the county courts under the system of laws in force in Colorado, and you will pardon me if I go a step further and offer a few suggestions upon other points as to what in my judgment ought to be embraced somewhat more fully than is usually found in Constitutions. First, as to your inquiry. We have found the county courts very useful and likewise the jurisdiction bestowed upon them very beneficial to the people. Before the adoption of our Constitution, the Territorial Legislature bestowed upon probate courts then, now county courts, jurisdiction not to exceed $2,000. In several cases the judges elected to preside over these courts were disqualified, but generally they were competent, upright men. If an incompetent man was elected he did but little business. Suits were brought in the district court. In many of our counties, which are unreasonably large and quite difficult of access, it is expensive to summon a jury as well as costly to have the full machinery of a district court put in motion to try perhaps three or four cases when that business could be as well done by the judge of the county court. I would advise the same qualifications as to learning, and experience in practice of

the law in a county, as the district judge. You need not be afraid but what some man in the county is eligible to the position, if not, politicians are numerous, and they will soon migrate and present themselves to supply the want.

"Another improvement could be made, which is that a jury might be summoned without either party advancing the costs. It not infrequently happens that the party can ill afford to advance $16 or $20 for the sake of getting a jury, and, too, there is no reason why a jury should not be called and paid for in the county court the same as in the district court."

I have other letters here which I will not read. But I will read a portion of a letter from A. P. Rittenhouse of Denver, which has some good points. He says:

"The county court is a good one and a popular feature of our system of jurisprudence. Both lawyers and people like it. There is a strong feeling among us that all judges should be learned in the law; also that they ought to be paid in salaries rather than by fees. People who litigate ought, of course, pay for their litigation, and fees therefor should not be abolished. The trouble with the fee system is that in large towns it makes the compensation of judges and other officers large beyond reason, and in small rural places by no means adequate. Let fees be paid, turned into the treasury, and withdrawn in well regulated and adjusted salaries for the officers."

Mr. BALTLETT continued: In Griggs county the expense of the district court, aside from the expense of summoning the grand jury, was $3,200. The amount of civil judgments rendered in our last two terms was between $800 and $900. We could better have paid every judgment that has been rendered there and have saved 400 per cent., than to have held these expensive district courts to try those cases. I believe the man who litigates should in a measure pay for his litigation. If I owe a man $100, no other man has a right to pay for a jury to try that case. I ought to pay it if I lose, and that is the system usually adopted in the county courts. There is no expense to the county court except the salary of the judge, and it will be found that when a system of fees are established, they will more than balance the salary. In Colorado there was a fee system up to this winter. In some counties, while I was there, the fees ranged from $2,000 to $15,000 a year, and it was deemed too much, and they were making strong efforts to have the county court a salaried court, and if

I mistake not it was so made last winter. They also increased the jurisdiction of their county courts. If it was unpopular why did they do this? If it is unpopular, why did the representatives of the people increase, instead of diminishing its jurisdiction? In counties that wish it, we desire that they shall have a county court at their doors. All we ask is that when a man comes into our offices and says that he wants a stay or an injunction, we won't have to go to the expense of going thirty or fifty miles to get it, and I venture to say that if the gentlemen who are opposing this motion had this to do very often, they would be asking for some such system. There is not a note in Griggs county but has a defense on account of usury. Nearly every one of these are secured by chattel mortgages. There is hardly a day in the fall but some one comes into my office and wants to know if he cannot get an injunction preventing a foreclosure. He will say: "They say they are going to take that stock." There has, perhaps, been a portion paid, and there is no endorsement on the note of that payment. Or perhaps he says he is willing to pay the principal and legal rate of interest, but not the expenses that are charged up. I tell him he can get an injunction compelling the plaintiff to foreclose in the district court, but that I would have to go to Jamestown or elsewhere to see the judge, and there is an expense, and if the stock has been taken possession of, it will eat its head off before you can get the case to trial. We ask that these people can have a county court in their own county if they want it. The gentleman from Burleigh has gone over the whole matter, not confining himself, and perhaps I have not, to the amendment. As he has gone that far, I will go a step further and mention the provisions in the original report in regard to justices of the peace. It proposes to force every man justice-of-the-peacewards if his claim is $50 or less. You might as well have a rule that the two men shall go into a room and flip a coin to see which shall have it. Any lawyer who has had experience in a justice court knows that it is so, and that is one of the provisions in the majority report. We ask simply and solely that we have the benefit if we want it, of the experience of other States in regard to county courts. I have been surprised at the position taken by a good many members in this matter. I have been told by a delegate to the South Dakota Constitutional Convention in 1885, that they put the system of county courts into their Constitution, and he does not remember that there was one word of opposition to it at

that time. It went through as a matter of course, as the best system they could devise, as an improvement on the probate court —not as the establishment of a new court, but as an improvement on a court already established, and he says he has never heard one objection raised to the county courts in that state.

Mr. PURCELL. As the presiding officer said, the question before the committee was whether the amendment should be substituted for section twenty-four. But I judge from the discussion of the question that it has not been confined to the motion under consideration. This is a very important matter to the citizens of the State of North Dakota, whether or not this motion prevails. It is sought by this substitute to do away entirely with probate courts and establish in their stead county courts. In this substitute nothing appears to be said about the abolishing of the justice of the peace, but on the other hand it allows their existence, and leaves it to the Legislature to say how they shall be located and how many there shall be. If there is any man in this Convention who can state here a sufficient reason for the abolishing of the probate courts as they are now constituted, I should like to hear him. The gentleman from Benson states that they are not all they should be in many respects—that those who occupy the position of judge of probate to-day in the numerous counties of North Dakota are not by experience and practice fitted for the duties necessarily devolving upon them. Mr. PRESIDENT, in many of the older states of this Union, the same position of judge of probate is filled by officers who are not lawyers and who have not had experience in the practice of law. In the State of New York the estates of widows and orphans, the estates of minors, and of those under guardianship are passed upon, supervised and handled by men who are not lawyers. The office of surrogate as constituted in that state and in New Jersey and many of the old states in the Union, possesses duties precisely like those of our judge of probate. The surrogate of the county of Queens and of the county in which the City of New York is located, are not required to be lawyers, but can be laymen, and the way these men perform their duty meets with the approval of the people. The system by which estates are settled does not require a man learned in the law to faithfully carry out the duties that are imposed upon him. All he has to do is to understand the nature of the work before him, and it is plain sailing if he has judgment. Our statute is simple and plain in regard to the settlement of estates, and the judge can get

his printed blanks, and if any man suffers by the act of the judge of probate he has a right to appeal to the district court. There all matters go up on appeal. If there is error in his judgment; if his acts have been illegal, or if it is necessary for his acts to be supervised, the judge of the district court can supervise them, precisely as they could be by the judge of the county court.

Why is it that this measure is so strenuously insisted on by the gentlemen who are supporting it? Is it because of necessity? Is it because in this great Constitution that we are now forming we have not made ample provisions for the dealing out of justice? Heretofore we have had but three district courts in which all the business of North Dakota was supposed to be done. It is true that this was not satisfactory, but we have already adopted a clause in the judicial bill which gives us six judges instead of three, and deprives those Judges of Supreme Court powers, and we have created a Supreme Bench, making nine judges to take the place of three. Can it be claimed that the business of this new State is six times behind what it should be? The district court judges of the past not only had the cases of the Supreme Court of North Dakota, but they had to sit in judgment on cases in South Dakota, so that they did other work besides that which arose in North Dakota. Is it possible that the business of this new State cannot be safely and successfully carried on, and safely and successfully disposed of by all the judges that we have provided for? Is it necessary that we should establish an intermediate court—a court between the court of the justice of the peace and the district court for the pleasure of a few men who ask it, because in their counties they do not have a judge residing there? The reason they insist so strenuously is this, and it must be obvious to everyone who has sat here and listened to the arguments—it creates an office, and it gives some man an opportunity of becoming a county judge. There are fifty-three counties in North Dakota as shown by our File No. 121. Of these counties I am informed that thirty-two possess a population of over 2,000 each. Those counties with a population of over 2,000 each would be entitled to a county judge. That would make it nearly $50,000 that would be paid out every year in this State for the salaries of county judges alone; $50,000 a year paid out in North Dakota for salaries for what? For the office standing midway between the justice court and the district court, and what do you get after your case has gone from the county court judge? You get no

nearer the law than when you started, for in many counties the man who will occupy the bench as county judge will be the same man who in the past has been justice of the peace, and we all know that in many counties in this territory the judges have abused their power, and admitted men to practice law—have stood them up in rows and sworn them in—who were a disgrace to the profession and they are now practicing. They are the men who are working to have this office created—they are the men who stand here (not that I wish to reflect on anyone here) and plead for the establishment of these courts, and will be most likely to occupy the position of county judge. Is it possible to receive from these men the law you are asking for? Are you not in just the same position that you were when you started? Is it not necessary to go from them to the district court or to some other court that is supposed to know the law?

Think of over $50,000 paid in salaries, and this is a small item compared with what the aggregate will be. Why? Because if the county court runs there must be the bailiff—the sheriff who lives by his fees will be active—the clerk of the court will also need pay. The general jury, or the jury that sits around and asks to be called occasionally, will be active. This court will cause an activity in law matters that will be surprising. Where a court is open and where men can go into court with their grievances, litigation will be encouraged, and parties when they get there will bring in all the witnesses and expenses they can. All the officers of the county court will pile up every dollar they can pile. I say this is a fact, for they have existed in the past and it has been the experience where county courts have existed. There are fifty-three counties in North Dakota, and at $1,500 a year each it would mean $79,500 for salaries, and then the litigant would be in the same position that he was when he left the justice of the peace. This bill which is so strenuously insisted on requires that a man who becomes county judge must have the same qualifications as the district judge, except that he must reside in the county in which he is elected. If he is a man of equal qualifications, he is working for too low a figure, and if he has not the qualifications he is not worth it. In my practice the getting of an injunction is a very seldom proceeding. It is something that is not very often indulged in, and if there is a man who comes into the office of the gentleman from Griggs, and tells him some one has a chattel mortgage on his stock, all he has to do is to say that the man must

go home and refuse to give up his stock. If he does that, this man who is so afraid his stock will be taken, will be protected, and instead of that man taking the stock, the sheriff will take it according to law, and then the bond of the officer will protect the client from any damage he may sustain.

When these gentlemen stand here and hold up these little incidents we should remember that our statutes and our Legislatures have protected every man in his rights, but there are instances, and I don't deny it, in which it is necessary in a very short order to have an injunction. But these cases will exist if the judge boarded in the house—they will always exist. The practice as it is proposed by the majority bill is this—that with the Supreme Court separate and distinct from the district courts they will be sufficiently ample to attend to all the business brought before them. As six district courts are required to hold two terms of court every year in each organized county, the judges will be enabled to go over each district and hold four terms of court a year where it is needed. Under our present practice it requires thirty days from the service of the summons or complaint within which to put in an answer. It requires ten days to give notice, virtually, so that a case cannot possibly be got into court within less than fifty days from the time the case is commenced. With a court twice a year a man will have no time to lose to get his cases prepared for the coming trial. I presume the same rule would prevail in the county court, and what is the use of having a county court and a district court, when there is no provision for getting your case tried quicker in the county court than in the district court. Therefore, Mr. PRESIDENT, it seems to me that those who go to work for the county court, or seek the privilege of voting for it, do it simply because it would be convenient for them, and not because it would be a benefit to the people. It is a very nice turn the gentlemen have made from the original proposition when they now ask by their amendment to submit this to a vote of the people, and only those counties that vote on it will have it in force. I say that it will be comparatively easy for any man or set of men to have this done when the people are not prepared for it, and we all know how easy it is to spring a matter of this kind when the people have not looked into the matter, and know nothing of the merits of the case. It has always been the province of Constitutional Conventions to fix the different branches—executive, legislative, judiciary. It has been the province of every Constitutional Convention to do

that, and they are generally called specifically for that purpose—to say what shall be the executive, and what shall be the legislative and what the judiciary. That is what we ask you to do by the majority judiciary report.

Mr. PARSONS of Morton. I should like very much to answer the gentleman, but I respect the feelings of some, and will not. It has been charged here that any man who would dare to advocate the county court system was guilty of personal feeling or personal aggrandisement. I repel the accusation. I stood here and advocated this, and I dare to stand here and advocate it again, and I would like to say that I am just as free from any aspirations to the position of county judge as the gentleman from Burleigh or the gentleman from Richland may be for a judgeship of some of the higher courts. It is a poor rule that won't work both ways. It may be that some of the gentlemen who are opposing county courts are doing so because they think that these courts will detract from the dignity and importance of the district courts. Briefly consider the situation: We are met with this question. The objection was raised to making the Supreme Court from the judges of the district court, and we have gone to an expense of nearly $20,000 to keep the Supreme and the district courts separate. Now they bring in the most preposterous theory that it would cost the people $70,000 to run the county courts. As one gentleman has said, the opponents of this system beg the question. I would ask if the arguments they have adduced is all they can produce in favor of the district court system? I trust to the good sense and the common sense of the delegates here to detect the fallacy. As a principle of right and justice I don't believe that there is a gentleman here that wishes to take the probate court from the county that wishes to have it, but I do believe that county courts are the courts of the people. They are close to the people, and it is a fact that when speedy justice is meted out, it in a great degree determines the prosperity of localities and sections, and it is a fact, and the records show it, that county courts have been a benefit. I wish it left on the records in such a way that when any county wants to have a county court, it can have it. We don't seek to take away the probate court, but we do seek to have the opportunity of having the county court if we want it. If you will look you will see the enormous sums of money that have been paid for the terms of the district court. We have had our jails full when they should have been clear. All we ask is

that those counties that wish to, shall have probate courts, and those that want county courts shall have them.

Mr. MOER. I move that the committee do now rise, report progress and ask leave to sit again.

The motion was carried.

Mr. SELBY. I move to adjourn.

The motion prevailed, and the Convention adjourned.

THIRTIETH DAY.

BISMARCK, *Friday, August 2, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

EXEMPTION LAWS.

Mr. GAYTON introduced the following resolution and moved its adoption:

"*Resolved*, That the Committee on Judiciary be instructed to report an article prohibiting the Legislature from ever changing or repealing the present Territorial Homestead and Exemption Laws."

Mr. SCOTT. I am in favor of the resolution. It appears to me that this is one thing that Dakota is sought for by the people of other states. People who have been unfortunate in business relations elsewhere, and knowing that we have a liberal exemption and homestead law, will come here and take up their residence if there is any guarantee that that exemption will never be repealed. As it at present stands there is 160 acres of land and $1,500 worth of personal property, and I believe that that very fact is a great inducement to settlers from other states to come in here and make this place their home, and for that reason I am in favor of the adoption of this resolution.

Mr. BARTLETT of Dickey. I want to enter my protest against any such resolution. I do so as a farmer. The very idea

of fixing it so that the exemption should not be changed! Just think of it for a moment—bidding to get men here who propose getting into a fix so that they can get the advantage of that law. That law was framed in the first place to benefit the settlers, but now the most of them have got so that they could get along even if they did not have so much exemption. I believe to-day that if the exemption was cut down it would be a help to the poor man. I believe that; and I also believe that it would help the poor man to get credit where now he cannot get any. Now they have to march up to the common altar and give security.

Mr. STEVENS. I am opposed to this resolution for more reasons than one. First, we have come here to deliberate upon what shall be the Constitution that is to be submitted to the people of this Territory. We have seen fit to provide that each article, in order that it may be properly considered, shall be first introduced; after having been read it shall be referred to a committee; after that committee has reported, and the printed report has been placed on the desks of the members, it must go to the third reading and final passage. This resolution contemplates the passage by a single swoop of one of the provisions of this Constitution without further consideration than a vote upon this resolution, as it directs that that committee shall report, and if this resolution is adopted every man who votes for its adoption is in honor bound to vote for the report that they have directed to be made, so that in fact the vote on this resolution if carried will settle the question as to the exemption laws. I am in favor of passing a Constitution here that will be as free from objection as it is possible to get it. I am in favor of passing a Constitution without weights upon it to go before the people, but every merchant and every business man who has a single cent at stake, will say that a Constitution adopted in such a form as that will prevent the Legislature from reducing the exemption if they see fit, and they would feel it to be against their best interests and the best interests of the State to vote for it. It would be, in my opinion a weight—a millstone, slung about the neck of this Constitution when it went before the business world of North Dakota. Who can this benefit? Can it benefit the farmer? Undoubtedly not. Let us make this Constitution so that every farmer, every business man, every professional man will be cared for under its provisions, and if it does not suit those who see fit to come here,

let them stay away. The interests of the farmers and business men are identical.

The farmers cannot pass a constitutional provision here that will be to their benefit unless it is also to the benefit of the merchant and the manufacturer. The merchant and the manufacturer are as necessary to the interests of the farmer as the farmer is to the merchant, and the merchant without the farmer would be an absolute failure. There is no danger of the business man ever attempting to pass through the Legislature a provision that will be against the interests of the farmer. It is true that combinations are sometimes made which are against the interests of the farmer, but they don't last. If we place this clause in our Constitution we have placed it beyond our control. I say that the passage of that resolution would be a detriment to every farmer in this country, because it would not only be a millstone around the neck of this Constitution when it came to be submitted, but it would also be a provision that they would themselves desire to change. Fifteen hundred dollars and 160 acres of land may, in the present situation of the Territory, be ample and sufficient, and it may be as little as it should be. I am in favor of a liberal exemption, but I cannot say that I am in favor of seventy-five men here saying that they shall forever provide in this Constitution that no power except two-thirds of the people of this State can ever change those exemptions. I say I am opposed to the resolution, and I believe that every farmer who understands his best interests will also be opposed to it. I am opposed to it, and I believe every business man who consults his best interests will be also opposed to it. I am not opposed to the present exemption laws, necessarily, but I am opposed to putting it in the Constitution where it cannot be changed by the will of the people through their Legislature.

The resolution was lost by a vote of 69 to 4.

The Convention then resolved itself into Committee of the Whole for the purpose of considering Files Nos. 121 and 131.

PROBATE AND COUNTY COURTS.

Mr. CARLAND. There has been considerable discussion on the question of adopting the minority report of the Judiciary Committee as a substitute for the majority, relating to probate courts. I have prepared what I think will be a measure which can be adopted by those persons who are in favor of county courts,

and those who advocated the other side. My amendment will be a substitute motion as follows:

That the word "probate" where it occurs in section twenty-four and twenty-five of the majority report of the Committee on Judiciary Department be stricken out, and the word "county" inserted, and that at the end of said section twenty-five there shall be added the following proviso: "*Provided*, That whenever the voters of any county having a population of 2,000 or over shall decide by a majority vote that they desire the jurisdiction of said court increased above that limited by this Constitution, then said county courts shall have concurrent jurisdiction with the district courts in all civil actions where the amount in controversy does not exceed $1,000, and in all criminal actions below the grade of felony; and in case it is decided by the voters of any county to so increase the jurisdiction of said county court, then the justices of the peace of such county shall have no exclusive jurisdiction, and the jurisdiction in cases of misdemeanors arising upon State laws which may have been conferred upon police magistrates, shall cease. The qualifications of the judge of the county court in counties where the jurisdiction of said court shall have been increased, shall be the same as those of the district judge, except he shall be a resident of the county at the time of his election, and said county judge shall receive such salary for his services as may be provided by law.

Mr. MOER. I second the adoption of the substitute.

Mr. PURCELL. I also second the adoption of this substitute, for this reason: As the committee stated last night there was considerable feeling on both sides with reference to the aboption or rejection of the report of the majority. The adoption of the minority report would force on some counties a court that they did not desire to have. The adoption of the majority report would have kept some counties from having a court that they seem to want. This resolution creates a county court by the Constitution, but leaves the jurisdiction of that court to the people of the respective counties. I think it is just and fair, and should receive the sanction of the members of the Convention.

Mr. ROLFE. I would like to have the privilege of seconding the motion of the gentleman from Burleigh.

Mr. CAMP. I would like to ask if there is any means by which a county can get rid of a county court after once it has adopted the plan?

Mr. MILLER. In view of the fact that it is a matter of grave importance, and there has been a difference of opinion in regard to probate and county courts, and as it would seem to be practically settled by this amendment, I should like to have the amendment printed and laid over till to-morrow. We will not be wasting any time by doing this, but will be saving time. Some of us

might feel like making amendments to it now, which we might not make after having thought the matter over. I therefore move that the consideration of the report be deferred till after it has been printed.

The motion was seconded.

Mr. LAUDER. It seems to me that this Convention has had this question under consideration a sufficient length of time, and has discussed it at sufficient length to understand just about what the members want, and it seems to me there is no necessity for this delay. It is now under consideration and can be disposed of, and I am opposed to this deferring action on these matters from day to day.

Mr. MILLER. I made the motion only for the purpose of saving time. If the amendment is discussed now there will be several amendments offered to it. I can see grave objections to its adoption, while in the main I am satisfied with it and satisfied with calling the probate court the county court and under certain circumstances increasing the jurisdiction, but there are other matters there that in my opinion need to be changed. I made my motion for the purpose of saving time. It is an entirely new question that is before us.

The motion of Mr. MILLER was adopted.

Section twenty-six of File No. 121 was then read.

Mr. SELBY. Inasmuch as the proposition for county courts has been postponed and the subject of justice courts becomes a part of the subject matter, I move that this matter be deferred also, to be considered at a subsequent meeting of this committee.

The motion was seconded and adopted.

Mr. SCOTT. I move that sections twenty-seven and twenty-eight be postponed for the present.

The motion was carried.

Mr. POLLOCK. It seems to me that the proposed change with regard to county courts will have an effect on sections twenty-nine and thirty, and I move that the consideration of these sections be postponed.

The motion was seconded and adopted.

THE GOVERNOR.

File No. 122 was then considered. Section one was adopted. Section two was then read as follows:

SEC. 2. No person shall be eligible to the office of Governor or Lieutenant Governor except a citizen of the United States and a qualified elector of the State, who shall have attained the age of thirty years and who shall have resided two years next preceding the election within the State or Territory, nor shall he be eligible to any other office during the term for which he shall have been elected.

Mr. SCOTT. I move that that the word "two" in line four be stricken out and the word "five" inserted in its place. If there is any reason why any official place in the State should be filled by a man who has had some lengthy residence in the State, there is every reason why that of the Governor should. I don't believe that it should be possible under the Constitution for a man to come into the State and in a period of two years attain to the gubernatorial chair. I believe that five years is short enough and that he cannot in less than that time become acquainted with the wants and desires and necessities of the people.

Mr. ROWE. In the fifth line the question arises whether a Governor should be prohibited from being elected to any other office outside of the State. Not infrequently Governors are sent to higher places, and the question arises whether this provision would prohibit anything of this kind.

The CHAIRMAN. You must put your own construction on that.

Sections three and four were adopted.

The motion of Mr. SCOTT was adopted.

THE QUESTION OF PARDONS.

Mr. CAMP. I move as a substitute for section five that File No. 8 be adopted. Section five reads as follows:

"The Governor shall have power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction for all offenses except treason and cases of impeachment, but the Legislature may by law in all cases regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Upon conviction for treason he shall have power to suspend the execution of sentence until the case shall be reported to the Legislature at its next regular session, when the Legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the Legislature at each regular session each case of remission of fine, reprieve, commutation or pardon granted by him, stating the name of the convict, the crime of which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same."

The section I desire to substitute for it reads as follows:

"The Governor, Attorney General, and the Judges of the Supreme Court shall constitute a Board of Pardons, in which shall be vested the sole power to remit fines and forfeitures, grant reprieves, commutations of sentence and pardons. The meetings of said board shall be held at the Capitol, shall be called by the Governor, and not less than ten days' public notice thereof shall be given. Two-thirds of the members of said board shall be a quorum for the transaction of business. A record of the proceedings of said board shall be kept. No fine or forfeiture shall be remitted, no reprieve, commutation of sentence or pardon granted unless two-thirds of all the members of said board shall vote for such remission, reprieve, commutation or pardon; and the voting shall be by ballot."

Mr. CAMP. The question of pardons is one that has perplexed and puzzled the legislators of many states, and all those who are interested in the general subject of government. Upon the Governor, if the pardoning power is placed in his hands, immense pressure, is frequently brought to bear. We all recollect vividly the scenes connected with the last days of the Chicago anarchists—what a tremendious pressure was brought to bear on the Governor of the State of Illinois to pardon those men. My propositition is somewhat similar to the system in vogue in the State of Pennsylvania, which you will find set out in File No. 106, page 31. In that State there is a Board of Pardons and the Governor is only allowed to pardon on the recommendation of that board, whose sessions are public and proceedings are in writting. Practically the only change I make is that the votes of the board shall be by ballot, so that no friend of the criminal nor any other person shall know how those men possessing the pardoning power have voted. It seems to me that such a board, composed of more than one individual, can handle this matter of pardons with much greater safety to the State, and do their work in such a manner, that the laws will be respected more than one man can. Under the present system of pardons a great many men are pardoned from various motives who ought never to be let out of the prison to which they have been consigned. That is so, and it must remain so as long as the pardoning power is left in the hands of one man.

Mr. ROWE. I desire to speak in favor of the report of the committee, and I hope the amendment of the gentleman from Stutsman will not pass. The committee, when they had this under consideration, were unanimous in expressing the opinion that the pardoning power should rest with the Governor. The Governor who is elected to the highest office in the gift of the State, is sup-

posed to be a man of ability and integrity, and when we place this responsibility on one man he realizes the situation, and acts with more judicious care than if it rested on a Board of Pardons who were allowed by their ballot to shirk the responsibility. As the gentleman called our attention to Illinois, I would call your attention to the fact that that grand old man, Richard Oglesby, rose to the occassion and refused to exercise the pardoning power in the cases referred to. I again say that where you place on the one man the responsibility, he will use it with more judicious care than if it was put on a Pardoning Board who can by a secrect ballot shirk their responsibility.

Mr. JOHNSON. I concur with the remarks of the gentleman from Dickey, and am firmly of the opinion that in cases of this kind we are more likely to get just decisions when the people have some method of fixing the responsibility where it belongs. I consider the worst feature of File No. 8 is that which allows this responsibility to be so that it will be utterly impossible for people to fix it. It would be vicious enough if it were left in such a manner that one member could shift it on to another. The people and the parties would be confused, and there would be no distinct and conspicuous figure on whom to fix the responsibility. If you have a governor who exercises this power who is required to give his reasons and report every case to the coming Legislature, then the people know who is responsible.

Mr. FLEMINGTON. I would move that in place of section five there be substituted sections eleven, twelve and thirteen of File No. 106.

These sections were read as follows.

SEC. 11. The Governor shall have power to remit fines and forfeitures, and to grant commutations of sentence, and pardons, except in cases of treason and impeachment; but no fine and no forfeiture shall be remitted, no pardon shall be granted, and no sentence commuted, except upon the recommendation in writing of a Board of Pardons composed of the Lieutenant Governor, Secretary of State and Attorney General, or of any two of the members of said board, after full hearing, upon due public notice, and in open session; and such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the Secretary of State. The General Assembly shall by law prescribe the sessions of said Board of Pardons and the manner in which application shall be made, and regulate the proceedings thereon; the written proceedings and decisions of said board and all papers used at any hearing shall be filed in the office of the Secretary of State; the Board of Pardons may grant commutations of pardons, either absolutely or upon such conditions as said board may deem proper.

SEC. 12. The Governor shall have power to grant respites or reprieves for any time not exceeding ninety days, in all cases, except treason or conviction on impeachment, but such respite or reprieve shall not (in any case) extend beyond the end of the next session of the board of pardons.

SEC. 13. The Governor may, upon conviction of treason, suspend the execution of sentence and report the same to the General Assembly at its next session, when the General Assembly may either pardon or commute the sentence, or grant a further reprieve.

Mr. ROWE. I would say that except the arrangement for a board of pardons, section five of the original report covers all the ground of these three sections.

The motion of Mr. FLEMINGTON was lost.

The section was adopted as reported by the committee.

Sections six, seven, eight, nine, ten and eleven were adopted.

OTHER STATE OFFICIALS.

Section twelve was read as follows:

"There shall be chosen by the qualified electors of the State at the time and places of choosing members of the Legislature, a Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of School and Public Lands, Commissioner of Insurance, three Commissioners of Railroads, Attorney General and Commissioner of Agriculture and Statistics, who shall have attained the age of twenty-five years, and shall have the qualifications of State electors. They shall severally hold their offices at the seat of government for the term of two years, and until their successors are elected and duly qualified, but no person shall be eligible to the office of Treasurer for more than two consecutive terms."

Mr. PARSONS of Morton. I would amend section twelve by substituting the word "labor" for "statistics" in the sixth line.

Mr. ROWE. I second the motion.

Mr. PARSONS of Morton. The Chairman of the committee has kindly seconded this motion. The only reason for asking is this, that at our national seat of government we have a Commissioner of Agriculture and one of Labor. The commissioner of statistics is an indefinite term. The commissioner himself is a statistician, by reason of his office of Commissioner of Labor, and he has complained publicly of his inability to get information from the State, and it was designed that this particular commissioner should be the one we should communicate with, and it would be no difficulty to substitute the word "labor" for "statistics."

The motion of Mr. PARSONS was adopted.

Mr. BEAN. I don't know whether I am right or not, but in line four it provides for a Commissioner of Public Lands. In the

report of the Committee on School and Public Lands, File No. 130, section four, line four they have provided for a Board of University and School Land Commissioners. It is my opinion that this commissioner spoken of here will find his duties conflict with the duties of this board which we have already agreed to. I move to strike out the words "of school lands" in this line.

Mr. ROBERTSON. I would like to ask if the gentleman would have any objection to striking out the word "commissioner" also? I move that the words "commissioner of school and public lands" be stricken out entirely.

Mr. BEAN. The reason I did not include all these words is that I was not certain but that we needed a Commissioner of Public Lands. These other commissioners only act on school lands. There may be other public lands donated to the State, or over which the State will have control, that this board will not have under its cognizance. That is why I did not insert the other words in my motion.

Mr. ROBERTSON. I think it would be satisfactory if the gentleman would examine section twelve, File No. 130. He would see that all other lands except school lands are relegated to the Legislature entirely. It is taken out of the limitations and provisions of the whole article—placed entirely in the hands of the Legislature. So I don't see any need, and don't think any other member can see any need, of commissioners of public lands. The Legislature can make any arrangement they may see fit.

Mr. O'BRIEN. I would suggest that we had better let this matter go to the Revision Committee, and if there is any conflict they will discover it and report it. We have not the time to investigate it here.

The motion of Mr. O'BRIEN was seconded and adopted.

Mr. LOWELL. I move that after the words "Attorney General," in line five, section twelve, we insert the words "Inspector of Steam Boilers."

The motion was lost.

Section fourteen was read as follows:

"Until otherwise provided by law, the Governor shall receive an annual salary of $3,000; the Lieutenant Governor shall receive an annual salary of $1,000; the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of School and Public Lands, Commissioner of Insurance, Commissioners of Railroads and Attorney General shall each receive an annual salary of $2,000; the salary of the Commissioner of Agriculture and Statistics shall be as prescribed by law, but the salaries of any of the

said officers shall not be increased or diminished during the period for which they shall have been elected; and all fees and profits arising from any of said offices shall recover into the State Treasury."

Mr. ALLIN. I move that the figures "2,500" be substituted for "3,000," in line two, and instead of "1,000" in line three insert the words, "twice the salary of a State Senator."

Mr. WALLACE moved that a provision be inserted in the section providing that the Lieutenant Governor receive the same pay as the Governor when he is acting as Governor.

Mr. O'BRIEN. I move that the salary of the Governor be made $5,000 a year instead of $3,000.

Mr. MOER. I move that the section read "until otherwise provided by law the Governor shall receive $2,000 per year."

Mr. BARTLETT of Dickey. We don't want a Governor whose time is not worth $3,000 a year. When a common drummer from Chicago can earn, after one or two years' practice, that much, surely a man who fills the office of Governor should have $3,000 a year.

The motion of Mr. MOER was lost.

Mr. WALLACE. The gentlemen are trying to be a little facetious. I am in favor of giving the Governor $3,000 a year.

The amendment of Mr. O'BRIEN was lost.

The amendment of Mr. ALLIN was lost.

Mr. WALLACE. As I understand it the question is now on the amendment that the Lieutenant Governor receive double the pay of a State Senator. If he is acting Governor he should receive the same pay as the Governor. In several state constitutions that is exactly the provision they have. The Lieutenant Governor has just about as light a job as anybody, and I don't know why he should be paid $1,000 for presiding over the Senate. But, of course, when he performs the duties of the Governor he should receive the same pay.

Mr. MOER. I would like to ask the gentleman from Steele if we should pay the Governor his salary during the time the Lieutenant Governor is acting as Governor?

Mr. NOBLE. I would like to ask whether the mileage of the Senator would be considered in as part of his salary?

The amendment of Mr. WALLACE was lost.

Mr. O'BRIEN. I move to amend by making the salary of the Lieutenant Governor $500 instead of $1,000. The reason I do this is this—to give the Governor of the State $3,000 a year for

two years' services is one thing, but in the same section you give the Lieutenant Governor one-third of that for ninety days' services. I think that is entirely too much. We should decrease the salary of the Lieutenant Governor or increase that of the Governor. For that reason I offered the amendment to make the salary of the Governor $4,000. To be consistent I offer the amendment cutting down the salary of the Lieutenant Governor to $500.

Mr. McHUGH. We might go on this way all the afternoon. Every member might get up and offer an amendment, cutting down one salary and raising another, therefore I move as a substitute motion that we report this report of the committee back to the Convention with the recommendation that it do pass.

The motion was declared to be out of order.

The amendment of Mr. O'BRIEN was lost.

The section was then adopted as reported by the committee.

LEGISLATIVE REPRESENTATION.

File No. 129 was then brought up for consideration.

Mr. NOBLE. I move that the minority report of the Legislative Committee be substituted for the majority report.

Section eleven was then read as follows:

"At its first session after the adoption of this Constitution the Legislative Assembly shall apportion the State as nearly as possible into representative districts composed of compact and contiguous territory according to the population, giving, however, one Representative to each organized county."

Mr. SCOTT. I move that section eleven be stricken out and the following substituted therefor:

"The members of the House of Representatives shall be apportioned and elected at large from each senatorial district."

Mr. NOBLE. I move that section eleven of File No. 129 be substituted for the report of the majority of the Legislative Committee as read. The original report of the Legislative Committee provided for what is known as single county representation. The supplementary report of the Committee of the Legislative Department provides that the Representatives shall be elected at large from the senatorial districts. This election of the Representatives from the senatorial districts at large is what I object to. The principle established here of making a senatorial district and making it also a district from which there shall be two or three Representatives elected, is entirely contrary to the principle on

which this government is run, and if that principle is to be established here, then I am decidedly in favor of one house. The principle of making a Senate and a House of Representatives which shall be elected at the same time and by the same people is going back to the principle of one house. While the original report of the committee is preferable to the supplemental report I would still prefer to have the original report amended so that Representatives shall be elected one from each district regardless of senatorial districts, and the House of Representatives should be entirely separate and distinct, and independent from the Senate; otherwise I believe that the principle of two houses is done away with, and the reason for it is done away with. I hope that section eleven, the amendment, will be substituted for the supplementary report as advocated by the gentleman from Barnes.

Mr. PARSONS of Morton. It seems that in keeping with section eight we should adopt the motion now before the House—section eleven of File No. 129. The supplementary report, reports an extra section for section eight, and as we have not seen fit to reconsider the prior action of the House, it would be the height of folly to adopt it in another part of the report, and I hope the amendment for the adoption of section eleven will prevail.

Mr. WILLIAMS. The majority of the Legislative Committee have reported adversely to section eleven. The majority favor the election of members of the lower house from the senatorial districts at large.

Mr. PARSONS of Morton. It is the principle that I am opposed to. I believe the people's will can best be carried out by dividing these representative districts irrespective of any senatorial district, and when there is a body of people of sufficient number and votes to elect a member of this House, they should have the privilege of doing so.

Mr. SCOTT. As the section originally stood it was reported without the knowledge of the majority of the Legislative Committee. That section gave to each organized county, no matter what the population was, one Representative. Section eleven was recommended after re-consideration by the committee to be stricken out, and the original idea was to add a clause to the end of section eight, which however had been adopted by the Committee of the Whole prior to the meeting of the committee, so if the Convention sustains the majority of the committee the amendment will be adopted that I have read. The only question before the Con-

vention is this—shall the State be divided into senatorial districts and the representatives be elected at large from those districts, or into senatorial and representative districts, and then shall each district be re-divided for the purpose of electing two or three, (as the case may be,) members of the House? The majority of the committee were not favorable to this re-division of the districts. In the first place they are all the same people. You may divide the senatorial districts into two or three parts and elect a Senator at large, or you may not divide it. It is the same people who elect the senator anyway. The same voters elect him, but there is this difference—you are only entitled to vote for one Representative if you sub-divide it into districts, and in the other way you are entitled to vote for as many men as there are Representatives to be elected. It is a great deal of work for the Apportionment Committee to sub-divide each senatorial district into sub-divisions, and apportion to each the proper portion, so that each Representative may be elected as may be on the basis of population. Again, after it is re-divided into representative districts, they must hold their caucuses and conventions in one representative district and then they must do the same thing in the other districts, and after that they must all get together and nominate a Senator, and after all it is the same people that do it. What difference will it make in the constitution of the House? The Senators are elected for four years. Only one Senator is elected at a time and that is done so that all the elections won't be together—so that there would be some difference between the Senate and the House, but the mere sub-division does not change the voters in any way, and for that reason we thought the State should be apportioned into senatorial districts only.

Mr. ROLFE. I wish to divide the substitute of the gentleman from Bottineau. I think I was one of the majority of the Legislative Committee which made the report that appears here, but at the time I voted in favor of the report as it stands. I did so because the situation in that committee was such that unless we dropped our discussion entirely on the three measures that were at issue there, we would be unable to agree on a section covering the point. The committee was composed of thirteen members. There were three propositions before that committee and I yielded the measure I supported, which included one Representative from each organized county, and voted with the majority in order that we might agree on something to get before this Convention.

When I came here I was strongly in favor, and am yet, of a Senator from each organized county, for the reason that it is analogous to the system of the United States Senate, which we all uphold, and believe in, I presume. But no such proposition as that would carry; therefore, if we obtained anything that was similar to that proposition it must come in this way—that each organized county would have at least one Representative. As has been said by the gentleman from Bottineau, if we cannot have the one system or the other, I would like to see the one house system prevail, which we have already sat down upon hard. If neither House is to be a check on the other, there is no occasion for two houses. If the senatorial district is created, and the Representatives are to be elected at large in that district, then the Senator and the three Representatives have interests that are exactly identical, and any measure proposed in the House will be supported in the Senate, and any measure proposed in the Senate will be strongly supported by the three Representatives in the House. Therefore neither house will be a check on the other, and if we are to incorporate in our organic law any provision by which the interests of one house will not be identical with the interests of the other house, it must be done in the way suggested by the gentleman from Bottineau.

Mr. MOER. I have only a word to say and it is this—that I believe every organized county in the State should have a Representative in the Legislature. Every organized county, whether it is large or small in population, is compelled to bear its burden of taxation, and is therefore entitled to some sort of representation. In my district, we have suffered somewhat under a similar clause as that proposed by the majority of the committee, offered by the gentleman from Barnes. A senatorial district composed of three counties simply means that if one of the counties is large in population and the others small—it ordinarily means the large county takes all the representation there is to be had by the district. That is what it has meant to us in connection with Barnes and Ransom counties from the time of the first history of our county. It is what it would mean in the future if we were attached to those counties. I believe that every county is entitled to representation. I am not afraid of my own county now. From some of the plans submitted, LaMoure, McIntosh and Logan have been placed together. If that was to be the basis, and the Representatives are to be elected at large, and three men in La-

Moure county worked together, Logan and McIntosh would be left out in the cold. I don't believe in placing it in the power of LaMoure county or any other county to cut out a smaller county. I think every organized county should have its Representative.

Mr. PARSONS of Morton. I would say that if this supplementary report is adopted, Morton county would profit by it, but we have suffered for the last six or eight years under this very system of three Representatives from a district, and there has been more political chicanery, more trading backward and forward, and the will of the people in each locality has been more disregarded, than I have liked to see. It is a system by which the politicians can ride rough-shod over the will of the people. I hope the amendment of the gentleman from Bottineau will prevail, and if it prevails, section eleven stands as it came from the committee originally.

Mr. STEVENS. It is an old saying that bad pennies always return, and chickens come home to roost. Some of the gentlemen who did what they could to sit down on the one house plan, now see that they have made a mistake, and desire to adopt it in another form. At an election held down in my county there was an old gentleman very much interested on one side, and that side was very badly beaten. A gentleman said to him: "Well, Uncle Jim, what are you going to do? You are down." The reply came—"I will tell you. There ain't any man that can get on the other side any quicker than I can." That is the way with me. I have concluded that I was wrong in my one house theory, and I want two houses. But if this Convention concludes to have two houses, it is preposterous to have those two houses divided up in such a way as to give some little county with sixty votes a Representative, when there are seven or eight hundred or a thousand votes just across the county line that would have no greater representation. The district is made for the Senator, and the Representatives should be elected from the same district as a whole, because if divided it only allows that much more jobbery in the election of the Senator. They should be elected, if they are elected at all, from the same district. If the districts are to be the same, then everybody should be elected from the same district. A city might be divided up in such a way as to let the country have no representation and practically no vote. I am decidedly in favor, though I signed the minority report, to be consistent with the one house theory, of engrafting nothing in this report that would be

inflicting an injustice on the people of every district from which a Senator is to be elected.

Mr. LAUDER. I am not one of those who believe that political questions should to any extent be brought before this Convention, but I want to say just a word to my republican friends who are members of this Convention. This measure you will see is introduced by a prominent democrat. While the democrats are not saying a word in the discussion, you will find when they come to vote, every democrat will vote for the proposition introduced by the gentleman from Bottineau. There won't be many noes from that side of the house. While I would not drag in a political question here, neither would I depart from the rule usually adopted, for the benefit of the other side.

Mr. JOHNSON. I take some pride in following my chief who led us so gallantly in the one house contest, and in being with him consistent. We do not believe in checks on legislation. We believe there are too many checks now, and have been during the past year. We have had too many. But further than that, and further than the political objections offered by the gentleman from Richland—and it is well known I am a partisan as strong as anybody—more than that, overshadowing that, I oppose the motion of the gentleman from Bottineau on the simple grounds of justice. Read the last line of the section. It reads like this: "Giving one Representative to each organized county." There are counties in this State that only cast forty-four votes. In my county we cast 1,035. We do not ask or expect more than one Representative. Is there anything fair—any justice—in a system that would give forty-four men in Billings county the same representation as the 1,035 voters of Nelson county? That is the substance of the substitute which the gentleman advocates. We are assembled here under the Omnibus Bill or Enabling Act. The first section of that bill reads as follows: (It has a thought in it which is inspiring)—"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana and Washington as hereinafter provided." Mark the words—it says "the inhabitants" of that part of the area shall constitute the states. That is the true, the historic, the constitutional and poetic theory of the state. What

constitutes a state? Not area. It is men—high-minded men—men whom their duties know. Our theory is that representation in this new State which we are creating here shall be based as laid down in the very first section, on men and not surface. It is not on geographical exposure merely, but on men. In the name of justice, why is not a man in the Red River Valley as good as a man in the Bad Lands? You would not have it so if the proposition of the gentleman from Bottineau prevails—you would make forty-four men in the Bad Lands as good as 1,035 in Nelson county. We are here to make laws for people, and not valleys, and rivers and inanimate objects. It is a fact that for the present and for many years to come the Red River Valley is and will be the center of our civilization, will have the population, so that we don't ask any more than those people who live in the cow counties, but we do hold that a man should be counted a man wherever he lives, and to people who live in those counties we ask that the people who live in the eastern counties shall at least stand an equal show with the men who live in the far western part of the State.

Mr. PURCELL. If the principle advanced by the gentleman from Nelson is good, why is it that we have divided or have empowered the Legislature to divide this Territory into senatorial districts? Why not instead of that have all our senators elected at large—the same as the Governor and the Secretary of State and other officers? Why do we fix districts from which they are to be elected, and which they are supposed to represent? If his theory is good, then why do we do it like this? If his theory is bad, and the theory is a good one to fix districts, then why not carry that theory a little further and fix the districts which the members of the lower house also shall represent? As the gentleman read from the Omnibus Bill, something was said about the Congress of the United States. The Congress is composed of Senators and Representatives from their specific districts in the respective states. That is an example that we can well follow in fixing our Constitution here to-day. We can well follow the principles of the Constitution of the United States, and say that the district shall be represented by a Senator, and that these districts shall be sub-divided so that certain portions shall furnish certain members, and by doing that we preclude any jobs. There is nothing in the way of having this enacted. It is in vogue in almost all the states in the Union. The objections that have been advanced by the gentleman from Barnes will not lie, for it is no

more difficult to hold an election for Senator or Representative than to hold an election for a member of the board of county commissioners. In each organized township of the counties there is an election precinct established. When they meet at that election they select their town officers, and they can just as well at that time vote for their Representative and Senator. It should be no great burden to the Legislative Committee, or to the Legislature to get together and apportion these districts. They come here to perform just such acts, if they are required to do that by this Constitution. It seems to me that the reasons urged by the gentleman from LaMoure are good ones. If this is allowed to prevail and these senatorial districts are not sub-divided, you will see in nearly every senatorial district the same fight as in counties where county seats are in question. It will be a question of the majority eating up the minority. When you say that the senatorial districs shall be divided into representative districts, then you deal fair and square with the country as against the city, and that is all we ask of this Constitution.

Mr. HARRIS. I am opposed to the report of the majority of the committee, first because the principle is wrong. I want to see the senatorial and the representative districts divorced as widely as possible from each other. It is all very well to say that we don't want any more checks on Legislation. I say that we want the check of one house against another, and what the gentleman from Richland and the gentleman from LaMoure have said in regard to the larger counties eating up the smaller ones is true, and we all know it. You put three or four small counties into a district and then provide that the Representatives shall be elected at large in that district, and you get a Senator and Representatives all from the larger counties, and the smaller ones are not represented at all. It is all very well to say that the smaller counties are represented by the men from the larger. If a man from one of the larger counties finds himself in the Legislature, and his interests and the interests of his county conflict with the interests of the smaller counties that he represents, his own interests get his vote every time. The smaller counties cannot be represented if they are attached to the larger counties. The gentleman from Nelson is poetic over the fact that we are not here to make an apportionment whereby acres, merely, will be represented. He raises a man of straw in order that he may in a poetical and rhetorical manner knock him over. No man has stood on this floor and

asked that acres be represented, but we do ask that out in this western part of the State, where at the best, out of a House and Senate to be composed of more than a hundred members we shall have not more than fifteen members—we do ask that the smaller counties of the western two-thirds of this State shall be allowed some representation, although it may seem to be against exact square justice to the counties in the Red River valley.

The gentleman has mentioned Billings county that last fall only cast forty-four votes. I want to say that Billings county has over 200 voters, and she has over $500,000 worth of assessable property. I want to say that although Billings county has only 200 votes, Hettinger county, lying beside her, unorganized, had 271 voters last spring, and has more than 300 voters now. They are just as honest, just as intelligent and grand American citizens as there are to be found in the State of North Dakota. They are composed of the New England colony that came from Maine, New Hampshire and Vermont. They are not allowed to vote because their counties are not organized. They believe that it is for the best interests of the county that they should remain unorganized until they get a larger population. Those people should have a representation in that section of country through the organized county that lies next to them, so that they may be properly represented in the Legislature, and we are only asking that the counties having the larger population may give these smaller counties some representation in the Legislature. We find the same thing true in the north. We find Church, Sheridan and a number of counties adjoining the counties on the Manitoba railroad having a large population, but they are not organized. We ask that these smaller counties have representation. Nelson has only one Representative, it is said. We are not asking that you give each organized county a Senator. We are asking that every organized county in this State shall have at least one Representative. It is true that the Committee on County and Township Organization placed a report before this House which was referred to that committee, providing that no county shall be organized with a population of less than 1,000. This would prevent the small counties in future from being organized until they have sufficient population to give them a Representative. All we ask is that you divorce these districts, and follow out the principle to which the Government of the United States and the government of every state is pledged.

Mr. PARSONS of Morton. I would like to read from page two of the Enabling Act. It says:

"The Constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence."

There is no more pleasing reference in that Enabling Act than the one just read, that our Constitution shall not be repugnant to the Declaration of Independence. What was it that produced the Declaration of Independence? Briefly, it was taxation without representation. You say these counties have representation. You may take it in any portion of the State to-day, and the outside small counties have simply the choice between one or two men in the large counties. Political conventions have been held, and they have had the glorious privilege of voting on the choice of delegates from the larger counties. Now please look at it—what class of men inhabit the large counties? You will find there the centers of business, professional men, business men and commercial interests, centered in the large counties. Under this system the tendency and the practice of it will be to give us that class of men in the Legislature in preference to farmers. Go to the outside counties and you will find a rare case of a professional man. I can point you out counties that have perhaps only one or two professional men. There are two counties that I know of and I doubt if there is a professional man in either one. This old principle which the majority seek to give us is a perpetuation of the principle that we have had under the old territorial form of government, and we have seen the iniquity of it. I am not in favor of disfranchising the outside counties and allowing the centers of population to control the Legislature in the future. I speak in behalf of everyone who wishes that the laboring people of this country shall be represented in the Legislature, and ask that they vote for the amendment of the gentleman from Bottineau. I hope that none will be caught by such arguments as have been sought to be advanced here to the effect that this amendment has been introduced by a democrat. It was first introduced as a majority report of this committee, and now it is proposed to strike it out, and if this is done we must feel that it is done in the interests of the professional and commercial classes and against the farming and laboring classes.

Mr. LAUDER. We have had a good many quotations from the

Omnibus Bill and the Constitution of the United States and the Declaration of Independence, but I was particularly struck with that portion read by the gentleman from Morton county. It is elementary, and perhaps we can all agree on it—that all men are created equal. That is just what we claim. To refute every word he has said I intend to quote his own words—that men are created equal. That is, a man out in the Bad Lands is not created equal to two or three men out in the Red River Valley. All that we ask is that the principle laid down by the Declaration of Independence shall be adhered to in the formation of this Constitution. The objections that are raised here and the argument made by the gentleman from Burleigh and the gentleman from Morton, when you look at the thing as it exists, you will find that it has no force in it, whatever. It is a great cry—the large counties will swallow up the little ones. The gentleman speaks of his own county, Morton, and tells us how many of these small counties will be swallowed up in the insatiable maw of Morton county. I would remind him that under the report of the Committee on Apportionment and Representation as it seems to be almost unanimously agreed on, Morton county will go in with one other county only, Oliver, and the two counties will have one Senator and two Representatives. You won't have the exquisite pleasure of swallowing up anybody. These arguments are made on the theory that there will be twenty-four Senators or members of the Council. In all probability there will be thirty Senators from North Dakota, and it will be a small county that will not be a senatorial district of itself, and the matter of swallowing up counties will not cut any figure. It is simply a firebrand thrown out here. I simply appeal, and I have a right to appeal, in view of what has been said, to the gentlemen who reside in the thickly populated counties of the Red River Valley. I warn you that this is a scheme by which this great and almost uninhabitable country west of the Missouri river is to be cut up into counties just as soon as they have 250 voters, and they will be brought in here, and it will destroy the very principle of representation on which our government is founded, representation in proportion to population. We do not want to disfranchise anyone, but this is a combination between these men who want to get an unjust representation from the counties west of the Missouri river, and the democrats who hope to be able to carve out a district in some county that they

can carry when they could not carry the senatorial district altogether.

Mr. MOER. The gentleman from Richland says the people who advocate this measure are appealing to the smaller counties from selfish motives, and then he appeals to the large ones on the same theory. I cannot understand why any county—Richland or any other county—why they should object to it from any stanpoint. Does it affect Richland?

Mr. LAUDER. I object to it because I object to having forty or sixty voters in Logan county have the same voice in the administration of the government of this State, as five or six or seven hundred will have in Richland county.

Mr. MOER. The gentleman is wrong entirely in regard to Logan county. They do not have any representation as a matter of fact. As a matter of fact Logan county is entitled to her proportion of representation; so is McIntosh; so is LaMoure under the district system. I have no fault to find with some of the sentiments advocated by the gentleman from Richland, but I don't believe that the entire position he takes up is right or just, and I want to say that I am going into no scheme with the democrats, for I am as good a republican as is the gentleman from Richland. Why should not McIntosh county have representation? Why should not Logan county have representation? Take the district as proposed. There are in these districts some 1,282 votes—McIntosh, LaMoure and Logan. LaMoure had 831 votes at the last election. Why should we permit LaMoure to take all the representation in that district? There are 351 other votes which should at least entitle them to one Representative. LaMoure pays taxes on $2,000,000 and McIntosh on $470,000, and at the same time he would say—give us a system that would give McIntosh no representation. The same thing is true all over the Territory where small counties are attached to large ones. What is the reason that Cass and Barnes and other large counties are against this? The reason is that they want the cities to control the country. That's all the reason there is in it. There cannot be any other reason advanced that has any argument in it at all than that the cities wish to control the country, in the same way that the larger counties wish to control the smaller counties and take all the representation. I am not surprised that the gentleman from Ransom has abandoned his one house theory. But he is not consistent, for he now advocates another form of one house; he advocates now a

system that selects from the same district, men to the Senate and the House—elects them at large, thus making practically one house, but called two houses. This is practically a one house system. The gentleman says the howl is here to give the small counties representation. That was the cause of the United States Senate being established. It was established so that every State might have representation. They paid taxes, and therefore they claimed representation equal with the rest of the states in the Senate. Why should not every organized county be represented? So far, I have not heard one word of argument other than than it is a democratic measure, which I deny, and simply from the self interest of the larger counties—Cass and Richland and such counties. If the northwestern part of the State is to be divided *ad infinitum*, them let Cass split herself into seventeen different pieces. There is not a thing in that. A county in the west has as much right to representation on the floor of the Legislature as any county in the east.

Mr. BELL. It seems strange to me that they should be willing that we should pay money into the Treasury of the State, and let the counties that lie on the Missouri slope pay it out. It is very strange, indeed, that these gentlemen—I know a few of them by seeing how they were elected last spring—that they don't deal out the same generosity to the different townships around that elected them. If you follow this system out, then in the county government you must follow it too, and give each organized town the same representation as another. It is said that this would be no advantage to the west over other sections, but I notice that the main advocates of the scheme are all from the west and the thinly populated counties. They are afraid, apparently, that the people in the eastern part of this new State are going to control it. If they do, they have a right to control it. They are going to supply a big part of the funds to run it, and I think we should have the right to say how these funds are to be disbursed. Do you think it is fair that Walsh county should only have one representative to every 750 votes, when Billings county has one representative with forty-four votes? Does it take 750 men in Walsh county to be as good as forty-four in the Bad Lands? You must certainly think that a man who has come out here and set himself up on bare hills and barren rocks has a great amount of judgment above him who has settled down in the fertile portions of the eastern counties in this State. I think the only fair way of

having representation is representation according to population, for when you get representation by population you get it according as each one contributes to the public funds.

Mr. SCOTT. I want to call the attention of the Convention to the fact that the gentleman from Morton says this proposition does not affect him. He is looking after the interests of the smaller counties. The gentleman says that as a matter of fact Morton county can swallow the other fellows all up and get two or three times more than it is entitled to. The gentleman from Richland says that it does not affect him because he is one of the large counties that will not have any small counties attached to it. The gentleman from Burleigh says it does not affect him, but they all have sympathy with the smaller counties. It is astonishing to see so much magnanimity displayed by the gentlemen who advocate this system. I don't know why they should advocate it. They say that they have the same interests that the gentlemen in the eastern counties have—the same interests that we have in Barnes county—that it will entitle them to the same representation that it will us, but they pour out their souls to the poor men in the Bad Lands and Logan county.

Mr. HARRIS. The gentleman from Richland grows eloquent and appeals to the Red River Valley counties to stand by this minority report, because he is afraid there is a scheme between the democrats and a few republicans to capture the Legislature by the cow counties. As though it were possible when the district east of the James River Valley will have a population amounting to four-fifths of the whole population of the State, for the counties west of that to do the capturing. It does not seem to me that the Red River Valley counties were in any danger of being crowded out of the way, and as to what the gentleman from Barnes has said, he must remember that we are representing these outside counties on this floor. While it will not affect Burleigh it does affect McLean that has not less than 400 voters, although at the last election it only showed 360; it does affect McLean, and I represent McLean on this floor and I say that it should have a Representative in the Legislature. We are here to represent small counties that surround us and if we represent them right we can only ask that they be given representation, and the gentlemen of the Red River need not be afraid of the power slipping away from them.

The amendment of Mr. NOBLE was then voted upon and lost.

Mr. NOBLE. I wish to offer another amendment. It is this—that all of section eleven of the original report be adopted, down to the word "population" in the fourth line, and adding that "only one Representative shall be elected from each representative district."

The amendment was seconded by Mr. CAMP and lost.

Mr. NOBLE. I move to adopt section eleven to the fourth line and add afterwards the words: "And only one Representative shall be elected from each district, provided every county having over two hundred voters shall have at least one Representative."

The motion was lost.

Mr. NOBLE. I move that section eleven be re-committed to the committee.

Mr. SCOTT. The committee has made its report, and the report is in the hands of the Clerk, and it is before this body for adoption or rejection. They recommend that a certain section be inserted as section eleven. The question is now before us to adopt the committee's report or reject it. It has been fully discussed both by the committee and this Convention.

Mr. STEVENS. As I understand this question the amendment introduced by the gentleman from Barnes, or the substitute, has never been before any committee, and no committee has had anything to do with it. This is an original proposition offered by the gentleman from Barnes to be incorporated as section eleven. You cannot re-refer it unless it has been once referred.

The motion to recommit was lost.

Mr. NOBLE. I don't believe that we want to establish this principle. I wish to offer as an amendment the amendment that I have sent to the Clerk's desk. The main objection to the adoption of this principle of giving each county a Representative seems to be from the older counties of the Red River Valley, and they imagine that they will be over-ridden, and that the new counties will have more power in the General Assembly than the old ones. This seems to be the main objection. The principle of representation, such as we wish to see established here, cannot be disputed by any man on the floor of this Convention. The idea that it is a democratic scheme can be seen to be absurd on its face. My objection to the proposed scheme is that the older counties will have entire control of the Senate—absolute control if they have the Senate apportioned according to population. There will

be five or six counties that will have one Representative, and a slightly larger portion of representation than they should have. But let us consider a few objections to this principle that have been voiced in this Convention before to-day. There has hardly been a time that men have not stood up and pleaded against the tyranny of the old Legislatures of this Territory. Counties have been cut in two, and all this has been done simply because a county was not represented in the Legislature under the territorial era. Under the old principle of legislation—under the principle that an attempt is being made to establish in this Constitution, counties will be unrepresented in the Legislature. Their lines can be changed and the people in these counties, in the future as in the past, will always necessarily have to go down into their pockets to send men to watch to see that the county lines are not changed. The idea of the older counties standing up here and being afraid of giving a county a fair representation in the Legislature—representation that may be a little larger than they are entitled to at present—but which they will at least be entitled to in a year or two. The older counties of the State will have to control the Senate absolutely, and why? They can stand up here and object to giving us fair representation in the popular house —the house that will be composed of all classes and factions of the people of the State. How they can object is more than I can understand. We hear the idea expressed that possibly this is a democratic scheme. We have heard stories here of counties that have been robbed—of their lines having been changed—instances have been given and reasons advanced and methods proposed for remedying the evils that exist, but no theory has been advanced yet before this Convention to remedy the trouble, and the plan to adopt that I can think of, that will be effectual, will be to elect a democratic Legislature.

The amendment of Mr. NOBLE was lost.

Mr. ROLFE. I would like to have the Clerk read the original report of the committee that we have to vote on.

Mr. SCOTT. The resolution which I moved was a resolution which was favored by a majority of the committee, but it is not in the form of a report, for it had been formerly appended to section eight, and that section had been considered by the Committee of the Whole. It is not in the form of the report of a committee, but it is a resolution to be adopted as a substitute for section eleven.

Mr. PARSONS of Morton. Is this report of Mr. SCOTT's the report of the committee?

Mr. BARTLETT of Griggs. It is the matter before the House.

Mr. FLEMINGTON. I believe that a little time taken on this matter may be of advantage to the Convention and to the future State of North Dakota. With that idea in mind I move that the consideration of this resolution be postponed until to-morrow by this committee.

Mr. APPLETON. I hope this resolution will not prevail, for if it does we shall have to go over this whole business again to-morrow. I believe that every gentleman here has been talking about this section for the last two weeks, and every man has made up his mind just what he is going to do when it comes time to vote. I hope that the motion for postponement will not prevail.

The motion to postpone was lost.

Mr. ROLFE. I move to add to the section the words: "Any organized county having 200 voters shall be entitled to at least one representative." I offer this because it is in exact line with the action in the meeting of the Apportionment Committee this morning, on which basis the first house will be made up, provided it is adopted by this Convention.

The amendment of Mr. ROLFE was lost.

The matter was then postponed till the next day.

EVENING SESSION.

File No. 129 was brought up for discussion; section twenty-one was read as follows:

PAY FOR THE LEGISLATURE.

"Each member of the Legislative Assembly shall receive as a compensation for his services for each regular session $300, and 10 cents for every mile of necessary travel in going to and returning from the place of meeting of the Legislative Assembly on the most usual route, and $5 per day for extra sessions and 10 cents for every mile of necessary travel in going to and returning from the place of meeting of the Legislative Assembly, on the most usual route."

Mr. JOHNSON. I move to strike out "$300" and insert $500."

The motion was seconded by Mr. BARTLETT of Griggs.

Mr. WALLACE. I move to amend by making it $400.

Mr. BARTLETT of Griggs. I hope the motion will not prevail. I think $300 is enough, and you will find plenty of just as useful men as are to be found, applying for the place.

Mr. JOHNSON. Just one word in explanation. You may perhaps say it is demagoguery, but I don't agree with you in that. One reason why I make this motion is because the Farmers' Alliance at their meeting in Fargo had this matter under discussion. There was a large attendance, and they put a plank in their platform demanding $500 a session for members. The reason is that the poor man should have just the same opportunity to attend the Legislature as the rich man. I undertake to say from experience that a man cannot pay the necessary expenses of attending a meeting of the Legisiature for $300. I have tried it. A married man like myself, or many of you, should have pay so that we could support our families at home or take our wives with us. I pay $4 a day for myself and wife at the hotel. Where am I to get money to buy gum, hair-pins, whiskey and tobacco, and all the things we have to pay for? It is not right that we should come here and pay a large amount more than we get for our services. I abandoned politics in Iowa because I could not live and stay in the Senate of that state for $550, and I made up my mind I would withdraw from it. I never expect to attend the Dakota Legislature, but I want to pay the men who do represent us a reasonable amount so that they can pay their expenses. I don't calculate that they shall make any money out of it. The Farmers Alliance have made this demand, and they are entitled to consideration.

Mr. SCOTT. I don't believe that we as a Convention are here as the mouthpiece of any society no matter what it is. We are not here to represent any particular sect or society, but society at large, and what we do we are supposed to do for the best interests of the State at large. The argument of the gentleman from Nelson would seem to imply that the Legislature should be composed exclusively, or be made up mainly, of farmers. That may be true, and yet I think the farmer can live just as cheaply as an attorney or any other man. We receive $4 a day here, and I don't believe the State is called upon to pay anything for tobacco we smoke, or cigars we use or whiskey we drink. It is not supposed to furnish us with these things. If we wish for these luxuries we should pay for them. Any economical and prudent man can live very well on $4 a day. We can spend just as much more as we choose. If we like to go to the Sheridan House that is a matter of our own selection, but a man can live respectably, and decently, and fairly and get good board for $6 a week. We figured that $300 would be $5 a day. That is a dollar more than we are now

getting and I don't see why any ordinary, average man cannot get along with $5 a day. The expense of each Legislative Assembly on the State will be at least $50,000, and the first session will cost over that. As the membership of the House and Senate is increased the cost will increase. It used to be that the members of the Legislature got $8 a day, and then it was put down to $4. Now we have increased it to $5 and it seems that no reasonable man can ask for any more. If a farmer comes to the Legislature, the session is held at a season when there is not much to do and he can live on $5 a day and at the same time save more than he could make at home unless he is extravagant in his modes of living.

Mr. BARTLETT of Dickey. I believe that a man has a right to pay all for his board that he has a mind to. I have paid out a good deal of money in my time for the grand flourish of the thing, but I have got over that. Any man can live right here and get good board in the city of Bismarck for a dollar a day if he has a mind to. If he wishes to go to the Sheridan and pay out more money, all right, but I feel that the tax payers of this State should not be made to pay him more than $5 a day, at the present, at least. I believe that my constituents would bear me out in this position. When election times come the men who will want to come to the Legislature will stick out like bristles on a pig's back. They are just now waiting, and can hardly wait for us to adjourn before they will bestir themselves.

Mr. WALLACE. The gentleman from Barnes says that if this section is adopted it will amount to $5 a day. But the session is limited to ninety days. That will make it but little more than $3 a day. To-day we voted to pay one man $2,000 for ninety days' work. I say that $400 is not too much. Because of the fact that a large number of men will be here the figure must be low at which they are each paid per day, but there is no sense in putting it too low. The gentleman from Barnes says that because the Farmers Alliance has indicated a desire that the pay of the members should be $500 is no reason why we should pay any attention to their wishes. I think it is a good deal of a reason, but I am willing to compromise on $400. I think an organization made up of farmers, who comprise seven-eights of the people of this Territory, have a right to say something in this matter, though some gentlemen seem to think they have not. You are willing to go to any extravagance when it happens to go in a certain direction, but when it comes in other directions it is different. Any man who is

capable of serving as a member of the Legislature should be paid at least $400 for the session.

Mr. O'BRIEN. I move that the figures "$300" be stricken out, and "$5 a day" inserted.

Mr. JOHNSON. May I ask that the gentleman will withdraw his motion a moment so that a vote may be had on my motion.

Mr. O'BRIEN. Certainly.

The amendment of Mr. JOHNSON was then voted upon and lost.

Mr. O'BRIEN then renewed his motion.

Mr. SCOTT. I am not in favor of this amendment for this reason. There is no necessity after the first session of the Legislature—there is no necessity for any Legislature sitting for more than sixty days, and that period is too long rather than too short. If the pay is put at $5 there is a disposition, as we have all seen, in the past, to lengthen out the sessions as much as possible, and the sessions will be very liable to run to the extreme limit that we have made here. I think that the shorter the sessions we have the better, providing all the necessary public business is disposed of, and it can be disposed of readily in sixty days. That would be just exactly $5 a day. If they desire to lengthen out the time longer than that, it would incur a large expense upon the State.

Mr. BEAN. There is just one reason why I am in favor of having this placed at $5 a day instead of $300 for the session. It is the same reason that has been working to a more or less extent here. I have heard it expressed by nearly every man in the Convention, that in case we run our sessions over a certain day, we would be working for nothing. In that way a man who is using this as a summer vacation—who has plenty of money to spend, does not care, but the poor man here, in case he is not to be reimbursed, would be willing to sacrifice certain important points which should not be sacrificed, for the sake of getting home. In case they are paid $5 a day, the rich man cannot get the sinch over the poor man in that way. They are getting their $5 anyhow, and if they have a bill to support there will be no sinch or gag law and they can act perfectly free. If the figure is put at $300 the work will have to be crowded to get it down to sixty days, and as we allow ninety days the man who uses this as a political lever will say: "We will prolong this after we have passed the period that these men are getting $5 a day; when they see every day that they are working for nothing, they will give in."

Mr. BARTLETT of Griggs. I oppose the amendment for

almost the very reason that the gentleman from Nelson is in favor of it. I believe there is no more important section of the legislative article than this one we are considering. I believe that if we want a Legislature that will do its duty and do it well, and then go home, we want to pay them by the session, and not limit them as to time. Pay them $300 or $400 or $500, but don't limit them as to time so that on the last days of the session there will be a rush. I believe that forty or fifty days is just as good as sixty or ninety, and if we put the pay at $300 or $400 a session or whatever you agree on, then they will do their work and go home. Michigan's Legislature has just adjourned—it has been in session six or eight months on pay per diem, and there are many farmers and lawyers that are likely to be members in the Legislature who would be glad to stay here all summer at $5 a day, and I say that a per diem law for a Legislature is a pernicious one.

Mr. O'BRIEN. The theory would be all right of the gentleman if we did not have some limit to the sessions. In section thirty-two the sessions are limited to ninety days. I don't believe there is any man who is going to our Legislature for the purpose of making $5 a day. I believe the State should pay any man who will come here to the Legislature, a reasonable compensation, and I believe that $5 a day is a reasonable amount. The gentleman from Barnes in defense of this section as it now stands stated that they based the amount of pay of the Legislators on $5 a day. That is just exactly the basis I take. I am not asking that they shall receive any more than that, and it seems to me that it is no more than right that a man shall get that sum, and I don't think they will prolong the sessions for the purpose of getting $5 a day. I know there are none of us here who would care to stay here much longer for $4 a day, and I would not go to the Legislature and have the sessions continue indefinitely for any such sum. I could not afford it.

Mr. BARTLETT of Dickey. The gentleman who last spoke says he does not believe that there is a gentleman here who would prolong the time. We will admit that, but we are talking about the future Legislatures. These gentlemen will not get there. I don't expect to, I am sure. I think it should satisfy any intelligent man that during these terrible times, during the drouth and misfortunes of Dakota this year, we ought not to pay more than $300 for the term. As the gentleman said, sixty days undoubtedly would be all the time it would be necessary to spend, and I am

satisfied it would be liberal pay. I am satisfied if it was $5 a day for an indefinite period, that there would be a large number of the members who would strike out to have a good time and stay here as long as they could.

The amendment of Mr. O'BRIEN was carried.

Mr. SCOTT. I wish to offer an amendment to strike out the word "ninety" and insert the word "sixty," and add "but the first session of the Legislative Assembly may continue for a period of 120 days."

Mr. PARSONS of Morton. I desire to have a division of the question.

Mr. SCOTT. I don't see how the question can be divided, for it is all one amendment to strike out "ninety" and insert "sixty," and add those words to the section which I have read. I don't believe that sixty or ninety days is enough for the first session.

Mr. PRESIDENT. The Chair is of the opinion that the question is subject to division.

The amendment was divided, the first part put to a vote and adopted.

Mr. APPLETON. I desire to make it read "ninety" days instead of "120."

Mr. MILLER. Possibly it does not occur to the gentleman that the first session will convene in the fall, and if he makes it ninety days the fore part of the session will be taken up with matters that are not legislation, and probably there may be some adjournments. I think that ninety days would be too short for the session,

Mr. FAY. I hope the motion of the gentleman from Pembina will not prevail. During the first session of the Legislature all our laws or nearly all of them will have to be made to conform to the Constitution. It will be a very important session, and the Legislature should remain in session long enough, without being hurried, to do this work thoroughly and carefully. I think the first session should be long enough to give the Legislature ample time to do this work.

Mr. ROLFE. I hope this amendment will not prevail for the reason stated by the gentleman from Cass, and also for the further reason that the first Legislature has one job that will necessarily take a great deal of time, and no ways or means can be devised by which that job can be accomplished in a shorter time. It is the enactment of a new code entirely, or the adoption of the code

we now have in existence, now called the Compiled Laws. As every lawyer knows, and probably every member knows, that is a large volume and contains a great mass of laws which we must adopt as a whole, which the Legislature must adopt as a whole, or re-enact a new code, covering principally all the matter contained in that code. I don't see how that first Legislature can enact the incidental legislation, elect two United States Senators and also enact that code or adopt the one we now have in use, within ninety days. It seems to me that 120 days is short enough, and I doubt very much if they can well accomplish the work that will be before them in that time. I am opposed to the amendment of the gentleman from Pembina, and in favor of the one of the gentleman from Barnes.

The amendment of Mr. APPLETON was lost.

The amendment of Mr. SCOTT making the maximum time of the first session of the Legislature 120 days was then adopted.

Mr. PARSONS of Morton. I desire to move that the following be adopted to take the place of section forty:

"Every bill passed by either House shall be signed in duplicate and one copy shall be forthwith deposited with the Secretary of State."

The motion was seconded.

Mr. PARSONS of Morton. I introduce this, so that when a bill shall pass from one House to the other, and some one steals it, there will be another copy in existence. There have been bills involving thousands of dollars to the taxpayers that have been stolen in every state in the course of transmission from one house to another. In Minnesota that trick has been carried out, and it has also been carried out in this Legislature, but by this simple plan it will do away with the whole business, and nobody can then steal a copy and thereby perhaps wrong the people of a law that they want, and at the same time ruin the character of some member of a committee who will be charged with the theft.

Mr. MILLER. If bills are stolen I think the motion a very immoral one, because it will force the boys to steal two bills instead of one. It will double the crime.

Mr. JOHNSON. I have to suggest another reason in favor of the resolution. It occurred to me when we were discussing the article on the executive, but I said nothing then though I am glad that I now have an opportunity. We passed a section providing that in case the Governor failed to sign a bill, and neglected to return it within fifteen days it should become a law anyhow. Sup-

pose he received a bill, destroyed it, utterly failed to sign or return, unless we had a copy of it we should have no way of putting that on the statute book.

Mr. BARTLETT of Griggs. I hope this motion will prevail. It is not a matter that should be turned off with a joke, for it is well known that it occurs in nearly every Legislature in the country. Whether this will remedy it or not I cannot say, but it is an attempt in the right direction. Certainly it is not very cumbersome or very troublesome. The fact that the evil exists warrants us in the attempt to put a stop to it.

Mr. STEVENS. Is it your intention that when either branch of the Legislature passes a bill, it shall have two copies made of it.

Mr. PARSONS of Morton. The proposition is that when any measure has passed one house, one copy shall be sent to the other house and one to the Secretary's office.

Mr. STEVENS. As I understand it at least thirty per cent.,—fifty per cent., of all bills—you might say seventy-five per cent., that pass one house are either killed in the other house or amended, so that they come back for final action, and the gentleman has forgotten to provide for extra vault room for the Secretary to keep the bills in, as a vault the size of this room will not hold the accumulations of ten years.

The motion was lost.

The sections were adopted up to section forty-six. Concerning it Mr. POLLOCK said: I think lines twenty-one and twenty-two should be struck out, as the matter is covered by lines thirty-four and thirty-five. I would strike out that part which reads as follows: "The sale or mortgage of real estate belonging to minors and others under disability." I think this is covered by the following: "Affecting estates of deceased persons, minors or others under disabilities."

Mr. MILLER. I suppose this will be attended to by the Committee on Revision and Adjustment.

Mr. JOHNSON. As I understand it these paragraphs are not identical. Lines twenty-one and twenty-two refer to the sale or mortgage of real estate, and thirty-four and thirty-five affect the estates of deceased persons. The personal property of deceased persons goes direct to the administrator, and he can sell all that, no matter how much there is, but the real estate goes direct to the heirs, and the administrator has nothing to do with it unless it is

shown that it is necessary to sell the property to pay the debts. That is clear enough to my mind.

Mr. CAMP. I would like to have the chairman of the committee inform us as to what is the meaning of line forty-five—the "imparing" of liens. What is meant by it?

Mr. POLLOCK. If there is no doubt that lines twenty-one and twenty-two, thirty-four and thirty-five do not cover the same ground I am not desirous of having any of them stricken out. But it does not seem to me that the point made by the gentleman from Nelson is a good one, and I still think that the sub-sections cover the same ground.

Mr. FAY. The first sub-section would not prevent the leasing, but the last would.

Mr. POLLOCK put his objection in the form of an amendment, striking out lines thirty-four and thirty-five, and the amendment was lost.

Mr. SCOTT. I should understand that the word "impair" meant destroy—to take away any part of its force, or validity or change would be to impair the lien. The word is spelled wrong and doubtless will be corrected.

Mr. CARLAND. I move that there be added to section forty-six the following:

"Nor shall the Legislature indirectly enact such special or local law by the partial repeal of the general law; but laws repealing local or special acts may be passed."

The motion was seconded and carried.

MINORITY REPRESENTATION.

Mr. PURCELL. I desire to move that the following shall become section forty-nine of this article: "Each elector may cast as many votes for members of the House of Representatives as there are members to be elected in his district, or may cast the whole number of votes for one candidate, or divide his votes among the candidates as he may see fit." I desire to say that this is what is called minority representation. I don't present it for the purpose of having it incorporated in the Constitution, but for the purpose of having it submitted to a vote of the people, and have them say whether or not we can have a minority representation. In the Sioux Falls Constitution they have submitted this question to a vote of the people, and it will be voted upon at the same time the Constitution is voted upon. This proposition

is something new in the new Northwest, but it is an old theory in the State of Illinois, and in conversation with men who have resided there I am informed that it is a very good measure. It is in vogue in a smaller way in many legislative bodies in the different states and in many cities. We have an illustration here in a small way. The President of this Convention has seen fit to accord in the democratic members of this body a representation on the committees equal to their proportion of the whole number of members, and he has also seen fit to divide up the chairmanships in proportion to their numbers. In many of the large cities of the country, especially in Pennsylvania, they have this privilege, and all with one voice declare it to be a very good measure. There are many localities where the majority is very small—sometimes less than ten, and frequently less than 100, and in these localities the majority of less than 100 make the laws and enact them, and have all the say about them, and the minority have nothing to say. Of course we believe this to be right in a sense—it is one of the principles of our government. Minority representation does not intend to interfere with that, but it simply gives the majority their majority, and gives to the minority a representation in the legislative halls of this new State. It does not give them representation in the Senate, but simply in the lower house, where their views can be expressed, their wishes made known, and where they can have a vote in the legislation that takes place. It seems to me that this is a fair proposition. We simply ask to have it submitted to a vote of the people and let the people say whether or not we shall have minority representation.

Mr. STEVENS. I lived under this system, and I think it is no more than fair that it should have a good, honest, fair, candid consideration. We have not time to go into this to-night, and I therefore move that this amendment be referred to the Committee on Elective Franchise, so that we may consider it better.

The motion was seconded.

Mr. NOBLE. I wish to suggest that this clause has already been referred to that committee, and I think that committee referred it back, and it was then referred to the Committee on Legislative Department. At all events the committee did not do very much with the question, and I don't think it will do very much good to refer it to that committee again.

Mr. SCOTT. I move as an amendment that the matter be laid

over till to-morrow. I don't think there is any reason for referring it back to that committee.

Mr. LAUDER. This is a matter that has been discussed a good deal—perhaps not in Convention or Committee of the Whole, but outside and I think every delegate has considered the matter, and made up his mind how he is going to vote. It seems to me that it can be disposed of just as well now as to be laid over till to-morrow.

The amendment to postpone was withdrawn, and Mr. PURCELL'S motion was put to a vote and lost by 24 to 40.

THE OATH.

Mr. NOMLAND. I desire to say that the Farmers Alliance favored the insertion in the Constitution of the oath for the members of the Legislature to take, that is in the Sioux Falls Constitution. It will be found in Long's Legislative Handbook, on page six. In that oath it states that the members shall take an oath that they will not take any passes on the railroads. There has been some talk here about the matter. It has been said that the members of the Legislature should not have $500 per session—it is too much, has been said. The idea of the farmers, as I understand it, in asking that the legislators should have this much, was that they should have no passes on the railroads. I don't say this because I have not got a pass, or because I am an extreme moralist, but at the same time if the farmers—and they are taxpayers, because the producers are taxpayers—if they say to the members of the Legislature, "We will give you good pay, but you must have no passes," I am in favor of accepting the position. I move that the section of the Sioux Falls Constitution providing for the oath be inserted as a part of this article.

The motion was seconded by Mr. PARSONS of Morton.

The section was then read from the Sioux Falls Constitution as follows.

"Members of the Legislature and the officers thereof before they enter upon their official duties, shall take or subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of North Dakota, and will faithfully discharge the duties of (Senator, Representative or officer) according to the best of my abilities, and that I have not knowingly or intentionly paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive, directly or indirectly, any money, pass or any other valuable thing, from any corporation, company

or person, for any vote or influence I may give, or withhold on any bill or resolution, or appropriation or for any other official act."

Mr. STEVENS. As I read it, this matter is already covered. There has been a section already passed here which provides that no member of the Legislature shall take a bribe either in money or thing of value for his vote or influence on any subject. Under the section we have adopted, and under the section that has just been read, you may take as many passes as you can get and as the railroads will give you, so long as you don't take them for your vote or influence. If it is not taken for a vote or inflence there is no violation of the section in the Sioux Falls Constitution.

The motion of Mr. NOMLAND was lost.

Mr. FAY. There is another matter that is already coming up at the sessions of the Legislature. That is in regard to postage, newspapers and stationery. In many constitutions it is provided that a certain sum shall be allowed the members in lieu of all perquisites. This sum is paid them and they can use it for stationery, papers or whatever they may desire. I would move that in lieu of all perquisites, newspapers, postage, stationery, etc., the sum of $50 be given to each member of the Legislature.

The motion was seconded.

Mr. LAUDER. I move that the figures "$50" be stricken out and the figures "$15" be inserted. We have fixed the compensation of the members of the Legislature, and this idea of granting another $50 under the name of perquisites is so obviously an attempt to get more pay from the State, that it seems to me it should not be discussed. There is not a member of this Convention for whom $15 will not buy all the pens, and ink, and paper and postage stamps that he needs. Five dollars would do it. If you want to give the members of the Legislature $50 additional to their salary, do so, but call it by its right name.

Mr. FAY. I introduced this resolution for the purpose of getting it before the Convention. In Illinois for a great many years they have allowed the members $5 a day and $50, and while the gentleman may think this is too much, yet in many older states and with just as wise men as we have got, they have seen fit to insert that amount, and they pay it right along.

Mr. PURCELL. I move that when the committee rise it reports this resolution back, with recommendation that it do not pass.

The amendment of Mr. PURCELL was adopted.

The committee then rose.

Mr. BEAN. I move to adjourn.

The motion prevailed, and the Convention adjourned.

THIRTY-FIRST DAY.

BISMARCK, *Saturday, August 3, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. PURCELL. I move that the Convention now resolve itself into a Committee of the Whole for the purpose of considering File No. 137.

The motion was carried.

Mr. CARLAND. In view of the question asked yesterday I would move to amend the File by adding at the end the following words:

"In case the voters of any county decide to increase the jurisdiction of the county courts, then such jurisdiction as thus increased shall remain until otherwise provided by law."

I move this for the purpose of enabling the Legislature to abolish the jurisdiction, if after trial the people of any county desire to abolish it.

The File as amended by Mr. CARLAND'S motion was adopted.

JUSTICE COURT JURISDICTION.

Mr. SCOTT. I desire to amend section twenty-six of File No. 121 so as to read as follows in line five:

"The justices of the peace herein provided for shall have concurrent jurisdiction with the district court in all civil actions, where the amount in controversy exclusive of costs does not exceed $100."

The section now reads as follows:

SEC. 26. The Legislature shall provide by law for the election of justices of the peace in each organized county within the State, but the number of said

justices to be elected in each organized county, shall be limited by law to such a number as shall be necessary for the proper administration of justice. The justices of the peace herein provided for shall have exclusive jurisdiction in all civil actions, where the amount in controversy exclusive of costs does not exceed $50, and concurrent jurisdiction with the district court in all civil actions where the amount in controversy exclusive of costs does not exceed $200. They shall have such jurisdiction as committing magistrates as may be prescribed by law, but in no case shall said justices of the peace have jurisdiction, where the boundaries of, or title to, real estate shall come in question.

The amendment was seconded.

Mr. STEVENS. I desire to offer an amendment to the amendment. I would insert "$200" instead of "$100."

Mr. SCOTT. I don't know whether the gentleman from Ransom has had much experience in the justice court or not, but it seems to me that $100 is all the jurisdiction the justice court should have. I fail to see any advantage to be gained by making it $200. In the first place is does not cost any more to sue in the district court than in the justice court, and now terms of court will be more frequent. There will not be nearly as much delay, and why this amendment was offered or why the report recommended $200 I cannot see. If we are compelled to go into the justice court to litigate a case involving $100 it is more than we should do, for in nineteen cases out of twenty an appeal will be taken to the district court.

Mr. STEVENS. In the first place, under the gentleman's resolution we are not compelled to go into the justice court, because the justice court has concurrent jurisdiction with the district court, and not exclusive jurisdiction. In the second place the $100 clause may work very well where you are living in the county seat, but in the larger counties there might be cases involving $200 in which there was no defense and no contest. If you bring the case into the district court, after having service you must wait thirty days before the time for answering comes. It is an injustice to parties who want to bring suits on notes where there is no defense to say that because the note exceeds $100 they shall not only be compelled to go into the district court at a greater expense, but shall also wait in addition, and in all probability there will be a delay of six months or more if there is a defense. On the other hand, if it was to be tried by a justice, if there was a defense there could be no injury, and if there was not, it would assist the plaintiff. I believe that law suits should be so that a man may get out of court the cheapest and easiest way he can. The law should be

so arranged as that any man who brings a defense that has no merit, cannot delay the trial indefinitely. I have not had a large practice in the district court or in the justice court. I am an unsophisticated youth who has just begun to practice, but my practice has convinced me that jurisdiction of $200 would have been the correct thing for my clients.

Mr. SCOTT. The same argument would apply to make the jurisdiction larger, and I would ask—why not make it $1,000? Very frequently a person having a case of a $1,000 would like to get a judgment in a day which he might get in a justice court.

Mr. WALLACE. The gentleman wants to know why there is any reason for increasing the jurisdiction beyond $100? I believe that every litigant has a right to have his case heard speedily. To force a man to go into the district court because he has a case of $200 I think is unwise. I think the justice court should have jurisdiction to as high an amount as $200.

Mr. LAUDER. It seems to me that the amendment of the gentleman from Barnes should prevail, for we have as good as adopted the county court system, and with the county court always open, and presumably presided over by a man with more ability than an ordinary justice of the peace, there will be plenty of opportunity for parties who wish to bring suits to bring them if the jurisdiction of the justice remains at $100. There is another question in this besides the rapidity with which a man may get a judgment if he has got a note against a neighbor or anybody else, and that is the character of the court and the ability of the court to transact the business of that magnitude. That should be the question here. It seems to me that the jurisdiction of $100 is sufficient for the ordinary justice. Occasionally we find a justice of the peace in whose court it would be safe to try cases involving a larger amount, but I can see no necessity for increasing the jurisdiction in view of the fact that we will have county courts in all counties that desire them.

Mr. CARLAND. I have no particular interest in the jurisdiction of justices of the peace, but there is one point that seems to have been overlooked by the gentleman from Richland, and that is that under the terms of the Constitution, as it now stands, counties that contain a population of over 2,000 do not have county courts with jurisdiction other than probate jurisdiction. Consequently in those counties it seems to me if it might not be too much for the justices to have jurisdiction of $200.

Mr. MATHEWS. Where I used to live justices of the peace had jurisdiction to an amount of $200, and it worked very well. They could settle things at once without rendering it necessary to wait five or six months.

The amendment of Mr. STEVENS was adopted, and Mr. SCOTT's amendment adopted as amended.

Mr. CLAPP. I move to amend the section by adding after the word "magistrate" in the tenth line, the words "to hear, try and determine all cases of misdemeanor."

Mr. BARTLETT of Griggs. It seems to me that this is an organized effort to defeat the county courts in another form. If we are going to give all the jurisdiction of the county courts to a justice of the peace, let us know it. The idea of giving him power to hear, try and determine all cases of misdemeanor is as absurd a proposition as we have heard.

Mr. CLAPP. The gentleman is an earnest advocate of the county courts, but I would say that there are some whom I represent who are as entitled to a hearing as he is. In the county in which I reside there are numerous villages which are not incorporated, and which would not come under section twenty-seven, where police magistrates are given the power that I would give to the justices of the peace. There are some of these villages nearly as large as some of the county seats, and they are forty or fifty miles from the county seat of my county. It is a grave injustice to them to ask them to go to the county seat in cases of misdemeanor.

Mr. STEVENS. It may be ridiculous on my part, but it sounds ridiculous on the part of this amendment in this—in the first place, we have provided that a police magistrate shall be a justice of the peace, or shall have the jurisdiction of the justice of the peace. In the second place, either the law must provide that no misdemeanor can be punished by a fine of over $200 or else he would have criminal jurisdiction to a greater extent than civil. The highest penalty ascribed for a misdemeanor under our present code is not exceeding one year in jail or $500 fine. If we abolish these penalties and make the penalty within the present jurisdiction, that we have fixed for justice of the peace, we must also make a difference in the grade of crimes, or else men who should be punished under our present laws with one year in jail, will ask that they get $200 fine and perhaps thirty days in jail. If we do that the offenses that could now be punished by a fine greater than $200 and imprisonment greater than one month

must go as felonies. That would be a great injustice in our criminal legislation—in our Criminal Code to say that a person who had been guilty of an offense, that the judge or jury might say would be amply compensated with punishment of $300 fine, must go to the penitentiary. It would increase the number that would go to the penitentiary from three to five times. I would be opposed to give this jurisdiction. When you use the term "all misdemeanors" you make it very broad. If you say misdemeanors of a certain grade, that would be very different.

Mr. ROLFE. As one of those who earnestly advocated the system of county courts I recognize the situation that some counties would be in that don't adopt the county court system, and therefore I am partially in favor of the amendment, and certainly would be if the amendment to the amendment which I would offer would be satisfactory. I would add to the amendment as offered the words: "Where the penalty does not exceed thirty days in the county jail or $100 fine or both."

Mr. POLLOCK. I am very much in favor of the amendment, and until the last few minutes I did not discover that this provision for justices of the peace does not, as it stands, give the justices of the peace jurisdiction to hear and determine any criminal cases. They certainly should have as much jurisdiction as they have under the Territorial laws, and as I understand it this will give them about the same jurisdiction as before.

Mr. O'BRIEN. I do not quite understand this amendment. What is a committing magistrate? Is not he a man who holds to the grand jury? Is it intended that the justice of the peace shall act as committing magistrate, and in addition thereto shall have the power to punish?

Mr. PURCELL. The purposes for which county courts were advocated were to take away from the justices some of their civil and criminal jurisdiction. This Convention has agreed in a measure to adopt that system, and in doing so we should not enlarge the powers of the justices of the peace, for by substituting county courts we furnish a speedy and quick hearing for the cases. This extension of jurisdiction will take away a certain measure of the county court business. It is true that some of the counties will not have county courts, but under our system of district courts they will not be at much disadvantage. Instead of extending the jurisdiction of the justice court we should restrict it.

Mr. JOHNSON. I recognize the objection of the gentleman from Ramsey, and I think it could be obviated by placing this amendment a few words further along. Instead of placing it after the word "magistrate," place it after the word "law" in the eleventh line.

Mr. SCOTT. It seems to me that now in place of having one court in the county you are making the justice of the peace a county court. This is increasing the jurisdiction of the justice of the peace so that he may try and determine cases of the grade of misdemeanor. As the amendment of the gentleman from Benson reads, all cases which are punishable by imprisonment of thirty days and fine of $100 will be within the jurisdiction of the justice court. Misdemeanors, which are the majority of the offenses which are committed, should not, in my opinion, be brought within the jurisdiction of the justice court. If it were in my power I would take away the jurisdiction they have got.

Mr. BARTLETT of Griggs. I have been an earnest and sincere advocate of county courts, but if we are going to have five or six county courts in every county why I don't know that we want any. I want some system that will be in a measure consistent. The very object of forming the county court was to increase the dignity of the court that is near the people, and to give the people as good a court as we can of original jurisdiction. Now you place the original jurisdiction in a still inferior court and take away two-thirds of the business which would naturally come to the county court.

The amendment to the amendment of Mr. JOHNSON was lost.

The amendment of Mr. CLAPP was lost.

Mr. NOBLE. I move as an amendment the following, to come after the word "magistrate" in the tenth line: "such criminal jurisdiction to try and determine, as may be prescribed by law."

Mr. NOBLE. It seems to me that under the section we are considering in one of these counties that is below the 2,000 population limit, for the crime of assault and battery the magistrate would simply act as a committing magistrate and the defendant would lie in jail till the next term of the district court. Some provision should be made so that crimes of that kind can be punished by the justice. That is the main reason why I would leave it to the Legislature.

Mr. CAMP. I offer an amendmeht to the amendment. After the word "magistrate" in the tenth line, insert: "And in counties

where no county court with criminal jurisdiction exists, they shall have such jurisdiction to try and determine cases of misdemeanor as may be prescribed by law."

Mr. CARLAND. The amendment to the amendment and the amendment presented by the gentleman from Bottineau would authorize the Legislature to give the justices power to try a man for homicide. I don't think the Constitution wants to confer any such power on the justice of the peace.

The amendment of Mr. CAMP was adopted and the other amendments rejected.

Mr. BARTLETT of Griggs. I desire to move as an amendment that the following be added at the end of the section:

"The Legislature shall have power to abolish the office of justice of the peace and confer that jurisdiction upon judges of the county courts or elsewhere."

To be consistent with my theory we should provide the best possible courts as inferior or original courts. If the county court should become so popular that the Legislature desires to confer on them all the power, they should be able to do so.

The amendment was carried.

DISCUSSION OF THE PREAMBLE.

Mr. McHUGH. I move that we substitute the Preamble of File No. 106 for that of File No. 133.

The motion was carried.

Mr. POLLOCK. I move to substitute File No. 74 for the one just adopted. It reads as follows:

"We, the people of North Dakota, acknowledging the supreme and perfect law of Almighty God, in order to maintain and perpetuate the peace, prosperity and happiness of our citizens, do ordain and establish this Constitution."

Mr. BARTLETT of Griggs. I move to strike out the words "acknowledging the supreme and perfect law of Almighty God." In this world, unfortunately, there is a large class of people that declare that the only law there is lies within the lids of the Bible, and they will stand by that with their heart's blood. The framers of the Constitution of the United States kept the name of Almighty God out of their work.

Mr. MILLER. I have read the preambles of almost all the constitutions in the different states of the Union, and I don't believe there is a terser, more expressive, more complete preamble

to any constitution in any state in the Union than the one we have just adopted as a substitute for the one reported from the committee. While it does not interfere with anyone's particular belief, it expresses fully and tersely everything which should be covered by the Preamble.

Mr. STEVENS. I am surprise that any member of this Convention who voted to have service each morning before our exercises or before our business commenced, should offer to strike from this preamble the name that should be remembered at our earliest morning wakening, and as we close our eyes in sleep. I am surprised that any man in this day—in this enlightened day—would get up in this hall and ask to strike from the preamble of our Constitution, words that are, or should be, near and dear to every true citizen and every lover of law and liberty. When you strike those words from this Constitution you strike a blow at civil liberty, because without a due reverence for Almighty God all forms of government must crumble in the dust, and the enlightenment of our day go back into the dark ages of the past. If the gentleman has a single silver dollar in his pocket, and will take it out and examine it, he will find that "In God We Trust" is good enough for him in financial transactions every day of his life. He will find that every silver doller he handles says "In God We Trust." If we do not trust in God in whom shall we trust? What are we but creatures of the Divine Being? You may call him God or not as you please, but I say that the majority of mankind at this day and age of the world have arrived at the conclusion that that is the name by which He should be called. The very first thing that was done in this Convention was to invoke the Divine blessing and morning after morning that has continued. In every Convention of a political or civil nature that is held in this country the first thing to have is the invocation of the Divine blessing. Why should we not rely on Him? Do we not rely on Him for the sunshine and the shower—do we not rely on Him for every benefit that nature bestows on man? Why, then, should not we say so, and then the coming generations when they open the lids of that Constitution will see that its compilers relied upon the blessings of the great Jehovah? Strike these words from this Constitution and you send broadcast, not only over this land, but over across the deep sea to every civilized nation, that North Dakota has deliberately and willfully struck a blow at religious liberty. You say in that Constitution that no man shall be de-

prived of the right of worshipping according to the dictates of his own conscience. Take your Declaration of Independence, and what are its provisions? "With a firm reliance upon an Allwise Being." You cannot find a single document within the last hundred years, that speaks of man's liberty, that does not recognize also a Supreme and Allwise Being. I say it is a disgrace to any man who votes to strike the name of God from this Constitution.

Mr. BARTLETT of Dickey. The gentleman is a nice talker. I like to hear him. But I have not heard anyone who wants to strike the name of God from this Constitution. We know that there is a large element of the religious world to-day that is struggling with all their might to keep the law of God out of the Constitution, simply that they may not have the blood stained streets that there have been in years that are past. Recently in Arkansas they threw men in prison bacause they broke the Sunday law. Who makes this persecution? It was the orthodox world that was oppressing their fellow men. Right along there are men lying in jail there, and all because they got this into their law. In the history of the world up to the fifth century, people lived in peace and quiet, but when they began to get the law of God into their constitutions and their laws, the world was deluged with blood; one religious sect began to persecute another, and it has been so through all time till now. For my part I am willing that they should claim that they are governed by a higher power, but not to say that they are controlled by the law of God. There is not an orthodox man in the United States but would say that that means the Bible, and therefore I am opposed to the measure.

Mr. BARTLETT of Griggs. I did not suppose when I made this motion that I should be the cause of springing a sermon on this Convention. It was not my intention. I believe in being consistent. The gentleman alludes to the fact that we open our Convention with prayer. We do; we open the sessions with prayer, and the Legislature opens its sessions with prayer, but do members of the Legislature or of this Convention bow their heads in suppliance and ask Almighty God for wisdom to conduct these meetings and the Legislature in accordance with His law? The gentleman says it is a disgrace to try to strike the name of God from this preamble. I say that it is more of a disgrace to stand and listen to the prayer, and one moment after to put your heads together and connive in schemes that are disgraceful. That is what I say is a disgrace. Does it occur in the Preamble of the

Constitution of the United States?—one of the greatest, grandest documents that was ever written? Were our forefathers disgraceful that they left it out of that document? I believe that a preamble without the name of Almighty God in it would be one that all could unite on. That is why I made this motion, and I am not ashamed to stand here and father it, and I don't feel disgraced.

The amendment of Mr. BARTLETT was lost.

The amendment of Mr. POLLOCK was lost.

Mr. BARTLETT of Dickey. I move that the words "Almighty God" be stricken out of the preamble that we have adopted, and the words "Supreme Ruler of the Universe" be inserted in their place.

The motion was lost.

CAPITAL PUNISHMENT.

Mr. ROLFE. In view of the fact that in the State of New York the system of execution by electricity has been adopted, which is modern and may be considered unusual, and since one who has been condemned to death since that law was placed on the statute books has contested the sentence imposed on him on the ground that it is unconstitutional under a provision similar to this, I would move that the words "or unusual" in the fourth line of section six of the Preamble and Bill of Rights be stricken out. In the advance of science we do hope that, if the death penalty be retained, some means will be devised by scientists whereby that horrible penalty may be imposed without the scenes of suffering that are at present entailed on many murderers. It may be that electricity will accomplish this, and it may be in years to come means may be devised which will be superior to that which has been adopted in New York, but we don't want to handicap our Legislature so that it cannot inflict another penalty by some means which will be superior to those now in force.

Mr. STEVENS. It won't be unusual by that time, as it is already being tested. If these words are there for the purpose of preventing experiments then I think it should be there. The committee thought that it was better to have such a provision there than not, because there might be a time when some Legislature might see fit to prescribe some plan for execution that would not be best. I don't see any advantage that would follow striking it out. "Unusual" might be construed to mean cruel. That is the

ground on which the New York case is to be tested, and the question that the courts are to pass on is whether or not death by electricity is unusual or cruel. They have to pass on the meaning of the word "unusual."

The amendment of Mr. ROLFE was lost.

TRIAL BY JURY.

Sections one to six inclusive were adopted. Section seven was read as follows:

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate, but a jury in civil cases in courts not of record may consist of less than twelve men, as may be prescribed by law.

Mr. BEAN. I move that this section be amended by inserting after the word "inviolate" the following: "In civil cases a three-fourths majority of a petit jury shall constitute a verdict." I make this motion for the object which is apparent. We all know that in civil cases it is very easy for a man to have a friend on the jury that will, when the right is on the other side, prevent a verdict from being arrived at. For instance, I had a case which was as good as one could wish, and I got all the jury but two and they hung the jury. It was nothing but a petty case in the justice court. That occurs frequently. It is my opinion that justice can be secured more frequently if we say that three men out of four in all civil cases shall be sufficient. I think if we get three men out of four in a jury it is a pretty good sign that those three men are right.

Mr. CARLAND. I hope the amendment will not prevail, for if we are to retain trial by jury at all I think we must retain it as it was known to the common law. If we are not to retain it I should like to have some good reason given for setting it aside, and trying our cases without a jury. But if we are to have it, let it remain as it was to the common law. Of course it is possible and probable that men will disagree on facts submitted to them for their decision, but it must not be argued that the men who are in the minority are wrong and that those who are in the majority are right. If ten think one way and two another it does not argue from that fact that the ten are right. The matter of hung juries will continue in any event, supposing you put it at three-quarters of twelve men. Those men may still disagree. They are all men with different minds, and will look at facts differently and will disagree on facts presented to them, and if you are

going to adopt a practice of letting three-fourths of a jury render a verdict, it will be proper in my judgement to abolish the whole system. I am in favor of having the right of trial by jury secured to all, and hope that this amendment will not prevail.

Mr. BEAN. I desire to show great deference, as do other members of the Convention, to the opinion of the gentleman from Burleigh, but at the same time I claim, on this occasion, that the gentleman's ground is untenable. He says that he is not willing to allow nine men out of twelve to settle a case. Rather than that he would let one man decide it. I may be wrong, but I think that that is untenable ground. I care not for the history of the matter, or whether it originated in England or in the United States—if I think that justice can be brought about better by having nine men out of twelve decide a case, I am in favor of amending the old law.

Mr. LAUDER. I don't agree with the gentleman from Nelson that one man decides the case. When a case has been tried before a jury, and they have taken it into their jury room and rendered a verdict, that is a judgment of them all. His objection to requiring a unanimous verdict is that one man may hang a jury. My experience has been very limited, but during that limited experience I have found that one man on a jury was the means, not of hanging a jury, but of going a great way in moulding their verdict so that it would agree with the principles of right and justice. I have in mind a case that was tried in court awhile ago in Fargo. I understand that the jury were actuated more or less by passion and prejudice, and eleven of them were in favor of returning a verdict which would have been pronounced by the people as outrageous, and one cool-headed man stood there and insisted on getting down to business and finding a verdict as should be found, without any personal considerations. The verdict was returned and the sense of the public was that it was a sensible and a righteous verdict. That one man prevented an outrage, and that is oftener the case than that we will find a corrupt man in the box who will refuse to exercise his judgment or return a verdict in accordance with the rights in the case. We should not act on the theory that we are going to deal with dishonest men. Occasionally we find a man in the jury box who is corrupt. But that is not the fault of our system. No system that men can devise will be perfect, or will mete out exact justice in all cases. As long as we are dealing with men we must deal with the

infirmities of men. I think the experience of mankind in England and the United States is that our jury system is the best system that can be devised. When twelve men agree, ordinarily they agree pretty nearly to the right thing. The system prevents a body of men who may be actuated by passion or prejudice from doing what is wrong, and it is that way far oftener than that it prevents a fair verdict from being returned.

Mr. BARTLETT of Dickey. I must enter my protest to some of their talk. They want it understood that if a man goes into court claiming that a certain party may owe him, twelve men must be on his side or the debt goes unpaid. Won't they also admit that if you have a mean case—what is the first thing you do? Every one of you know that you just walk up and down that jury box and talk at your man and throw your whole force on him. That is what all attorneys do when they have a hard case. They pick out their man, and throw every bit of their force on him. Presently the attorney will see the man's head bow, and then he knows that he has got him. Every lawyer knows that this is true, and the moment the lawyers go out of the court room to take their quiet drink they will tell you how they pinned their man, and the jury is hung and justice is perverted.

Mr. STEVENS. So far as the gentleman's argument is concerned about the attorney picking out the man, it may be right, but the attorneys get on the other side as often as they get on this side. Sometimes we are on the side of the one, and sometimes on the side with the eleven. But I desire to say a word in addition to what has been said by the gentleman from Burleigh and the gentleman from Richland. The Legislature will have power under this provision, as it now stands, to do just what the gentleman from Nelson wants to have done, in case they should see fit. I think it would be a bad provision to be made by the Legislature or anybody else, but more particularly to be made in the Constitution. If the time should ever come when it was found expedient to adopt this plan, let the Legislature adopt it, but don't put it in the Constitution. It would be poor legislation, and of all places the wrong place to put it would be in the Bill of Rights. If it would be right now it might be wrong hereafter and if it is put in here it would be impossible for the Legislature to change it.

The amendment of Mr. BEAN was lost.

Section seven was adopted.

INDICTMENT AND INFORMATION.

Mr. ROLFE. I move to amend section eight, which reads as follows:

SEC. 8. That until otherwise provided by law, no person for a felony be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases offences shall be prosecuted criminally by indictment or information. The Legislature may change, regulate or abolish the Grand Jury system.

By striking out the word "felony" and inserting the words "criminal offenses" in the second line, also inserting after the word "by" in the second line, the words "information or;" also in the fourth and fifth lines strike out the words "In all other cases offenses shall be prosecuted criminally by indictment or information." I offer these amendments in the interest of the public and defendant's in criminal cases. I suppose there is no lawyer in the House, and probably no member of the Convention, who has not seen the occasion for some such change in our laws as this. I suppose there are some who would raise the objection that this might result in trifling charges being made against parties from malice, but this is not the day and age when such moves are popular, and it is rarely the case in my experience now, when a trifling or malicious charge is brought before the grand jury or a court directed against some person for whom the prosecuting witness has some malice. This substitute that I propose simply makes it possible that a defendant may be proceeded against by information and not necessarily by indictment. As I stated the other day to illustrate the abuse which under the present system may arise, a man in Benson county was confined for thirteen months awating the action of the grand jury on the charge of obtaining $10 under false pretenses. Under the law his case was a felony, therefore he could get no trial until after the grand jury had passed on his case, and he was immured in the cell for thirteen months under the system we have agreed on as to our judiciary. This will never arise again perhaps in the State, but the case might arise that he would be confined awaiting the grand jury for a longer period than he would be sentenced after he was found guilty of the offense charged. The State of Wisconsin, whose system we cannot but admire in many respects, has gone to this extent that "no man shall answer for a criminal offense except by due process of law." There is no grand jury drawn except where

it is apparent to the judge that one is needed. This amendment provides that information or indictment may be the proceeding, but we shall not be limited to indictment alone. It appeals to our pocket books, as we have to support men in jail for a long time, and it certainly appeals to the rights of the defendant. We are careful to place in our Bill of Rights that any person charged with a crime shall have a speedy trial, but at the same time we make it possible that he may lie in jail for six months before he can possibly have a trial. This is inconsistent, and should be changed.

Mr. CAMP. I am in favor of abolishing the grand jury, but I don't see why the section is not just as good as it now stands, as it would be with the amendments of the gentleman from Benson. The section provides that the Legislature may establish some other method of bringing accused persons to trial besides the grand jury, and until they have some other method the accused could not be brought to trial in any other way. Until the Legislature does provide some other way we shall have to go on under the present system.

Mr. CARLAND. It was the view of the committee in adopting section eight that as the territory had grown up since its organization under the grand jury system and our laws were now framed for the purpose of prosecuting criminals by the grand jury, it would be unwise to make any radical change in the Constitution in this matter at this time, for the reason that the Constitution would go into effect before the Legislature would have an opportunity to pass any laws to provide the machinery for prosecution on information. So the section is worded that the grand jury system will prevail until the Legislature makes some other provision. I think the gentlemen who wish to abolish the grand jury system can see that the Legislature will have full power to do that, and I think it best to leave it as it is, and then the law-making body, after a full discussion, can abolish the system if they desire to do so.

The amendment of Mr. ROLFE was lost.

BLACK LISTING.

Mr. PARSONS of Morton. I wish to offer an amendment to the report. I desire to add to it File No. 89, which reads as follows (with certain amendmendments to the original file):

"Every citizen of this State shall be free to obtain employment, wherever possible, and any person, corporation or agent thereof keeping a black list, in-

terfering or hindering in any way a citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of conspiracy against the welfare of the State, which offense shall be punished as shall be prescribed by law."

I have presented this File to a good many members of this Convention, and have endeavored to amend it so that it would not be objectionable.

Mr. POLLOCK. I have no objection to the spirit of what is contained in that proposed amendment, but it seems to me that it is a matter that belongs to the Legislature. There are other matters just as important as this that scarcely any member would ask to have incorporated in the Constitution. The matter itself is all right, except that this is not the place for it.

Mr. PARSONS of Morton. It is incorporated in other constitutions of states in the Union already.

Mr. CAMP. It seems to me that this is one of the most important articles we have had under consideration, and I am very sorry that it comes up now that the House is so empty. Every one of us, who rides upon the railroad train, expects the utmost care from every employe of that train. We expect to hold the company responsible to the highest degree of care for our personal safety. And if by any misconduct of the engineer—if by any mistake of the conductor or any telegraph operator, I am injured while on that train, I expect to recover heavy damages against that corporation, and every judge and every jury is ready to grant such damages. How is a railroad company, for instance, and I take a railroad company as one instance, to know that its employes are competent? Railroad employes are men who pass from one community to another. Men are working on the Northern Pacific to-day who six months ago were on the Southern Pacific—men are in California to-day who were laboring a few months ago in New York or Connecticut. Now, when a railroad company has found that one of its employes is inefficient, incompetent or a habitual drunkard, is it not right to put him on a list and say to its own managers and the managers of every other railroad corporation—this man we have found to be a habitual drunkard, or he is color blind, and cannot safely act as an engineer? That would be a violation of this clause, and yet it seems to me that that is the only right and proper thing for a railroad corporation to do, and it seems to me that they should get a list of men whom it is found are inefficient, and that any other

method would result in great danger, not only to the traveling public, but also the railroad employes themselves.

Mr. LAUDER. If what has been stated by the gentleman from Stutsman was all there was of this proposition, it seems to me there could be no disagreement as to what ought to be done with the proposed article. But it strikes me that there is more of it than has been stated. I grant everything he has said, and if the black list was used for no other purpose than that which has been stated by the gentleman from Stutsman, I should be in favor of it. But laboring men have rights—they have the right to band themselves together for mutual protection, and the black list is not used, I take it, simply for the purpose of warning other corporations or the public generally against incompetent men, but I believe it is used oftener as a means of punishing men who have banded themselves together for mutual protection—men who have been engaged in strikes for instance—something that they have a right to engage in. Then they are often put on the black list for this reason, and this black list is used as a menace to the laboring men to prevent them from asserting their rights, and when it is used for that purpose it is wrong, and should not be permitted.

Mr. CAMP. I will not allow the gentleman to go one step further than I will go in allowing a body of men to band themselves together for mutual protection. The use of the black list is already a violation of the law, and the passage of this amendment would not make it any more so. I see no reason why a railroad company should not be put on a par with a newspaper. The newspaper can print anything it chooses, but is liable both civilly and criminally for the abuse of that privilege. Let the railroad company make all the lists it chooses, but let it be civilly and criminally liable for the misuse of that right. The gentleman from Richland has admitted that there is a right and a wrong use of the black list. This proposition would prohibit not only the wrong use but the rightful use as well. I do not sustain the wrongful use, but I do sustain the rightful use.

Mr. LAUDER. I know of no law on the statute books, or in force in this territory, that prevents the railroad companies from making out a black list and sending it to any other railroad company, giving the names of the employes of that company who have been engaged in strikes, warning the other roads against

employing them. If there is such a law my attention has not been called to it.

Mr. BARTLETT of Dickey. I desire to say why I am in favor of the black list. I believe there should be merit for good men —good laboring men. There is no danger of their getting on the list, and if there is no merit for doing right, there is nothing to encourage a man in well doing. Every town in the country has its black list. Every merchant has his black list, and they post one another as to who is entitled to credit and who is not. All through this land there are black lists, and it seems to me that while we hold railroad and other corporations liable for the damage they may do—I cannot see why they should not be entitled to warn one another against all the dangerous men that they have had experience with. I think it is only just and right that they should have that privilege, and when a man is notoriously incompetent they should have the right to post other people all over the United States and show what these men are like. On the river there are certain men who do not get drunk, but they are reckless. The minute your back is turned they will put on more steam than the law allows. We have the names of these men on the river, so that we can crop their wings whenever they present themselves, and it is right that it should be so.

Mr. PARSONS of Morton. I did not expect that there would be much discussion over this. I would like to make this statement. This section that I propose has been presented to, and received the endorsement of, every railroad attorney in town, but if the gentleman from Stutsman is a railroad attorney I will except him. I have submitted it to these gentlemen and have amended it to suit them and they have been willing to acept it in this from. It is strange that parties should rise here and try to help out those who do not ask for any help in this matter. This measure is not mine, but has been carefully prepared and advocated for years and years, and in our system of government you may talk about legal privileges, but there is no remedy for the laws that exist. There is a class of laboring men in some of the states that have worked for their fellows, and have succeeded in securing their rights, but they themselves, the men who have done the work, may go to the poor house. There is no tribunal before which you can bring these things, and the men are left to the mercy of the corporations. If corporations in practice worked as well as they do in theory it would be all right. I wish to say, that it does not interfere with

the discharge or the hiring of competent men and it does not interfere with the discharge of incompetent men. There is nothing in the provisions of this section which will prevent the employer from acting and using the same judgment and discretion, (although this employer may be an employe of a railroad company,) that he would use if he were in another walk of life. If a man asks for employment of a railroad company and he is asked where he was last employed, he will have to answer. If he is a skilled workman he will so state or show his papers. Nothing in this clause interferes with or trammels the right of the employer to write or inquire all over the United States as to the character of the applicant, but it is intended to make the circulation of the black list a crime, and most of the names on these black lists are there for political offenses. It has become tyranical, and in some cases people are held in shackles by the custom of exchanging black lists between corporations. The word "person" is in this clause to prevent an officer saying that he was acting as a person, and not as an agent of the corporation or the corporation itself. No other persons circulate black lists but the corporations. If this country is to be free—if the poor laboring man is to have the same rights as any other man, he should not have his bread and butter taken from himself and family simply because he may have offended some little petty officer—may have committed some little political offense, and have had his name put on the black list, and published to the world. There is no tribunal that has that right, and yet they take that right. There was a recent decision in Missouri to the effect that there was nothing in the Constitution of that State to prevent corporations from circulating a black list. I could point you to cases of men with families who would strive to obtain work, and they would get it, but the moment it was found that their names were on the black list they would be discharged. If that is right, then let it continue, but if the laboring men have any rights, we ask that they may have those rights preserved to them.

Mr. BEAN. I am in favor of this section for another reason which it seems to me has been overlooked, and that is on account of strikes. If I read this section right it will prevent strikes. It says that every citizen shall be able to obtain employment, etc. To my mind that would tend to prevent what is taking place in the east every day. We all know that these strikers form together and unite and endeavor to keep other persons from going there to obtain employment. To my mind this article would pre-

vent that very thing. They could not unite and say: "You must not come here and work." A man would be free to go there and work if the employer would hire him.

Mr. ROLFE. If there is in this measure only a prohibition of that feature of the black list which amounts to a boycott, I would be in favor of it. I think that the section could be so amended as to eliminate the objectionable feature. I would move that it be laid over till Monday.

The motion was seconded and lost.

Mr. STEVENS. I think that I know more about this question than any man who did not come from a coal or iron working state. The black list originated in the coal fields of Illinois. Miners who were not satisfactory or who objected to their wages or in any way were disliked, were put on the black list. These lists were sent out to other mines, and the men were not allowed to be employed by the other mines in the combination, and the whole mining interests of the state were into it. This system resulted in strikes, combinations of laborers, and to-day the two systems are at war with each other. There is no provision in the Illinois Constitution on this subject. They have passed laws by the Legislature, but they found that it was very hard to enforce them, because the practice has become so deep-rooted. I don't think the system is very much in vogue in this part of the country, and if we can prevent the condition of affairs that exists in Pennsylvania and Illinois, and those states where miners or other workmen are employed in large numbers, it would be a good thing. Since it was started in Illinois the system has been in vogue among the railroad corporations. The railroad corporation is all right but it has a president who looks after his department, and he has a lot of subs, and these subs run clear down. to the foremen of the sections, and any offense committed by any person in the employ of the road—offensive, not to the corporation, but to the chief of the department in which he is employed, is reported and blacklisted. That is one of the ways. The system can be carried to such an extent that the man who offends his section boss can be put on the black list, and the president approves it because he does not know anything about the circumstances of the case, for each officer supposes that his inferior officer has made a correct statement. It may be that a man has done wrong—violated the confidence of his employer—that he should have been discharged, but has not he a right to say, "I

will reform," to say, "when I go to the next man and he employs me I will reform, and refrain from the acts that I have committed in the past." If you put him on the black list you practically say that he cannot work in that particular line of employment any more, even if he has concluded to reform. Again, as the gentleman says, it will tend to prevent strikes. No combination of laborers should have the right to say that because they are not willing to accept the wages they are offered, nobody else should have the privilege of doing the work they refuse to do. Look at the combination that has been waging war on the Burlington railroad of late. That was simply a counter combination. The railroad first started it, and in order to protect themselves the men formed a counter combination, as is always the case, and went far beyond what was the original intention when they entered upon the contest. Political reasons, as has been said, are often the cause of men being put on the black list. For corporations expect and insist, very frequently, that they own the political power of the voters who are in their employ. Take the case of John V. Farwell of Chicago—there is hardly an election but there is a notice posted up in his place which reads like this: "Persons employed in this house are expected to vote for so and so, for it is to interest of this house." Everybody knows what that means. This may not be absolutely necessary to have in our Constitution now, but there will come a time when it will be of the utmost value to the new State, and I am heartily in favor of the amendment.

The amendment of Mr. PARSONS was adopted.

The committee then rose.

Mr. CAMP. I move that the Committee on Public Institutions be requested to report back to the Convention File No. 79 on Monday next.

The motion was seconded and carried.

EVENING SESSION.

Mr. STEVENS. I move that the Convention resolve itself into a Committee of the Whole for the purpose of considering the matters on the Clerk's table.

The motion was carried.

Mr. STEVENS. I see a great many vacant chairs. To my mind the most important subjects that we will have to consider will be that of corporations other than municipal, and taxation

and revenue. I hope these two subjects will be delayed if possible till the absent members come. I believe there should be a full attendance when they are discussed. I would like to see seventy-five votes on every section of these articles, as they are two propositions of all others that will give us trouble in the future if they are not properly considered here, and I hope there will be unanimous consent given to have them go over till we have a larger attendance.

Mr. LAUDER. I hope the consideration of these articles will not be delayed. There is no reason why every member cannot be here now. They all know when this Convention convenes, and if they will be here in five or ten minutes they will be here before we have proceeded at a great length in the consideration of these articles and I hope that we will proceed to consider them at once.

CORPORATIONS DISCUSSED.

Section one of File No. 134 was then read by the Clerk as follows:

SECTION 1. No corporation shall be created or have its charter extended, changed or amended by special laws except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the State; but the Legislature shall provide by general laws for the organization of all corporations hereafter to be created.

The Clerk then read section one of File No. 135 as follows:

SECTION 1. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under control of the State, but the General Assembly shall provide by general laws for the organization of all corporations hereafter to be created, and any such law so passed shall be subject to future repeal or alteration.

Mr. JOHNSON. I would like to know if there has been any motion made to change the rules here—any different rule adopted? Is there any precedent for the Clerk reading an article and then reading another without being requested to do so?

The CHAIRMAN. It was at my request that he read both articles. I thought that it would be an advantage to this body to have the majority and the minority reports both before them.

Mr. MOER. I move that when the committee rise they report back to the Convention section one of the minority report and recommend that it do pass.

Mr. JOHNSON. I second the motion. I wish to be fair in this matter, and I think the section from the minority report is

better than that of the majority, although we had no opportunity to consider the ideas of the minority in the committee. Therefore I second the motion and hope it will pass. I consider the last part of the section reading "and any such law so passed shall be subject to future repeal or alteration" is useless, but I do not wish to bring on a contest here over this.

The motion was adopted.

Mr. MOER. I move that the minority report be read with the majority report section by section.

The motion was seconded and carried.

Mr. JOHNSON. I move to amend by saying that the corresponding sections be read not by numbers. Section two in the minority report is section fifteen in the majority.

The amendment was seconded.

Mr. PARSONS of Morton. With all due respect to every one concerned, would it not be better to proceed according to the regular order and take the regular majority report of the committee; when we come to a section that answers to one in the minority report, bring it up by motion to be substituted for the majority report. I make that as a motion. The second section may take the sixth or the seventh or twelfth of the minority report.

Mr. MOER. I move to reconsider the previous motion.

The motion was seconded and carried.

Mr. PARSONS of Morton. I move that we take the sections of the majority report and when the minority has a corresponding section it can be moved as a substitute.

The motion was carried.

Sections two, three, four, five and six of the majority report were adopted.

Section seven of the majority report was read as follows:

"No corporation shall engage in any business other than that expressly authorized in its charter."

Mr. MOER. I would call the attention of the committee to a section in the minority report which reads as follows:

"No corporation shall engage in any business other than that expressly authorized in its charter and the law."

I move that the section in the minority report as just read be substituted for the majority report.

Mr. WALLACE. I would like to ask the meaning of the words "and the law." Does it mean some future law that the Legislature may make?

Mr. MOER. It would probably mean any law relative to that corporation, I should think.

The motion of Mr. MOER was lost.

Sections seven, eight, nine and ten were adopted.

Section eleven of the majority report was read as follows:

PARALLEL AND COMPETING RAILROADS.

"No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section, by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter."

Mr. MILLER. I am inclined to think that this section as it now stands will work a serious injury to railroad building in the State of North Dakota. If it is to be strictly construed it certainly will do that. It is a fact probably known to every member of this Convention, that every branch of the Northern Pacific has been built by a separate company. It is also known to every member of this Convention that the Manitoba road from Barnesville to Grand Forks was built by a local company as a competing line to the Manitoba across the Red River. It is also known that the branch west of Casselton to Mayville, and the branch west of Casselton also running up in the same direction, were both built by separate and independent companies and were competing and parallel lines and were sold out to the Manitoba line. I don't know that there has ever been a line built in Dakota except the main line of the Northern Pacific that has not been built by an independent company and then sold out. The Fargo Southern was built by a local company, organized in Fargo as a competing line with the Manitoba, and afterwards sold to the Milwaukee road. While I have not examined this section before, and have not any amendment just at present to suggest, I think it is well to look into this matter. If my recollection serves me rightly the original charter of the Northern Pacific does not permit them to build branches, so that any branches they may have must be built by local companies. If there is anything in this section to prevent the sale of these branches, it would certainly be a serious detriment to railroad building in North Dakota. I know of the facts that I have stated. In regard to the organization of private companies within the territory to construct these lines, every member of this Convention knows that there is no

man or set of men who can organize these companies and build a line from ten to 125 miles long and have the means and money to equip and operate that road after its completion, especially when they come to arrange for an eastern connection. These roads that cover the Territory of Dakota to-day were all built by independent companies, but of course with the expectation of selling them to some one of the larger companies that occupied the field contiguous thereto. This section would have prevented the Manitoba from buying the branch from Casselton to Mayville; it would have prevented, possibly, the sale to the Milwaukee of the Fargo Southern, some 125 miles, and it would have prevented the sale to the Manitoba of the road which was known as the Moorhead, Fargo & Northern; and if the stockholders of that road had known in advance that they would not be able to sell it to another company, they would never have built it. While I have no amendment to offer to this section at present, I should like to have it passed over for a little while.

Mr. JOHNSON. I think if the gentleman will read the section a little more carefully he will find that the objection which at first flush have occurred to him do not exist. The gentleman argues as if section eleven prohibited the consolidation of different railroads—as if it prohibited the purchase of one railroad by another—as if it prevented a small local company from selling out to a great trunk line. It contemplates no such thing. It will work no such result. This is a provision which I think the gentleman will find on investigation has been placed in all the Constitutions—all that have been made within the last sixteen years, or since the Illinois Constitution in 1870. I am very happy that the report has gone forward so smoothly and so nicely. Here are ten important sections that have been adopted with scarcely an amendment; nothing but verbal changes and improvements. It is significant, but I knew the time would come when we would not have as much smoothness, and we have struck a snag right here. This is one of the sections which we cannot yield an inch upon. We are not against corporations. We know that these prairies would be utterly uninhabitable without these roads, but we want just and fair treatment and we want guarantees for the future. People are not afraid of the railroads. It is the monopolies that they are afraid of. This clause is certain to guard against monopolies. It is so fair and just that it has been accepted by every Constitutionl Convention that has been held within the last sixteen years, since

this question of monopolies grew up to be a threatening danger and a live question in American politics. It is in the Constitutions of Colorado, Illinois, West Virginia, Pennsylvania, Texas and South Dakota. In some of these constitutions they provide that the question of a competing line, or being a parallel line shall be left to the courts to determine. I have no objection to inserting that there, except for the mere matter of lumbering up the Constitution with useless matter.

There would be no objection to a road building a line up and down the Missouri river and selling it to the Northern Pacific. They would not be parallel or competing lines. They would be feeders instead of competitors. But it does aim to strike at a giant combination like that of the Northern Pacific and the Manitoba. Those are the only two great companies in North Dakota. Think of the helplessness of the people in the event of a consolidation of these two great corporations. History would be turned back; progress would be stopped; people would be denied their rights, and unless we have some law of this kind on the statute books or in the Constitution, there is no guarantee but that at any moment in the future the fruits of their victory would be swept away. We are willing to give hundreds of thousands of dollars to get the roads, but are you going to invest that money when you have no safeguards in the Constitution that it will not be swept away in a minute? An agreement can be made in New York or Boston or St. Paul between the heads of these great corporations that will sweep away the rights of the people in an instant, and it is to guard against this that we seek to have this section in our Constitution. This is a moment when I call on you to represent the people, not only the farmers but the laboring classes—to stand up against the monopolies—to stand up against the combination of parallel and competing lines.

Mr. CARLAND. This may be a very good provision, but it seems to me that the penalty that is provided as a result of the violation of this section, would be inoperative so far as the Northern Pacific and the Manitoba roads were concerned. The section reads: "Any attempt to evade the provisions of this section, by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter." It is not within the jurisdiction of this State to work the forfeiture of the charter of either the Northern Pacific or the Manitoba roads.

Mr. MILLER. I am as anxious as the gentleman from Nelson

to have every safeguard thrown around the rights of the people, against the consolidation of monopolies, which would render the life and the business of the people burdensome. On the other hand I don't want to throw anything in the way of building railroads, upon which depends in a great measure the upbuilding of this country. I have no amendment to offer to this section, but I have in my mind now an instance where this section would work serious harm. There is a charter for a road running parallel to another road in North Dakota; the right of way has been secured; the road is being surveyed for over fifty miles, with the strong probability that much, at least, of the road will be completed this present season. It is a parallel and competing road to another line of railway of this Territory. It is being built by local parties for the benefit and the upbuilding of the country through which it passes. There is no moral question involved, and when it is completed the very parties who will seek to obtain it will be those parties to whose line it runs parallel, and with whom it is a competitor. It would be to the interest of every party along that road to sell it in that way. The road that now exists will not build along the projected road. They will have no road, opening up a new stretch of country, till a local company builds it up and sells it to them. The road would be a fixed fact; and be a valuable aid to the development and improvement of that section of country. If this section is aimed at preventing the building of roads in that manner, then I am opposed to it. I desire, as I said before, to see all safeguards thrown around the people in the protection of their rights, but I do not wish to call things by their wrong names, and say "safeguards" when I mean obstacle to the improvement and the development of the country. I have no captious objection to make to this section. I only wish for an opportunity to consider it carefully enough to be certain in my own mind as to what effect it will have. Perhaps there is no person here but is more or less interested in the building of railroads in this State, either directly or indirectly.

Mr. STEVENS. I confess frankly that I have never read this section before. I do not understand the word "parallel" when applied to a railroad to mean the same as the gentleman from Cass, but if it does, then I agree fully with what he says. I would like time to consider this question. I believe that this Convention should throw all the safeguards it is possible to throw, around the rights of the people, and I believe I for one would be better able

to vote on the question after having studied it than I am now. I move that this section be passed until Monday's session. I do this simply for the purpose of getting what light I can upon the subject.

Mr. PARSONS of Morton. I am willing to postpone this matter, for it is of so great importance that we should not consider it hastily.

The motion of Mr. STEVENS was carried.

RAILWAYS DECLARED PUBLIC HIGHWAYS.

Section twelve of File No. 134 was then read as follows:

SEC. 12. Railways heretofore constructed or that may hereafter be constructed in this State are hereby declared public highways, and all railroads and transportation companies are declared to be common carriers and subject to legislative control; and the Legislature shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers and freight, as such common carriers from one point to another in this State.

Mr. MILLER. I move to substitute for this section nine of File No. 135. It reads as follows:

SEC. 9. All railroads and canals shall be public highways, and all railroads, canals, transportation and express companies shall be common carriers and subject to legislative control, and the Legislature shall have power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the State; *Provided, however*, That such common carriers shall be entitled to charge and receive just and reasonable compensation for such transportation of freight and passengers within the State, and the determination of what is a just and reasonable compensation shall be a judicial question to be determined by the courts.

Mr. STEVENS. I desire to ask a question of somebody. How far would that section be interfered with by the present Interstate Commerce Law? We don't want to adopt anything that will be in direct conflict with that law. It comes close to a subject that they have done a good deal of legislating upon.

Mr. CARLAND. This is intended to apply only to commerce within the State. It would be inoperative for anything else, of course.

Mr. PARSONS of Morton. I would amend by inserting in the second line after the word "transportrtion" the word "telegraph," and after the word "passengers" in the fifth line the word "intelligence."

Mr. MOER. I think it would be rather a hard matter to make a telegraph company a common carrier.

Mr. LAUDER. I had always supposed that they were common carriers.

The amendment of Mr. PARSONS of Morton was carried.

Mr. STEVENS. I desire to offer an amendment to section nine, line two, adding after the word "companies," the following: "and palace car companies."

The amendment was seconded and carried.

Mr. JOHNSON. I have been waiting for somebody to say something in favor of the section that it is proposed to substitute for that reported by the majority of the committee. I figure that this section is the most important section in the minority report. In order to get at the difference between the two sections, let me go back just a few years in the history of this contest between the people and the railroads, and I will do it as briefly as possible. You will remember that the question of the oppression of the people by the railroad companies did not become a live question till after the war. Before the war we had comparatively few railroads. The immense development of the country immediately after the war sent forward the work of railroad building, immensely. The railroad industry grew to a giant. A great many evils followed; the people did not know how to deal with it, and the railroads themselves did not know how to use the great power and responsibility that were thrown upon them. In 1874 the oppression throughout the Western states became so general and intolerable that there was a general uprising of the people. It almost amounted to a revolution, and in the winter of that year there were enacted throughout the western states—Iowa, Wisconsin, Illinois and Minnesota, what were known as the granger laws. The companies were defiant. They said, "We own our roads just as you own your oxen—as you own your ox-carts. We can charge what we like. If you don't like to ride on our coaches you can walk. If you do not like to send your freight by our roads, you can send it in some other way." That is what the roads said then. The Legislatures were disposed to be fair, and reasonable and honest. There was a railroad lobby at the sessions of the Legislature in the different western states—there were men there also who were posted and competent to give advice as to what was reasonable. But in every one of the states the roads assumed a position of defiance and contempt for the Legislatures. In Iowa the farmers had control of the Legislature. They knew nothing about railroading, as to what was fair and reasonable. They could

not get the information from the men who were lobbying and had the information, so what could they do? They went to the railroad station and tore down a schedule that was nailed up on the wall, gotten up by the Illinois Central railroad, giving lists of classified freights, and giving a list of everything in the way of merchandise and farm products, and the price to be charged. The Legislature took that list and put a preamble to it, saying that ten per cent. less than the following rates shall be the legal rates for Iowa. They signed their names to it and made it a law.

These ignorant, honest farmers were helpless unless they did that. In some respects it was an unreasonable thing to do, and the railroad attorneys laughed louder than they had ever done before, and kept laughing till they got to the Supreme Court, and the Supreme Court sustained the Legislature. They laughed again till they got to the Supreme Court of the United States but this court sustained the law, and said that the Legislature had the right to fix freight and passenger rates. That settled that principle once for all. We don't have to ask any favors of that sort any more. If there is one thing that is settled in the constitutional history of the country, it is that railroads are *quasi* public institutions. They don't own their roads as we own our ox carts. They must run their roads in the interest of the public—they cannot stop these arteries of commerce, and deprive the husbandman of the fruits of his labor. It is decided that they cannot charge any arbitrary rate they may choose to fix and thus rob the laboring man of the fruits of his labor. This matter has been fixed in all the late constitutions. The fruit of these granger laws has been placed in these constitutions, and we propose to place it in this Constitution if possible.

The minority report seeks to spring on us a very curious provision which would destroy the fruits of the struggles of the farmers in the Northwest for nearly a quarter of a century, so far as North Dakota is concerned. Read the proviso to the minority section. That proviso destroys the whole thing. If you put that in you turn back the wheels of progress to 1872. It reads:

"*Provided however*, That such common carriers shall be entitled to charge and receive just and reasonable compensation for such transportation of freight and passengers within the State, and the determination of what is just and reasonable compensation shall be a judicial question to be determined by the courts."

That is nice, is it not? When laws are passed for you and me to obey, do we say—"We will obey them if they are just and reas-

onable, and provided you can get the decision of the Supreme Court to that effect." This would mean that the fixing of rates would be delayed five or six years before it would be determined whether or not they were right. When the Legislature passes a law ordering you to destroy noxious weeds and Canada thistles would you expect that they would put in their law a provision of this kind—"*Provided however*, That such labor should be reasonable, and the question whether it is reasonable or not shall be a judicial question to be determined by the courts." Could you get a decision of the courts before the seeds of the Canada thistles were ripe, and scattered to the four winds of the heavens? That is the kind of taffy they are giving us here, and time in the matter of freight rates is more important than it is in the matter of Canada thistles. No set of men—no individuals in towns or cities, have ever before had the impudence to come before an intelligent body of men and say that they did not want to obey the laws that were made until you can prove that those laws are just and reasonable. The theory is that the king can do no wrong and that the Legislatures can do no wrong. They may be unjust but the theory is correct after all. They may pass unjust and oppressive laws, but we must obey those laws.

The history and tradition of the Anglo-Saxon people point to the fact that laws must be obeyed, and if those laws are wrong and oppressive they must be agitated and modified and repealed. Agitate the matter on the stump—through the newspapers—through the ballot. That is the way to appeal from the Legislature. You can appeal to the people, and not to the district court. Now then, as a matter of fact the Legislature won't fix the rates under the section of the majority report. No man and no set of men could foresee two years and say what would be reasonable for that length of time. We have delegated this power to the Railroad Commissioners. That has been the practice in all enlightened states, and for them to fix the rates and have a sliding scale so that they can go up and down throughout the year. You cannot always fix rates that will be fair and reasonable for two weeks. Sometimes a single blizzard will throw an obstruction in the way of the roads that will cost them $10,000 to clear off. It costs them a great deal more to carry freight in a stormy winter than in such nice pleasant weather as we had last winter. The railroad commissioners will have the power to say that they shall carry freights cheaper during a nice winter than in some such

winters as we have. No Legislature could pass a law that would be right for an entire season, if that law contained the rates the road should charge for their freights. These things will vary. The size of the crop will make a great deal of difference as to the rate at which each bushel can be carried to the market. These are matters of storm and rain and sunshine and shower. What kind of a pickle should we be in if we pass this proviso—if we say—"No, you shall not from year to year regulate it, nor during the biennial sessions of the Legislature, but you shall wait till the laws passed have taken their regular course in the law's delay, and have been submitted to the Supreme Court of the United States." What protection would we thus give to the farmer? The law has been passed, let us say, that the roads shall carry wheat to a certain point from a certain point, for five or eight cents a bushel. If the proviso is passed they will say—"The Constitution provides that if a law of that kind is passed, I am entitled to disregard it till you prove in the courts that it is reasonable." So you would have to sue the company in the court, and they would appeal to the Supreme Court, and by that time another winter's storm and summer's sun would have gone over the State and you might be sold out on a mortgage or have died and be laid under the sod. You want that question decided then and there—you want them to obey the law, and if the law is oppressive and unjust the people of this State will always be reasonable and fair in the long run.

A corporation like the Northern Pacific has nothing to fear at the hands of the people. I heard one of its attorneys say some time ago that when the people along the line of the road were unable to get seed wheat they furnished $100,000 worth of seed wheat, and of all the farmers that had this wheat there were only two men who tried to cheat them. It showed that these men who had that wheat had been treated fairly, and reasonably, and honorably by that company, and they considered it their debt of honor, and they dealt fairly and squarely with the company. I could point you to other companies that try to take every opportunity to oppress the people. I have hear of a road selling wheat to farmers along its line, and the first chance the farmers had to get even with the road they would take it—to get even for past oppression. The farmers would commence to study and and lie awake nights to beat the road out of their wheat. The companies have the matter in their own hands. If they are just, and fair, and reasonable they can trust to the Legislature. If on the other hand they

undertake to oppress the people, they must expect the people will remember it.

Mr. MILLER. I will take but a very few moments of the time of the Convention. I do not expect to be able to make the argument that my friend from Nelson is able to make. I have given this matter no consideration whatever, but have been thoroughly impressed with the justness, fairness and equity of section nine of the minority report. The objection that the gentleman raises seems to be at the two or three last lines of the section. He says that the Legislature should have the right to fix rates for transportation of freight and passengers. The section provides that the Legislature shall have the right to regulate and control by law the rates to be charged. But the objection the gentleman raises is to the last few lines of the section. From the organization of the government of the United States its foundations were laid strong in this fact; in the ability and readiness of all the people of all the states to submit their differences whether great or small, to their tribunals of justice—to the judges of the courts that had been elected by the people, or appointed by the representatives that the people had elected. These courts hold the balance of justice, and decide what is right and what is wrong. All this section seeks to do is to have the differences arising between the Legislature, or the people, or any individual and any corporation, decided by the tribunal which we have elevated to the position of a court of justice—to which we pay respect and honor. The gentleman raises the objection that in case this tribunal—this court that is the arbitrator of all differences, should be left to settle the question whether the charges were just and reasonable, that it would take so much time—that the plaintiff would be seriously injured, and cites the instance of the thistle seed being scattered. In some cases the railroad commissioners might be ignorant, as he says the members of the Legislature may be, and the gentleman cites a case in Iowa where the Legislature regulated the rates, and in such cases their judgment is very likely to be wrong. Would it be just and right between man and man for the Legislature of the state which has no knowledge of what is right, to fix an arbitrary rate, and that such as would bankrupt the companies who would be compelled to carry freight and passengers at that rate? Suppose the Legislature was all-powerful, and the railroad company had to wait till they could go to court; their lines traversing the great state of Iowa, carrying freight

and passengers at a ruinously low rate, you would have them in the hands of receivers and their operations would have to cease. Would there be no injustice on that side?

I can cite an instance in Minnesota. The commissioners fixed an arbitrary rate for switching cars at $1 a car. The actual cost of switching cars as shown by the records of all the companies was $1.87 each. The commissioners fixed that rate arbitrarily, and without any knowledge as to what it cost to switch those cars. Is it anything more than right that those roads should have the right to go before the courts and see if their property can be confiscated in that way? Corporations have rights as well as individuals. Without these corporations the State could not exist. All that is asked, and it seems to me to be a fair proposition, is that these matters may be submitted to the courts. Is there a gentleman here who would not be willing to submit the differences that exist between himself and his neighbor or himself and a stranger, to the court that he has helped to elevate to the position of a court? That is all this bill asks. Now then, in the case in Minnesota where they were compelled by the commissioners to switch for $1 a car when the cost was $1.87, they appealed to the Supreme Court and the Supreme Court held that in the absence of a constitutional provision they were powerless to help them. If the power of those commissioners were carried to its full extent every company in the State would be bankrupted. It is unjust—it is wrong—it is confiscating the property of individuals and corporations, when their right to their day in court or their right to be heard is denied them. The fact is true that railroad companies are dependent on the prosperity of the country through which they pass—they are dependent for their livelihood and support on the prosperity of the country. The gentleman has well cited the instance of the Northern Pacific where it spent $100,000 for seed wheat for the farmers. They know that the farmers and the business men must prosper in order that the road might prosper. He might have cited another instance—the president of the Manitoba road shipped a number of high bred cattle into the country traversed by that road, and made a free donation of them to the farmers who would care for them, so as to improve the grade of cattle and help to make the farmers prosperous. That fact shows that the railroads recognize the fact that communities must be prosperous in order that the roads may attain any success whatever.

I can see nothing unjust or unfair in this section, and I am sur-

prised that any gentleman in this Convention should stand up before us and assume an attitude that we as individuals are not willing to submit our differences to the courts. We will submit all our differences between each other to the court, and when we get to the artificial individual—the corporation—we refuse to submit our differences to the court. It seems to me that this is a most preposterous idea. I can see no reason or justice in it, and when the proviso is in there it seems to me that it throws every safeguard around the rights of the individual. To leave the Legislature which has no knowledge of what the freight rates should be between certain points, to arbitrarily fix those rates might ruin any company and would certainly hinder and delay any company from extending its lines in a state where such laws exist. I would not like to put myself in a position of not being willing to submit my differences to the courts. I hope the Convention will look at this matter in that light. It is just to the individual and just to the corporation.

Mr. BARTLETT of Dickey. I feel that every gentleman should favor what the last gentleman has said. I am a farmer, and I feel that when a man says he wants the farmers of this country to convene in the Legislature and enact laws to control the railroads, when they have come here and spent their hundreds of thousands of dollars among us, he takes a very one-sided position. It makes it like a jug handle—all on one side. I think certainly if the farmers and the people of the state convene together and make laws it is only just that if those laws are such that the railroads cannot live under them—it is only just that they should be able to go to a higher tribunal to settle the differences. They spend their money among us to build us up, and when we do that we convene together to make laws to freeze them out. Is it generous or right? I say it is not. I say the minority article is what we ought to adopt, and it seems to me that any farmer ought to see it in that light. Suppose we want more railroads, and you enact a law of this sort, and English capitalists look over the ground—I tell you they will be scarey about building railroads for us, and if we don't have the roads our country will go down.

Mr. LAUDER. As I understand this question it is not so much as is claimed by the gentleman from Cass, whether or not we are willing to submit our differences to the court. That is a question that does not arise here at all, as I understand it. The question is whether the legislative authority of this State, or the legislative

power shall abdicate their position, or whether they will not. That is the question. We must all submit our differences to the court and I cannot but notice that the gentleman from Dickey had evidently fallen into the trap that this proviso was laid to catch him in. It is the very trap that was intended to catch him. We must all submit our differences to the court. The Constitution of the United States provides in express terms that you cannot take private property for individual uses without just compensation, nor can you deprive a man of it without compensation. The courts have held uniformly that when any authority fixed a freight or a passenger rate that was less than the cost, or a rate at which the company could not make anything—lost money—could make no income—that was in effect taking private property without just compensation. The courts have held that time and again, and if the Legislature should pass a law fixing a freight rate below operating expenses, the higher courts would declare it unconstitutional at once, because it would be taking the property without just compensation. As the gentleman from Nelson county said, it was a long and a hard struggle to have the judiciary establish the principle that railroad corporations were *quasi* public corporations, and they could be controlled by the Legislature, or in other words, that they had the constitutional power to control them, and it seems to me that when it was determined that the power to control them rested in the Legislature, that that body had the power to fix the freight rate and the power to control those rates—not to go to the extent of destroying them or passing laws that would in effect render their property useless, but they had the right to control them in legitimate ways. What does this provision amount to? Read it carefully. It simply means this—that the Legislature shall abdicate the power that they have fought so long to gain, and which they finally did gain in the highest court in the United States. That is what it means. It simply says that this shall be a judicial question.

Mr. MILLER. I think the gentleman is mistaken in his remarks about the Supreme Court of the United States.

Mr. LAUDER. I did not think that there was any dispute about that. There is no question in my mind about it. Does the gentleman deny that the Potter law in Wisconsin was held by the Supreme Court of the United States to be constitutional? There can be no question about it. I say in substance that we do not refuse to submit our differences to the courts. The court is the

final resort in any case, but it is simply a question whether the people shall abdicate the power which they have through their Legislatures and go back to and put a block in the way, so that they can never travel over the road that they have traveled over before. Shall they go back there and fence the road behind them? That is what it means. As has been said, here are nearly half a dozen states—in fact I think every state in the Union, whose constitution has been revised, or which has made a new constitution for itself within the last fifteen years, contains a provision almost identical with that which is under consideration here as the report of the majority of the committee. It is strange if the State of North Dakota shall not as carefully protect the rights of the people as did those states that have been named here—nearly every state that has adopted a constitution within sixteen years. The gentleman from Cass says that unless this is a judicial question property will be confiscated—unless we resort to the courts property will be confiscated. I say that this provision is the same as the one they have in Wisconsin and Iowa. Is railroad property in those states confiscated? The gentleman knows that no matter how many provisions there were in this Constitution, no person and no power would have the right or the authority to confiscate property belonging to any railroad. We have not the right to do this, but we have the right to control corporations that are *quasi* public in their character, and that is the power that is inherent in the people, and can be exercised through the Legislature, and then if their personal rights or the rights of their property are trampled upon, they have the right to come into court. Let us see how this plan would operate if this minority report were to prevail. A law would be passed fixing the freight rate. The railroad company would say "this must be submitted to the court." It would be taken there, and to the Supreme Court, and perhaps from three to five years would elapse before that law could become operative, no matter how the people might be oppressed in the meantime. At the end of that time, when it had been determined that the rate was fair and right, the conditions might have altogether changed, and rates would be changed again, and the road would take the case again to the Supreme Court and the result whould be, perhaps, during the next quarter of a century, we would not have any legislative enactment on the question of rates, which would have any force and effect. I hope this Convention will sustain the majority report.

Mr. STEVENS. Either I am wool gathering and do not understand the two sections and the argument that has been made on them, or they are both in my opinion wrong. If the substitute means that the Railroad Commissioners shall not have the right to determine this question, then in my opinion the substitute is wrong. If the original proposition proposes not only that the Railroad Commissioners shall settle this question, but that it shall cut off all appeal to the courts, then I think it is wrong. I believe that the proposition that should be introduced is one that where a law has been passed and any person may feel aggrieved, either the railroad company or the people or any patron of the road, should have a right to appeal from the decision of the Railroad Commissioners. The commissioners are elected for the purpose of looking after this business and fixing rates where it is necessary, and if the company or anybody else is not satisfied with the decision of these commissioners, they should have the right to appeal, but it should then become a question between the State and the railroad company, If the people or the person aggrieved should be dissatisfied with the decision of the Railroad Commissioners, they should have a right to appeal to the courts, and then it would be a question between the State and the person aggrieved. I would give every person a right to have his rights adjudicated by the courts, but no person should be compelled to follow a case in which he felt aggrieved from court to court and from year to year at an expense that it is impossible for the farmer to pay. If the commissioners establish a rate which the railroad believes to be ruinous, the law should be so fixed that the State would become responsible for the damage which it might cost to the railroad company. On the other hand, if they were right, the railroad company would have nothing to pay but the costs of the appeal. I understand that this proviso would cut off that power of the Railroad Commissioners. If so, if I have understood it correctly, and that statement of the case is right, I am opposed to the substitution. But if the original provision does not give the company the right to appeal from the decision of the Railroad Commissioners, then I shall insist that it be amended so as to give that right.

Mr. PARSONS of Morton. I would like to state that when the time comes I shall offer an amendment to the section. I don't wish to state anything that occurred in the committee room, This is supposed to be an amendment to section twelve of the majority

report—"Appeal may be had from any rate fixed, to the courts of record in this State, provided the rate appealed from shall be in force until such rate is decided to be unreasonable by the courts." It seems as a simple proposition of right and justice that no person or corporation, if they have any property, shall be subject to a board of three men—that they shall have their very life and success bound up in the decisions of those three men. We have agreed that we have a right to control the railroads, but it is not right that so much power should be given to three men, for they will be human, and circumstances will arise which will render them prejudiced against some corporation, and other corporations they will, perhaps be favorable to. The point seems to be that if this is voted down it would leave it entirely in the hands of three men. I shall vote in favor of section twelve, but I shall want such a provision inserted in that section as I have introduced,

Mr. MOER. The section proposed by the minority of the committee gives the railroad company the right to have determined in court whether or not the rate fixed is reasonable. It likewise gives the shipper the same right. Should the rate be fixed too high the shipper can go into court. The objection has been raised by the gentleman from Ransom, Mr. STEVENS, that the commissioners would not have any power in the matter—that they would not be authorized to fix rates. So far as I am concerned as one of the minority I would be willing to insert, for instance these words in the fourth line "power to regulate, by direct act or through a Board of Railroad Commissioners." That would give the Railroad Commissioners power to fix the rates, and shift them as often as was necessary. Under section twelve of the majority report, it would be a grave question whether the court would not say that under this constitutional enactment the Legislature could confiscate the property of the railroads. That would be the trouble with section twelve. The gentleman from Nelson has referred to Iowa in his remarks, and I think he referred to a state in which there is a good illustration of what would happen here under such a constitutional provision as is proposed by the majority of the committee. The granger laws passed in Iowa by an ignorant body of men, stopped railroad building in Iowa for three years. The State of Iowa to-day has a Board of Railroad Commissioners who have made certain regulations which the railroads deem unjust and unreasonable. What has been the result in Iowa? The result has been the abondonment of large mumbers of trains—taking

the trains off the roads, and only running such as they are absolutely compelled to run, and a general period of stagnation of railrowd building in the State. That is the result of laws of this kind—it always follows unjust discrimination. I want to see this State of North Dakota built up, and nothing can build it up so fast as railroad corporations. Take south of us, through Logan, McIntosh, and into Burleigh. There is a road graded from Aberdeen to Bismarck. The people through that section of country are farmers, and what they most desire is a railroad. I don't think they will get it in ten years if this majority section is enacted.

I think the gentleman from Richland is mistaken, as to what the courts have held in this matter. But be that as it may, the section of the character proposed by the majority simply means that the Legislature may confiscate the property of the railroad when they see fit to do so. It seems to me that all corporations, whether stage lines or what they may be, should have the right to go into the courts and try their cases, and have it determined there whether the rate is fair and reasonable. The objection is further urged that if the railroad company thinks that the rate fixed is unjust they can appeal to the courts and can tie it up indefinitely and thereby defeat the operation of the law. I maintain that that is not true. I apprehend that if the Legislature or the Railroad Commissioners should fix the rate on wheat at ten cents a bushel from this point to Duluth, and that rate was deemed to be unreasonably low, when the shipper came to the company and asked it to ship his wheat and was answered that the rate of ten cents was too low, and that the rate it wanted was fifteen cents, and the shipper had to pay the fifteen cents, if it took five years to determine that the rate of ten cents was reasonable, the railroad company would have to return to that shipper the excess that had been charged. If the rate were too high and the shipper said that he would not pay it he would have to sue the road for damages, and he would get them if it was held that the rate fixed by the commissioners was reasonable. That is the way we have to do with everything else and I don't see why we should not do it with the railroads. The gentleman intimates that you cannot make him sell an ox at a given figure, but suppose you could do that—suppose as a matter of fact that were the law—suppose it were possible for this Convention to provide that the Legislature might fix the price of a horse, but the question as to

whether the rate was reasonable or not should be left to the courts. That is the same principle. Would any one maintain that there was no reason in that? But what do the gentlemen want? They want that the Legislature shall be empowered to confiscate the property of the railroads without any compensation whatever.

Mr. PARSONS of Morton. I move as a substitute that section twelve be reported by this committee for adoption and amended in the following manner: Add at the end the following words:

"Appeal may be had from any rate fixed, to the courts of record in this State, provided the rate appealed from shall be in force until such rate is decided to be unreasonable by the courts."

Mr. MILLER. Does the gentleman offer this as a substitute for section nine?

Mr. PARSONS of Morton. I offer it as a substitute and that the committee report that.

Mr. LAUDER. The committee have taken a great deal of time; they are men of undoubted ability; their fidelity to the interests of this State is unquestioned; they have prepared this section with a great deal of care; they have compared it with constitutional provisions in other states, and as I have said it is found in every Constitution that has been passed since the principle was enunciated by the Supreme Court of the United States that there was power in the legislative authority to control railroads, and I hope this Convention will stand by the majority of this committee and vote down the amendment that is offered. I believe that this section is exactly as the people of North Dakota want it. Don't allow the wool to be pulled over your eyes. This matter has been tried in the different states; it has worked well, and I hope the Convention will stand by the committee.

Mr. PARSONS of Morton. I second the words of the gentleman who has just spoken. I endorse his words, and the only amendment that I would offer is to include telegraph and telephone companies and sleeping car companies, and the other amendment that I have moved. I wish to state that I believe it was owing to a clerical error that the amendment that I have offered was not embodied in the report of the majority. The substance of it, as it was written down in my note-book, was adopted by the committee as a portion of this report, and attached to section twelve, and this amendment of mine simply corrects a clerical error. If what I say is an error the committee are present, and they can set

me right. I am standing by the majority of the committee when I offer this substitute.

Mr. STEVENS. I don't believe that the gentleman from Richland has the interests of the people at heart any more than I have. I don't believe that it is fair and right for us to pass something because the committee have agreed that it is what the seventy-five members of this Convention should promulgate to the people as part of the State Constitution. I don't believe, further than that, that there should be any amendment made here that will kill the original report. If that provision allows an appeal to the courts, then I am for it. If it does not then I am against it. I am against it in that case because it is against the form of our government—it is against the Constitution of the United States—it is against the rights of every man to shut off the right to appeal. I believe too, that when these appeals are taken the State should stand responsible for the decision of its officers. If the Railroad Commissioners make an error in their decision, and the courts shall over rule them, then the State should stand responsible for any damages that have been suffered by the wrongful acts of their officers. If any person feels aggrieved he should have the right to appeal. With the addition of this substitute motion, nobody can be harmed. It provides that the Railroad Commissioners or the Legislature may fix the rates—that the rates shall be determined as between the parties by the Railroad Commissioners, and rates so established shall stand until the courts say the Railroad Commissioners are wrong. There is only one thing I would change in the substitute of the gentleman from Morton—and that is the words "courts of this State," for it might have to go the Supreme Court of the United States. They say this would delay matters. That is no argument, and cuts no figure, for the rates established will hold until a decision is obtained stating that they are not reasonable. I hope nobody will come here and be caught here with what I would term the chaff of those who say that because the committee have determined this thing one way that therefore it should go that way.

Mr. CAMP. Let us see for a moment if anybody would be harmed. The rates are fixed, say, twenty per cent. lower than they should be—twenty per cent. lower than the actual cost of performing the service. The company appeals and from what does it appeal? As I understand it it appeals from the decision of the Railroad Commissioners—the Railroad Commissioners or the Legislature.

The matter goes to the district court and in six months time it is decided that the rates fixed are too low. The Board of Railroad Commissioners thereupon appeal to the Supreme Court of this State, and that court decides that the rates are too low. The Railroad Commissioners then appeal to the Supreme Court of the United States, and after five years more that court decides that the rate is too low. There are six and a half years in which these rates have been maintained at twenty per cent. below the actual cost of performing the work, and from whom shall the railroad company receive its compensation? As I understand the substitute, the company does not appeal in the individual cases as it should be provided that they may, but it appeals directly from the action of the Railroad Commissioners. Where is the company to get its compensation?

Mr. PARSONS of Morton. I believe that the gentleman is a lawyer. When the railroad company has a decision of the court to the effect that the rate was too low, and that they have suffered thereby, is not that a good ground for action in any court?

Mr. CAMP. Action against the State or against the Railroad Commissioners?

Mr. STEVENS. Against the State, and that is why I wish to have the State held responsible for these damages.

Mr. LAUDER. In what I said appealing to this Convention to stand by the committee I did not mean to infer or to imply that the other members of the Convention were not qualified to consider this subject and pass judgment upon it. I simply meant to say that these gentlemen have had this matter under their consideration specially, and are presumed to have given it more study, perhaps, and their judgment on it now is presumed to be of more weight, than that of the gentleman from Ransom who was not on this committee, and who presumably has not given it the amount of study he would have given it if he had been on the committee. Just one word in answer to Mr. CAMP—the gentleman from Stutsman. It seems that the gentlemen here who are opposed to this section find no difficulty whatever in raising objections to it. I will remind them that the same argument was used during the contest between the people and the railroads in establishing this principle in the first instance. The gentleman from LaMoure says it would be confiscation. That is what they said fifteen years ago—that the property of the railroads would be confiscated if the Legislature exercised the right to regulate the roads; it would

be an unwarranted invasion of individual rights. There would be nothing between the railroads and bankruptcy, it was said; but notwithstanding this the courts did hold that the Legislature had this right, and there has been no confiscation yet. The Legislatures in various states—in Minnesota, Wisconsin and Iowa have exercised their powers, and there has been no confiscation. The gentleman from LaMoure knows as well as anybody else that no law passed by any body in North Dakota, be it by a provision in the Constitution or a legislative enactment, the effect of which would be to confiscate anybody's property, would have any force or effect whatever, for it would be in contravention of the Constitution of the United States. The courts have held repeatedly that where any authority whatever made a rate below that which exhausted all of the income to pay the running expenses, this was in effect taking the property of another without just compensation, and the railroad companies are protected from that.

Mr. JOHNSON. I wish to say that I am inclined to think the gentleman from Richland is correct, and the course of safety is to vote against this amendment.

Mr. MOER. The report of any committee should always receive due weight, for the committee is supposed to have examined the subject carefully, but it is much weaker when it is only a committee of nine and five comprise the majority and four the minority. It is supposed that the minority have examined the matter about as much as the majority. If I mistake not, the gentleman from Nelson, who now tells us we must vote against it—if I mistake not in the committee supported that same proposition now introduced by the gentleman from Morton. It seems to me that there certainly cannot be anything unreasonable in this proposition, for it affords full protection to the people in every way. But just on that committee point—remember that the committee stood five to four, and all of them probably investigated this matter.

The substitute of Mr. PARSONS was lost.

The substitute of Mr. MOER was lost.

Mr. FLEMINGTON. As I understand it the last vote was upon the motion of the gentleman from LaMoure as to whether section nine of the minority report should be substituted for the majority report.

Mr. APPLETON. I don't believe that this is a jug handle. In the early part of the Convention the gentlemen who urged that we should leave everything to the Legislature, now want to take

everything away from them. It is wonderful the way they can flop around. It seems that there are three or four gentlemen here who are trying to run this Convention. I don't believe there are any gentlemen here who can be bull dozed by any such cross-fire as there has been indulged in.

Mr. FLEMINGTON. I don't understand that the last vote we had settled the original section at all. I think we should vote on the matter understandingly. I did not understand what I was doing, and I think I keep track of the work of the Convention as well as the gentleman from Pembina.

Mr. BARTLETT of Dickey. I don't know who the gentleman from Pembina was talking about. If he meant me I can say this —I voted for the minority report in the committee—I talked in its favor in the Convention, and I have told everybody where I was on it. I have always talked that way. I stood in the first place right where I stand now.

Another vote was taken on the question whether section nine of the minority report should be substituted for section twelve of the majority report with the result that the motion was lost by a vote of 20 to 35.

Mr. BLEWETT. I move that the committee do now rise, report progress and ask leave to sit again.

The motion was lost.

Mr. BELL. I move the adoption of section twelve as reported by the committee.

The CHAIRMAN. No motion is necessary.

Mr. STEVENS. I desire to amend section twelve by inserting in the third line after the word "railroad" the words "sleeping car, telegraph and telephone;" also in the same line after the word "companies" insert the words "of passengers, intelligence and freight."

The amendment of Mr. STEVENS was carried.

Mr. STEVENS. I would add the following as an amendment to the section as it now stands.

"*Provided*, That the regulation of such charges shall be exercised by a Railroad Commission, and all such common carriers shall have the right to appeal to the courts from all orders of the commission fixing such rates, and such common carriers shall be entitled to receive such compensation as may be determined by said courts on such appeal, or as appears to be just and reasonable."

Mr. PARSONS of Morton. I am opposed to the amendment of the gentleman from Ransom, because there is something wrong

in it. I don't know if he observes it. It makes no provision to the effect that the rate fixed by the Railroad Commission shall be in force until reversed. My amendment had that provision in it, and this is just as bad as that which we voted down here—substitute number nine. I had a provision that provided that the rate fixed should be maintained until changed by the courts, and I am opposed to the motion of the gentleman from Ransom.

Mr. STEVENS. If there is any woodchuck in my motion, vote it down. I think it is right, and if others think it is wrong I am willing to have them vote the the other way.

Mr. APPLETON. I am going to vote against it, because I think there is too much legislation about it. I don't believe that the Legislature we are going to have will legislate the railroads out of existence. I understand the railroads will have the right to appeal without our saying so, and I don't want to see so much legislation in our Constitution.

Mr. CAMP. I move that when the committee rise they recommend that section twelve be not adopted. I think there is too much legislation in it. The gentleman from Nelson when he first took the floor stated that this section embodied the decision of the Supreme Court of the United States as to what was already the law. As I have had occasion once before to say, though it is so long ago that everybody has forgotten it, this Convention can give to the Legislature no power, and this section twelve will confer on the Legislature nothing that they don't now possess—nothing that every State Legislature does not possess without any provision. Attention has been called to the Potter law in Wisconsin, and the Constituton of Wisconsin contains nothing of this kind. The Wisconsin law in question was passed under the ordinary, usual powers of the Legislature without a constitutional restriction, and therefore section twelve is absolutely useless. It does not confer and cannot confer any power on the Legislature which the Legislature does not possess. I state it as a principle that is fundamental, as the gentleman from Nelson and every member of the committee knows, that every time we say the Legislature shall have power to do such a thing, we are just uttering so much rubbish, because they have the power whether we say it or not.

Mr. BELL. Is it not very strange that so many of our bright legal lights have been fighting nothing? He says it is nothing. They have used all the law they could get, and still they say it is nothing. I think there must be something in this section after

all, or they would not fight it so hard. I agree with the gentleman from Pembina that there is no danger that any Legislature will pass laws that will kill the railroads. I should be terribly opposed to that. We need the railroads, but we want to keep them in their right places, and every one here who has an interest in the farmer will vote for section twelve.

Mr. LAUDER. As an amendment to the motion of the gentleman from Stutsman I move that when the committee rise it recommend the adoption of section twelve as amended.

The motion was carried.

The committee then rose.

On motion of Mr. ALMEN the Convention adjourned after adopting the report of the Committee of the Whole.

Mr. ALMEN. I move to adjourn.

The motion prevailed, and the Convention adjourned.

THIRTY-THIRD DAY.

BISMARCK, *Monday, August 5, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. PRESIDENT. We have with us to-day two of the members of the Senate Committee on Irrigation and Arid Lands. I feel certain that I voice the sentiments of every delegate in this Convention when I say that we shall be glad to dispense with the regular order of business and listen to these distinguished gentlemen. I have the pleasure to introduce to you Senator Stewart of Nevada, the Chairman of the Senate Committee.

SENATOR STEWART'S SPEECH.

Senator Stewart said:

MR. PRESIDENT AND GENTLEMEN OF THE CONVENTION: We are here on a tour of investigation to obtain information rather than to impart information to others. But your President having kindly invited us to come before you

we deem it a privilege to do so. It is a most interesting occasion to see a new State forming a Constitution to become a member of the Union. North Dakota and South Dakota, Montana and Washington, are all engaged in the same interesting business. Four new states are soon to have a voice in the councils of the nation. This is very important, not only to you but to the whole nation. This is a representative government, and in order that each section may be properly cared for and have the benefits of the government, it is necessary that each section shall be represented. The great west—that portion of the country lying west of the Mississippi river has not been adequately represented, because we had not the population. The communities west of you have developed important interests in a most rapid manner, which have not been adequately represented or protected. In fact, while we are territories we are stepchildren and suffer from a great many inconveniences, but when we become states we are in a better position to look out for ourselves. It is bad for the government to have step-children or to have any place where they can send off those who are inconvenient to them and where they won't hear complaints. The government needs to hear from all sections—in order to do what is right.

This question of irrigation is a very important one; a new question to the people of this country, for we spring from a race that lived in a rainy country—the northern part of Europe. We came to this country where the rainfall is ordinarily sufficient for crops, and all our teaching and all our traditions related to raising crops with adequate rainfall. It was not so with many other people. It was found necessary to irrigate to raise crops by the ancients. There are now perhaps two-thirds of the people on this globe who pursue farming, who are required to irrigate their lands. Not more than one-third have the blessings of sufficient rainfall. In the Atlantic States, east of the dry zone—in a word, between here and the Atlantic, is the largest area in the world where there is sufficient rainfall to produce crops. The countries where irrigation is pursued have their advantages as well as their disadvantages. The land is richer, because it is not bleached so much by the rainfall. There are many places in the Atlantic States where they have very great difficulty in getting crops sufficient to pay for their labor. The land is poor, sandy, bleached—there is too much rain, and it is difficult to fertilize enough to produce good crops. Besides, even there they have their wet times and their dry times and their draw-backs. There is another consideration in regard to irrigating land. I think considering the population that has been supported—the vast numbers of people that have been supported where irrigation has been pursued, the vast populations that have lived there; we may infer without having made close investigation that irrigated land is very much more productive than the other kind. One acre of irrigated land is probably worth two or perhaps three or four of land which has sufficient water without irrigation. It requires industry, care and attention —more perhaps than where you have rainfall, but you get a more certain result. Now this country has been admitted by all to have at least 1,200,000 square miles of land where irrigation must be pursued. All of the country west of the 100th meridian, and a portion of that east, requires some irrigation. All that is west requires irrigation except a little strip west of the Cascade mountains. There is a great deal of waste land in that area that cannot be cultivated or irrigated. But it so happens that even these waste lands furnish nutritious grasses and are very useful for raising stock and always will be. So after all there is not as much worthless land as you might suppose.

These mountains are worth more than the eastern mountains that have been cultivated. We do not know exactly how much of this land can be reclaimed—how much can be brought under cultivation, but of the 1,200,000 square miles, if we can reclaim 12 or 15 per cent, it is an enormous amount of land. That is as much good land as they have in a good many large states. I am not certain but we could support about as much population in this region as we have in the region where they have the rainfall. If we compare this section of country with British India, it is represented that they are very similar. British India contains 800,000 square miles and supports a population of 250,000,000. We have 1,200,000 square miles. This section of country is the only one where we can make homes for the settlers that are coming hereafter. They have got to go into the arid region. The public lands in the rest of the country are occupied. That being the case, Congress has taken the matter up for the purpose of ascertaining the facts with regard to it. They appropriated at the last session of the last Congress $100.000 to be used in commencing a system of explorations under the geological department, under Director Powell's management. This is attached to the bureau that has to do with the geology and topography of the country. One hundred thousand dollars was appropriated, and last year a further sum of $250,000, which is now being expended, but this will not go far in the work. It takes a great deal of money to make these surveys. These surveys raise another question as to public policy and constitutional power. The policy of the department has been to survey the public lands so that settlers could move onto them and till them. The ordinary survey of public lands will not necessarily allow settlers to do that. The survey of mountains and desert lands will be of no service to the homestead settler. But the arable lands must be surveyed and they must go into the hands of settlers. This question of surveys involves different problems. We have in the mountains a stream—a watershed of considerable magnitude, and the stream that in the summertime nearly runs dry. It contains enough water to irrigate, say, 100,000 acres of land, and this land depends entirely upon that stream.

The survey must determine the value of these streams—locate reservoirs to store the water—determine the lines and ditches so as to reclaim land that can be reclaimed in any one watershed. When we have that done we will still have a very difficult problem before us. The homestead laws will not apply to that territory, because somebody must build waterworks. Hydraulic works must be constructed. Here are 20,000 acres to be reclaimed—probably the work will cost fifty or a hundred or two hundred thousand dollars, and the individual going there can do nothing. We must have laws so that there can be a combination between the people to construct these works for the common benefit. The next thing is to have laws to prevent monopolies, for I don't believe in one party owning the water and another the land. That would make serfs of the people. It is a difficult problem to work out. It has some advantages, for it is more difficult to monopolize irrigated land than other land. A man with a large amount of irrigated land will find his hands full if he is going to make it productive. In California they found that they had to cut the land up, and inaugerating a system of irrigation has opened a field for emigration. There is another consideration connected with water which applies everywhere. While we have no means of increasing the rainfall—that is

beyond human control so far as we have investigated, for raising of trees and vegetation does not increase the general rainfall—what a man can do is equivalent to that—he can preserve the rainfall that comes. He can plant trees, cultivate the soil and put more water on it in various ways, by ditches from rivers, or by storing the water, or by artesian wells. There is a great contest always going on between man and the desert—man moving out by regular stages into the desert and the desert moving back onto man. So man has been advancing and the desert has been receding. Many countries, on the other hand that were once inhabited, and may be reclaimed again, are now deserts. Large portions of Egypt that were once fertile, are now deserts. There are some wonderful irrigating works there—constructed 3,600 years ago. Their ruins show that they were intended to cover a large portion of the acreage. Travelers in Palestine tell us that every step taken shows evidence of ancient irrigation works. They built tanks on the mountains of huge masonry that hold water to-day, In Persia and the eastern empire that once flourished, ruins everywhere say that the desert has driven man back in those regions. Why, it is difficult to say, but we know that before the day of telegraph and the railroad, nations might be destroyed by the destruction of their hydraulic works. A foreign foe, getting into a country might destroy a whole people by the destruction of their irrigation system.

In South America we find the most perfect masonry built by the Spaniards, and in our own time Japan is a country where the people have made great development of its irrigation system. The country is mountainous, and by the sides of the mountains they construct terraces in which they save the water that falls. In Japan they could not possibly support 10,000,000 of people, and perhaps not 5,000,000, and may be less that that. Now they have over 30,000,000. China has vast irrigating works, and India depends largely upon it. Sometimes in India they have plenty of rain, but it does not come at the right time. The amount of money spent in India by the English government on irrigating works is simply enormous. The country was devastated by famines—the railroads could not prevent these famines, and an estimate was then made as to what would be the cost of the necessary irrigation works to be constructed by the government. The first was 150,000,000. Now they have spent between three and four times that amount. We cannot go into any such scheme as that, but what we propose now is to ascertain the facts and lay them before the American people. When they find what a heritage they have got—how much wealth there is, we have no doubt the ways and means will be discovered and the difficulties will be overcome. As to your region here, it has been compared particularly by Professor Davison to the region he finds in India. There they made canals out of the rivers, and distributed the water over the land. They have created an immense amount of wealth by the work they have done in that country. You have immense rivers here and much land that can be irrigated by them. You are, however, between the regions where they rely entirely on rainfall and entirely on irrigation, and you are likely to forget the bad years, but your abundant rainfall in some seasons will enable you to store the water and provide for the bad seasons. Water is very easily stored in lakes and ponds and it is very easy for the farmer to have a lake, and if he stores his water for the dry seasons he will have crops when he otherwise would have none.

The existence of artesian wells has been known for a long time, and the

waters from them have been used for irrigation. The chief objections have been that the supply of water has been liable to exhaustion, and before I came to this region I was very skeptical about the extent to which this land could be irrigated by these artesian wells. But the artesian belt is like everything else—the quantity depends upon the supply and the extent of the supply. They are sunk all along the James River Valley, down to the Missouri river. They have sunk their wells through shale, limestone, and have come through into the sand rock. They have not gone through this sand rock. They have gone into it fifty or sixty feet. It is a coarse sand, and it is the largest water bearing strata I have ever read of in any artesian country. It has got more capacity and more power, and discharges with more power than any that I ever heard of, and if there is a sufficient supply it might be used very generally for irrigating purposes. Much depends on the supply, and I have suggested to Major Powell, if this artesian strata that carries the water, immense as it is, comes from the Rocky Mountains, bringing the melting snows from those mountains—the supply would be such as would be of incalculable benefit to the people of this region. If this is the source of the supply, you can get artesian wells anywhere between the Rocky Mountains and the James River Valley. That matter should be investigated, and will be investigated. Once irrigated, this country can maintain a larger population than any portion of the east of the same size, for you have an advantage in your subsoil for saving the water. Your soil takes less moisture than the soil of the eastern states. There is scarcely any place we have passed over in Dakota that requires more than four inches of moisture to make a good crop, while in many parts of the east they require a foot. I am delighted that you are going to send representatives to Congress, and they will be able to do much to secure for you such legislation as will enable the people to develop the country. That will make all this land here which is now worth $10 acre, worth from $30 to $100 an acre. Its value will be determined by its proximity to market and its productive capacity.

There is another matter that I would like to speak to you about. They have invented a recent process for irrigating debts and making them grow. I think debts are large enough when they are born. I don't think they should grow after the contract is made. Shall I speak a little about that? You know very well—you have been told again and again—that the price of articles depended on the law of supply and demand. Value is not intrinsic in gold and silver. It is entirely outside of them, and depends on two propositions. First the desire of men to have the article valued, and secondly the limitation of the quantity. If the quantity is unlimited, as air and water, you don't pay anything for it. If you were on a desert where water was scarce, you would give anything for it if you wanted it. We call that supply and demand. When there is a failure of the wheat crop you say—wheat is going up, and so if anything else is going to be scarce. If the demand increases and the supply does not, prices will go up. If the quantity increases and the supply does not, then it will go down, and money and everything else is governed by that same law. If you doubled the money in the world, property would go up. If you destroyed half the property money would go down, but debts would keep where they are. So that the price of money depends on the same law of supply and demand. Civilization has had a great deal of trouble in devising some form

for money to take. They found only two things that they could agree on, and they were gold and silver. They do not rust, you cannot destroy them with fire and they remain the same. They are the only metals that can be found in any quantity possessing these qualities. The world in all civilized countries has adopted these two metals as money. I agree with the greenbackers in this—that fiat money is philosopical if you can get all the world to agree that the stamp of the government issuing it is good for the face of the bill. But you will have to get 1,200,000,000 of people to agree to it, and you can't live long enough to get them to do it. But they are all of one mind so far as silver is concerned. Wherever money is used they use silver, and in Asia and South America—in all those countries they know no other money. You cannot use gold there—they know nothing but silver. Only 250,000,000 of the people in the world know anything about gold as money. With these people the two metals possess the same characteristics and can be used for the same purpose and with them it does not make any difference which is used. It is a dollar the man wants, and it does not make any difference to him whether it is gold or silver that he gets. That practice existed for three or four thousand years, and when a country had plenty of money it prospered, for money is like the life-blood of the system.

It is the interchange of commodities that makes the difference between the civilized man and the savage. Money is necessary to this and it so happens that when a nation has plenty of money the people are prosperous, and when they have but little money they have a bad time. You cannot have property in a country without a good crop of money. Take the Jews in the time of their prosperity—when they made Palestine flourish and made it renowned. When they made their advancement they gathered gold and silver from every country in Asia, and the countries surrounding them. Look at Egypt—when she built her reservoirs and hydraulic works—she had an abundance of gold and silver. See Rome, from the time she started out on her way of glory, till all the commerce and treasure of the world was turned over to the Roman Empire. She accumulated in coin vast amounts, besides gold jewelry—more than any other nation has ever accumulated. No nation has ever got before or since the amount that Rome accumulated. By and by she had internal strife—war, internal quarreling—lost her money—men would bury it—and with her loss of money came her loss of power, and she descended to the same level to which she was centuries before. The world was once more plunged into barbarism for the lack of money. Feudal slavery was the order of things—no independence—no bravery—no independence of thought—no individual action—all slavery. I tell you my friends such a thing as brave independent action without wealth is phenomenal. It does not happen once in a century. To take a man's wealth from him—to mortgage his property—to make that mortgage grow larger and larger—will make him a coward. In a generation or two he is willing to become a slave. Take a tramp, and you can kick him from your door, but put $500 into his hand and you cannot do that. I have seen miners with no money who could be kicked around without a murmur, but let them strike it well, and they will carry a chip on their shoulders.

I am opposed to irrigating debts and mortgages, because they take the independence and manhood out of the people. Our present civilization—it was the gold and silver from Mexico which revived commerce, started a new era of

mining, and then we see reformation began—then we see men asserting their independence—we see civilization developing, because the people have money and are independent of their masters. This went on for 300 years without any diminution. There was some little falling off in the mines—the countries in South America and Mexico cut off the supplies, and from 1810 to 1850 they had dull times. From 1840 to 1850 $8 a month was considered good wages on the farm. All property was down—very cheap—everything was at a standstill. The entire product of the world from 1810 to 1850 was less than $40,000,000 of money. It did not keep pace with the growth of population—it was not enough to supply the losses of wear. But then came the discovery of gold and silver in California, and Australia. That was a blessing that no preceding generation since the world's history has enjoyed. That started inventions, progress, wealth. The average rise of the value of property was 35⅓ per cent. This is according to the statistics of England, Germany and the United States. Everybody was employed. When you go in debt you see sell money short. If when you go to deliver it it is worth more than when you made the contract you have to give more property to pay it. When this good fortune first dawned on the world there were some bond holders—some people long on money—who had a right to call for their money. They said—when we get our money we will not be able to buy as many of the necessaries of life as we could when we let you have it. They said that we must stop making money out of silver—make it out of gold. Germany and Austria demonetized gold, and so did Holland and some of the other minor states. The struggle went on and France took it into consideration and in 1869 after a commission had set on the subject for some time, she said that it was necessary to demonetize gold. Then a great deal of silver was produced, and Bismarck said, "we will demonetize silver." England had done this in 1816 and had demonetized gold in India. In 1871 gold was restored in Germany and silver was demonetized. In 1873 a bill was smuggled through Congress demonetizing silver in this country. At all events nobody knew it. Grant did not know it for two years after he had signed the bill. He signed it in 1873, and in 1875 he advised the establishment of two or more mints at Chicago, Omaha or St. Louis for the purpose of coining silver dollars. He did not know when he advised this that he had signed a bill demonetizing silver. The influence of the United States and Germany induced the Latin union to do the same. Then by the end of 1875 silver was banished from the civilized world as a coin to stand on a par with gold. In 1878 we passed a law providing that the Secretary should not coin less than $2,000,000 of silver in a month. This has done one thing—it has furnished $300,000,000 worth of silver certificates for the people. The civilized world had contracted enormous debts. The corporate and private debts were enormous.

What means did we have to pay our debts? We had a regular income of $200,000,000 from the mines out of which to manufacture money. That was our supply. If the people had been allowed to go on they would have been able to handle their debts and pay them. I believe in the obligation of contracts. That is the foundation of civil government and civil liberty, but it would not have been easy for the people to have maintained their credit and pay their debts without silver, in view of the facts under which they were contracted. The world sold money short because they saw that there was two hundred millions being poured out of the mines. They did not anticipate that

there would be anything done that would impair the utilization of this crop of money. Consequently they had gone into debt. But when these laws were passed the supply was cut off, and it grew less and less every year. The price of property has decreased in sixteen years, according to these same statisticians, from 30 to 35 per cent., including farm property and other real estate. You take farms in the east that are not affected by local improvements or immigration, and they have fallen in value 35 per cent in the last sixteen years. They will continue to fall. Now we are told we must ask England and get her consent before we can coin silver again. The people of Europe have no say in this matter. It is the money class that rules Europe—the aristocracy that live on the interest on bonds and fixed incomes, and they want labor cheaper so that they can pile up more money. The present system has destroyed the farming class in England. They appointed a commission on the depression of trade, and that sat for two years. Volumes of testimony were taken. The farmer said their wheat would not sell for as much as it cost to produce it. They said to the farmer—we cannot help you. We cannot revive the corn laws, for we are a great manufacturing country, and we must have cheap labor. But see how we are building up India. If we let you prosper we would make the American farmers prosper too. We must have cheap labor. Mr. Farmer, you will have to suffer.

So England goes on the basis that she is a creditor nation. If she makes money scare she will continue to hold her supremacy, but anything that is done to make money cheaper would be fatal to her financial supremacy. That is sufficient reason for her to hold on to the gold standard and contract the world's money to the greatest extent in her power. How does it operate here? Since the war the United States has been the field for the investments of this bonded aristocracy of Europe. Only think—the interest payable on the debts of the civilized world amounts to $5,000,000,000 per annum. Five thousand millions of dollars per annum the laboring and producing classes contribute to the non-producing classes. Can you comprehend this? More than all our wars cost is contributed annually by the civilized world in interest. A good deal of that five thousand millions has to be re-invested. Syndicates have been formed to make investments in bonds. They come over to America, and the Americans are always flattered by getting beside an Englishman. The Americans tell them about the resources of the country, and then these syndicates get interests in our railroads and towns and cities, and one of the condition of the bonds will always be found to be that the face and interest shall be paid in gold. It is understood that the e bankers will exact that the bonds shall be paid in gold. The railroads are undoubtedly mortgaged for twice the cost of their construction, and the officers have made a good thing out of them. But these New York bankers who control the newspapers and everything else, they make all these bonds payable in gold. and wherever you go—whether to the great banker in London or New York, or even to the little banker in your own town, you are told that gold is the only thing that is good for anything. And so it goes; but four-fifths of the people are on our side and Congress is with us. But the money power has controlled every Secretary of the Treasury for twenty years absolutely. That power forces the secretary to purchase the minimum and not the maximum of silver each month. But the present ad-

ministration was elected on a silver platform—the platform that says the republican party is in favor of both gold and silver for money. When we come to a vote we have a two-thirds majority in Congress. Mr. Cleveland asked his party to repeal the Bland Act and adopt the gold standard exclusively, and here is a gentleman sitting by my side who had the manhood to get his fellow members of Congress to the number of 100 to sign a respectful letter to Mr. Cleveland, telling him that they would not do it, and they did not do it. This saved you from a catastrophe of having the chains of bondage riveted about your necks. It was the democrats during the Cleveland administration who stood up against their party, and I present to you the leader of the men who did it.

I say to the bondholders that the American people are in favor of fulfilling their contracts, but there is not gold enough to redeem the world's debts. The world must go into bankrutcy or slavery. You cannot have more than there is of a thing. There is not gold enough to do it, and I warn the bondholders to allow the full volume of gold and silver to be manufactured or there will be universal bankruptcy. The world is too much in debt. The financial system has the worst fever in the world. The extremities are cold. There is no money with which to enter into any enterprise. No man will put money into property. All the railroads are discharging hands, the manufacturers are curtailing—everybody is waiting to see what will turn up. Things are at a standstill in this great country when they should be moving forward without let or hindrance. There is no people more energetic, more intelligent or more temperate on earth, and things should be moving forward. No, we are trembling—curtailing—no money is being used—there is no money in the country—it has gone back to the centers and it seeks investment in bonds. When money is a drug in New York, that is a sign that business is stagnant. That is the condition now. Do not be deceived. I tell you that there must be a change, and when they tell you that money is plenty they deceive you. Every man knows that it is not plenty. I say we are in favor of the use of both gold and silver. They sneer at me because I come from a mining state. I tell you the silver miners of the United States have suffered in actual discount over ninety millions of dollars. That is what they have suffered. It is a great industry—farming is a great industry—we destroy these industries for the purpose of gratifying the bondholders in making the rich richer and the poor poorer. I hope the people of this new state will stand shoulder to shoulder and send no representatives to Congress that will represent New York city, or London, or Berlin. Those cities have representatives enough there now. You will send men who will represent North Dakota, and Montana, Washington, Idaho, Wyoming, California, Nevada, Colorado, Nebraska, and Kansas will be with you.

Mr. PRESIDENT. I have the pleasure of introducing to you one of the best friends of the farmer of Dakota—one of the champions of the Inter-State Commerce law—Senator Regan.

SENATOR REGAN'S SPEECH.

Senator Regan said:

MR. PRESIDENT, GENTLEMEN OF THE CONVENTION, AND LADIES: I esteem it a very high honor to have the pleasure of addressing the mem-

bers of this Convention, clothed as they are with the sovereign authority of the people of North Dakota to form a State government. In sitting here and remembering that I was in the presence of the Convention that was to form a government, the thought came to me as to the difference between the formation of governments here in our land and among the despotisms in the old world. There the king, the emperor, is the sovereign, the source of authority, the foundation of honor. There the people are held to be incapable of self-government. There the philosophy of their system is that the government must be strong enough by the exertion of its powers to preserve order, to protect property, life and liberty, and to restrain the people as a means of securing safety to society. How different it is in this land of ours. Here each individual citizen possesses within himself a unit of the sovereignty of this great republic. Here the people by their own authority make, amend, destroy or alter governments. They are amenable to no authority above themselves. Here we hold that man is capable of self-government; that he possesses virtue enough to preserve the order of society. A hundred years and more of experiment in peace and in war has vindicated our American principle that the people are not only sovereigns, but capable of self-government. You in your capacity as a convention are exercising the highest sovereign authority a citizen can exercise. I did not anticipate observations of this kind but they arose from the accident of this presence.

Our committee of which Colonel Stewart is chairman have been directed by the Senate of the United States to collect information on the subject of irrigation in the arid regions of the United States. The question is one of very great moment, and is attracting year by year greater attention than heretofore as population reaches out to the arid regions. I will not attempt to discuss this question of irrigation in the presence of my friend Colonel Stewart, who has given so much attention to it, and Major Powell, who has given more attention to it and better understands it than any other citizen in this country. It is enough for me to say that about four-ninths of the territory of the United States, exclusive of Alaska, is in the arid region of the United States; in that part of the country where irrigation is necessary to fructify the soil and increase its fruits. The subject of irrigation for this purpose is older than history, especially in Egypt and Asia, and has been employed for a long time in Italy, Spain, France, and in Mexico and South America on this hemisphere. Recently it has been engaged in in our sister States of Colorado and California, and in the Territory of Utah. Our mission is to collect from among the people as much information as we can as to the necessities of the several portions of the country for irrigation, and as to their experience and judgment as to the means of irrigation. We are therefore collecting information, and not undertaking to give it, nor can we say what Congress will do with this information when it receives it. It may be the basis of some action that will be of value. Already an appropriation has been made for a survey, and land and water have been reserved from speculators till some plan can be adopted which will enable the federal government or the states and territories to utilize the waters for the benefit of the people of the country. In passing through the Dakotas we were gratified at the large flow of waters from the artesian wells which may prove an inestimable boon to the people of this country, and which presents the problem here, perhaps, in a different phase from what it is else-

where, where the holding of water and the flooding of dams during the wet season and using it during the dry season to stimulate the crops is resorted to. I don't propose to go further into this subject now, and if I may be pardoned I will refer to another subject—one to which Colonel Stewart has referred—a subject that is of vital interest to our people. Some fifty years ago Stephen Girard of Philadelphia, after a life of successful speculation and adventure accumulated a fortune of $3,000,000 which came from the fact that he owned in San Domingo, where the blacks were massacring the whites, property, and he put the treasure of the whites on his vessels and took them to Philadelphia for safe keeping, and the owners never lived to call for them. His fortune was the wonder of everybody in this country. Now what a change. We see within a few years men accumulating fortunes of ten, twenty, fifty, a hundred or two hundred millions. I pause to make this observation in reference to our past and our present. Up to thirty years and less ago, the wealth of this country was more evenly divided among its people, and the enjoyment of the wealth was more and better distributed. Since that time the tendency has been to collect the wealth of the country in a few hands and impoverish the great mass of the people. There naturally arises in the mind of one—how is this? If you will bear with me I propose to state to you some of the things which have brought this about, for being one of those who have sprung from the ranks of labor, my sympathies and feelings have been with the lower classes, and I have always tried to be faithful and true to those with whom I have been associated. What has caused this great change? I will only go back twenty or twenty odd years for the explanation. During the civil war the government was involved in a debt amounting to nearly $3,000,000,000—$2,800,000,000. The necessities of the government required that it should issue a great deal of paper money. Commerce was disturbed, and Congress undertook to relieve these embarrassments by causing this redundancy of circulation to be converted into interest bearing bonds, which was no doubt a wise policy. To induce people to take these bonds it was provided that the owners of this currency might buy the bonds at par with the currency. The currency was worth about half as much as coin. So a citizen with $100,000 of coin could buy $200,000 worth of notes, and with them buy $200,000 worth of interest bearing bonds. So by this operation, and I don't question the policy of it, whatever the motive might have been, it was to give to the bondholders one-half of the amount of the bonds which they held and a promise of interest payable semi-annually in gold on all of them. That was an enormous gift. But as I have stated I do not stop to question whether this was right or wrong, but to mention it as the first great step of enriching the few at the expense of the many. Up to 1869 the lawful money of the United States consisted of gold and silver coin and legal tender notes. All debts, public and private, state and national, were payable in this kind of lawful money. In 1869 these bondholders who paid 50 cents on the dollar for their bonds, concluded that these bonds should not be redeemed with the kind of money with which they were bought, but with coin. A congress was found faithless enough to the right of the people to say by law that thereafter the bonds should be repaid in coin alone, and that meant gold and silver. This act of taking away the legal tender notes as a means of payment, it was estimated by some of the best men of the country, by increasing the value in the hands of the bond-

holders of their bonds, added not less than $500,000,000 of burden to the people of the country. That is the second step in this drama.

Subsequently Congress provided for the retirement of the legal tender notes from circulation, by directing the Secretary of the Treasury, as they were brought into the treasury, to cancel and destroy them. When this retirement was ordered there was $400,000,000 worth of legal tender notes. In the execution of this law fifty odd millions of these notes were taken up, cancelled and destroyed, thus taking that much circulating medium from the people. It was alleged that it was sought to pay these bonds in coin because they must pay them in honest money. But to pay bonds in gold and silver which were bought with currency worth 50 cents on the dollar was one of the instances of putting on the livery of heaven to serve the devil with. Money that was good enough to pay the soldiers and sailors—money that was good enough to pay all private debts was good enough to pay these bonds that were bought for 50 cents on the dollar. In 1872-3 Congress passed a law to which Colonel Stewart refers, demonetizing silver. This was taking away from the currency of the country one-half of the money which might have been employed in national and state and corporate debts which we owed, and private debts. It reduced the amount of metal money one-half after providing for the retirement of the legal tender notes. That act of oppression to America was passed in view of the further fact that then as now, the United States produced forty per cent. at least of all the silver mined on the earth—a bounty bestowed upon this country by God such as has been bestowed upon no other country on earth—a bounty which, if it had been bestowed on Great Britain or Germany, the statesman who proposed to demonetize and destroy the world's money, would have been regarded as a lunatic and a knave. And yet our financiers and legislators to retain their respectability with British and German creditors and bond holders and Wall Street and London and Vienna bankers, sought to take from the American people this great boon in the hour of their struggle to redeem their indebtedness. I venture to say that in this world's history no act of greater outrage on the industrial interests of the country has ever been perpetrated—a policy so vicious as to affect every possible interest of the country. It was a measure to enrich the few and impoverish the many. But they said in justification of this, England has demonetized silver, Germany has demonetized silver, and they are old and wise nations. So they are, but that does not prove the wisdom or necessity to sacrifice the rights of the American people. Every civilized nation under the sun is Great Britain's debtor. When a state or a government desires to obtain a loan, or a railroad or canal corporation desires to obtain a loan, they will take their bonds to England, and if they are shaved down twenty or twenty-five per cent. they give their bonds for the full amount and with interest payable in gold only, and the people in that country who hold the revenue yielding property, own bonds given by the people of every land—by nations and corporations of every land. It was her policy to make those bonds as valuable as could be. Then Great Britain has a long civil list, and the incomes of those people are fixed, and it was the policy to make them as valuable as possible. When our government demonetized silver it did its share to destroy one-half the metal money of the world—to add to the burdens of the people—to double the number of carloads of wheat or bales of cotton or days

work of the people of this country to pay the vast indebtedness that then existed. This is the instrumentality through which the wealth of this country was rapidly made to drift into the hands of a few persons, and that has done so much to load the people, the labor, and the agriculture of this land with taxation, with debt, embarassment and often with sorrow and grief. It is enough to show how in a large measure this state of affairs was brought about. The occasion does not call for me to go into the operations and the means by which we have made millionaires and paupers in this country. But this is a sample of what has done it. I submit to this Convention whether the facts which I have stated are not the unalterable facts of history, and whether they are not sufficient to account for the condition of things which prevail in this country? Your young State is just coming into the Union. It has to shape its policy, and your action and the action of the people which immediately follows it, will determine in a great measure your capacity for forming a government which will protect the people and obviate the dangers which lie before us all. You will find that the money powers are strongly intrenched in power at the national capital, and that they have held control of the functions of government of this country for the twenty years in which all this has been going on. In 1877 Congress made an effort to relieve the pressure, and passed a law over the veto of the President arresting the cancellation of the legal tender notes, and preserved $346,000,000 to the people as part of the currency. The same Congress passed over the veto of the President a law which required the coinage of not less than two millions nor more than four millions of silver dollars a month. The House of Representatives passed a law for the free coinage of silver, but the Senate placed the limitation on it, and preserved the tax on the coinage of silver. By the law the government pays for the coinage of silver, and by the law the producer has to pay a tax to the government for its coinage. Now then, I feel a very great degree of gratification at the thought that four new western states are to be represented in the Senate and the House of Representatives at Washington. Add them to California, Nevada and Oregon and to the southern states, and we will have the power to control this question. If you choose men to represent you, and if the four new western states choose men to represent them who will go there under the influence of Wall Street and the bondholders, you will aid in fastening the chains of poverty tighter on your fellow citizens. I make no reference to any of your candidates, for I don't know who they are. In God's name send men who will represent North Dakota who are Dakotians. Do not send men to represent the bondholders and money men, to further oppress the people, and go further to change the character of this government—to rob the people of their sovereignty and make them the slaves of the money power. You send the right men, and we will make the coinage of silver free and unlimited like gold. Some people speak of the great weight of silver. I never found any trouble because of this. But we propose to relieve that objection and provide for the issuance of coin certificates, based on the gold and silver coin which will be deposited with the government. Strike down the difference which now exists between the two coinages. When men come to you and tell you that you want honest money to pay honest debts, tell them to disgorge the millions of which they have robbed the American people. They first changed the law under which these debts were created, for under them we could have paid

them in legal tender notes. They changed that. They violated the letter of the contract by taking away the rights of the people to pay them in coin, and ask that they be paid in gold alone. It would seem when we contemplate the intelligence, independence and courage of the American people, that no set of scoundrels would have ventured such an atrocious scheme as this was to rob a brave and strong people. We will be deluded no longer by their cry of honest money—we will be deceived no longer by a heartless and venal press. There are organizations among the laboring and agricultural people, where these questions are being discussed as they have never been discussed before. They are beginning to awake to the condition of things, and they will demand such action as will restore to the people of the land their rights I do not consider whether men are republicans or democrats in relation to the great questions which attack alike the rights of every citizen. When the President of my choice choose to join the band of plunderers, I told him he must halt, and induced a hundred democratic Representatives to tell him that he must halt. I have been a democrat all my life. I believe in its principles as I believe in Holy Writ, but whenever it joins the cormorants and robbers, it is no longer the party of Jefferson, and it will be no longer the banner under whose banner I will go. This country has suffered as no other country has suffered from classes. The legislation of this country has been controlled for more than twenty years by the money classes. It is enough for me to say that legislation in the interests of the classes as against the masses has covered many of your farms with mortgages—has loaded many of your people with debts that they cannot discharge, and has helped to pile up the collossal fortunes which press on the Amerisan people. Let us demand the repeal of all adverse legislation. Let us demand laws which shall protect all men alike and shall give no man an advantage—an undue advantage over his fellow men. I will go with any man in any party to accomplish a purpose so beneficient and so holy as this.

Mr. PRESIDENT. I have a great deal of pleasure in introducing to you Major Powell, the Director of the Geological Survey.

MAJOR POWELL'S ADDRESS.

Major Powell said:

MR. PRESIDENT, AND GENTLEMEN OF THE CONVENTION.—I am not accustomed to speak on occasions like this. In the first place I never made a political speech in my life, and it seems to me I am almost out of place here. When I was a boy they used to bring to the table the dinner, and the finest things came at the last part of the feast, but somehow in the high falutin dinners they give now they fill the people with wines and viands of many kinds, and then end with strong cheese and hard crackers. I think that is what your PRESIDENT is doing to-day. He wants to top off with something very plain. I know nothing about the silver question, but I have studied somewhat the subject of irrigation. I was a farmer boy and have been engaged in farming, and have spent a good deal of time studying many of the problems which interest your people. I remember in my childhood my father moving into Illinois. Then I remember when Wisconsin and Minnesota were making states, and now you are making two states of Dakota. All these years I have watched the march of progress across the continent, and have seen all this western half of America grow up as

it were from a wilderness. Of the questions that practically interest the people who are engaged in farming, I have made some study, and in my remarks I will confine myself wholly to some practical questions relating to irrigation, and then I will show what the Constitutional Convention should have to say about them. The State of North Dakota has a curious position geographically in relation to agriculture. The eastern portion of the State has sufficient rainfall for agricultural purposes; the western part has insufficient rainfall, and the western portion is, practically, wholly dependent on irrigation. In the western portion, all dependence on rains will ultimately bring disaster to the people. They are willing yet, a good many of them to admit it, but the study of the physicial conditions which prevail in this county and the application of the knowledge which has been given to mankind through the study of these same problems in Europe and Asia and Africa, all prove this one fact—that in the western portion of this State they will have to forever depend on artificial irrigation for all agriculture. In the eastern portion they may depend upon the storms that come from the heavens, and there is a middle belt between the two regions which is of very great interest. They will soon learn in the western portion to depend upon irrigation and provide themselves with agencies for the artificial fructifying of the soil with water. In the eastern part they will depend on the rainfall, and in the middle portion they will have a series of years when they will have abundant crops; then for two or three years they will have less rainfall, and there will be failure of crops and disaster will come on thousands of people, who will become discouraged and will leave. Up and down the temperature of agriculture will rise and fall with the seasons in this manner, and the only practical way to do is to look the thing squarely in the face and remember that in middle Dakota agriculture will always be liable to meet with failure unless you provide against it. That is the history of all those who live on the border between the humid and the arid lands. Years will come of abundance, and years will come of disaster, and between the two the people will be prosperous and unprosperous, and the thing to do is to look the question square in the face and provide for this and for all years. You hug to yourselves the delusion that the climate is changing. This question is four thousand years old. Nothing that man can do will change the climate. A long succession of years will give you the same amount of rainfall that any other succession of the same length will give you. The settlement of the country, the population of the country, the planting of the country, the cultivation of trees, the building of railroads—all these matters will have no influence upon your climate. You may as well not hope for any improvement in this direction. There is almost rainfall enough for your purpose. But one year with another you need a little more than you get. It is flowing past you in the rivers. Storms come and spread over the land, and the water runs off into the rivers and is carried into the waters of the Gulf of Mexico. There are waters rolling by you which are quite ample to redeem your land, and you must save these waters. I say it from the standpoint of the history of all such lands. Civilization was born in arid lands. Taking the world at large most of the agriculture of the world has depended on irrigation for more than 4,000 years. The largest populations have depended on irrigation, so it is an old problem, and it has been solved time and again, so that it may be said that there is nothing to learn. All you

have to so do is to learn the lessons already taught by history, and that it is that in these lands you have to depend on placing the water on the soil, and when you have once learned to do that you are in no unfavorable condition, In the humid region the storms come, and the fields receive the gentle shower, but frequently just before the harvest comes, a great storm devastates it all. In this arid region if you depend on artificial irrigation, you are independent of storms. The waters that are brought on the land by irrigation, are sources of fertilization beyond all other sources. There are fields in the eastern world that have been cultivated for 4,000 years—where water was brought on the land to irrigate, and all other fertilization is unnecessary. Now in all lands of high culture, where the fields are irrigated, they are ceasing to use any other fertilizer. In France where they are irrigating their lands, they have commenced a system in every county and township—the same in Spain and Germany. They find that they must pour the waters of their streams on their lands.

As members of this Convention, this is what I want to say to you. Not being a public man, it may be considered a little presumptious for me to say it —in Dakota you are to depend hereafter in a great measure on the running streams—in small part on your artesian wells, and in part on the storage of the storm waters. The chief source will be the running streams. These waters are to be preserved and stored during the seasons of non-irrigation. There are, say, two months of the year when you need to irregate, and ten months when you should store the water. All other wealth falls into insignificance compared with that which is to come from these lands from the pouring on them of the running streams of this country. Don't let these streams get out of the possession of the people. If you fail in making a Constitution in any other respect, fail not in this one. Take lessons from California and Colorado. Fix it in your Constitution that no corporation—no body of men—no capital can get possession and right to your waters. Hold the waters in the hands of the people. Think of a condition of affairs in which your agriculture—which you will have to depend on largely—depending on irrigation, is at the mercy of twenty companies, who own all the water. They would laugh at ownership of land. What is ownership of land when the value is in the water? You should provide in the Constitution which you are making, that the water which falls from the heavens and rolls to the sea, down your great rivers—that water shall be under the control of the people, subject always to the will of the people; that property in water should be impossible for individuals to possess. You should forbid the right to acquire property in water. The property should be in the land, and the right to the water should inhere in the land, and no company or individual should have property in the running streams. Such a provision will prevent your great agricultural sources falling into the hands of the few.

Mr. PRESIDENT. Whoever has any information in regard to irrigation which they can present to this committee, immediately after the session, will please do so.

Mr. JOHNSON. We are very much interested in this subject. We have found since we came out on these plains that the water supply is not sufficient to make sure a good crop every time. It

has apparently diminished during the last few years, and this year we are brought face to face with this great problem of a lack of moisture. But it does seem that there is an overruling Providence that tempers the wind to the shron lamb, and the way is now open whereby the fountains beneath us are opened to us. I believe that the greatest problem that will present itself to the members of Congress sent from this new state will be the question of the water supply. But this subject of irrigation is a much wider one than I supposed when we read that this committee would come here.

While the gentleman has been speaking my mind reverted back twenty-six years—to the time when many of you here who are wearing Grand Aamy badges were studying irrigation in the ditches, in the fever ditches on the 4th of July before the trenches at Vicksburg; my mind has reverted to the time when many of you were studying irrigation on the march that Sheridan made to the sea in wading brooks and traveling over pontoon bridges; my mind has reverted to the 4th of July twenty-six years ago when some were studying irrigation on the battle field of Gettysburg, irrigating that soil with the blood of yourselves and your comrades, when at least 12,000 of our northern soldiers irrigated the soil at Andersonville and Libby prisons with their tears and their blood, and I could not but think of the wonderful irrigation that we were studying at that time—how it cost money to furnish hardtack, and powder and bullets, and bayonets, and how we could raise money to save the country in those days—and I was wondering where the honorable gentleman from Texas was studying irrigation in those days. If I have correctly read history, when Jefferson Davis was elected President of the Southern Confederacy, he called the gentleman with him, as one of his trusted leaders that could be depended upon, into his cabinet. If I have read history correctly the gentleman was believed by the so-called President to be deep-rooted in the eternal principles of democracy, and the Senator from Texas was called into that cabinet and served as Postmaster General. Why did not the gentleman tell us something of that debt that was piled up at that time—as to how and why——

Mr. PURCELL. Does the gentleman mean to cast any reflection on the Senator from Texas by his remarks?

Mr. JOHNSON. No, sir.

Mr. MATHEWS. I move to adjourn.

The motion prevailed and the Convention adjourned.

EVENING SESSION.

PARALLEL LINES.

Section eleven of File No. 134 was read as follows:

SEC. 11. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section, by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

Mr. STEVENS. Mr. MILLER was looking up the matter of this section, and I see that he is not in his chair.

Mr. JOHNSON. This is a very important section, and I desire to say that it is no novelty as a constitutional provision. I could read you similar provisions in the constitutions of Nebraska, Missouri, Arkansas, Colorado, Illinois, West Virginia, Pennsylvania, Texas and the South Dakota Constitution. I think that is all the constitutions that has been made since 1870 except one or two states in the south, where they have no railroads to speak of.

Mr. PURCELL. Does the gentleman intend to confer upon the Legislature of this State the right to forfeit the charter of the Northern Pacific, which railroad is chartered by Congress?

Mr. JOHNSON. This Constitution is only good within the boundaries of this State. It applies to the corporations so far as they are chartered here, and so far as it is possible to reach them.

Mr. PURCELL. Is it not a fact that the Interstate Commerce law covers this particular section?

Mr. JOHNSON. It is my understanding that it covers the same principle as to railroads that run through several states, but we have no guarantee that it will not be repealed next winter, and we think it is well for us to go on record as approving that principle.

Mr. ROBERTSON. I move that section eleven be stricken out.

Mr. PURCELL. I second the motion.

The motion was lost by a vote of 16 to 29.

Mr. MOER. I move to amend by inserting the words "organized within this State" in the first line after the word "corporation." We would have no power whatever over a foreign corporation,

and no act that we might pass as a State or in our Constitution, would be of any account so far as these foreign corporations are concerned.

The motion was seconded.

Mr. JOHNSON. I object to that, for it will amount to the same thing as striking out the entire section. It would be an easy matter for any new company to organize outside the State to evade this section.

Mr. MOER. I would simply say the section would be void anyway. We cannot forfeit the charter granted by the Congress of the United States, or by the State of Minnesota. It does not lie within our power to forfeit it, and we should limit this section to something we can control. We can control a corporation organized within this State, but not a foreign corporation. What is the use of putting this in the Constitution? That is what I would inquire?

Mr. JOHNSON. That is all very well as to the forfeiture, but it is the principle of non-consolidation that we want in here.

Mr. PURCELL. As one of the members of the committee who signed the minority report, and which does not cover section eleven, I desire to say that as Mr. MILLER stated on Saturday night, the reason why the minority did not report a section to take the place of this, is because in their judgment it would seriously interfere with railroad building in this Territory. He gave us an illustration of the Fargo Southern road, and at least the delegates from Richland county know that his statement was correct so far as that road was concerned. That company was organized in Fargo, and in Richland and othes counties, and it was purely a local company. In the City of Wahpeton we subscribed $15,000 towards a fund with which we purchased lands for right of way five miles north and five miles south of that city. The railroad was built to Ortonville, and the company attempted to operate the line. They operated it for a short time, but found that it was impossible for them to go on with it, for they did not have a trunk line from Ortonville to any other point east, or from Fargo which would make it pay to operate. It was therefore sold to the Milwaukee road. The road was organized for the purpose of opening up the country on the west side of the Red River from Fargo to Ortonville. The Manitoba road had come as far as Breckenridge and built its line north to Barnesville, Crookston, and so forth, but on the west side there was no outlet for the grain grown

between Fargo and Wahpeton except by the Manitoba, and every farmer was compelled to haul his grain from six to twelve and fifteen miles to the station. We saw the necessity. The people got together and themselves built this road. They subsequently sold it to the Milwaukee road, but if they had not built it the Manitoba would never have come to the farmers. If this section is adopted there are a good many other sections of country that are similarly situated, and there are other men who would be ready to band themselves together and build roads, if they are not hampered and handicapped by such a provision as this. For this reason I am opposed to the section.

Mr. LAUDER. I am in favor of section eleven for the very reasons which cause my colleague from Richland county to be against it. I think the case he has cited is the strongest argument he could have made in favor of the incorporation of section eleven in this constitution. It is a fact, as has been stated, that the people of Richland county and other counties through which the Fargo Southern road was to run, contributed very largely towards its construction. They gave the right of way, and a bonus I think, too, in a certain amount. Now why did they do that? They did it so that they might have through their county a competing road. They did not contribute to the building of that road so that it might in the near future, as soon as it was built and operated, be absorbed in a system with which they wished to have it compete. If this section is not incorporated in this Constitution, and if some other road can absorb this one which the citizens of town and city and country have contributed largely to build, then there would be no security at all, and the very purpose for which these people put up their money would be defeated. For that reason I am in favor of the section. Perhaps in a very few cases it may work an injury. There is no law in its application that does not at some time and under some circumstances work injury, or operate, as it would appear, against abstract justice. But it seems to me that this is the only protection that people have who encourage railroad building into their cities and counties by contributing their money. They want to be assured that the road will continue to be a competitor of the roads that already exist.

The amendment of Mr. MOER was lost.

Mr. SPALDING. It seems to me that to make it consistent the words "organised within this state" should be placed after the word "corporation" in the first line.

Mr. JOHNSON. I will accept that amendment if you add after the word "state" the words "or doing business."

Mr. FAY. It seems to me that the words that the gentleman from Nelson would add are meaningless. If they are not doing business within the state, then what have we to do with them? If they are not operated here, then what figure would it cut?

Mr. SPALDING. The only object I had was to make it appear consistent, so that we might not appear to be attempting to declare some charter forfeited that was granted by some other state. When the amendment of the gentleman from Nelson is inserted it leaves the article practically as it is now, and there would be no object in amending it.

Mr. JOHNSON. One has to think pretty rapidly here, and just at the moment I thought it was necessary to make the amendment to the amendment.

Mr. SCOTT. If this amendment goes in, it is practically the same thing as if the original amendment had carried. I don't see how this will better it. If we cannot forfeit the charter of a foreign corporation, the section as it stands now has full force and effect. I don't think it applies specifically to the forfeiture of charters. It is to prevent any competing lines from consolidating with each other. It seems to me it is a good section, and although there may be very few railroad companies organized under our laws—although in all likelihood a majority of them will be foreign corporations, I don't believe it will be denied by the gentlemen in the Convention that we have got power to control, to a certain extent, a railroad company within our limits, whether it is chartered here or elsewhere. It must obey our laws and if it will not do that we can prevent its doing business, just the same as if it had been organized and chartered in this State. I don't believe the amendment ought to prevail.

Mr. STEVENS. I will go a step further and say we can forfeit the charter of a foreign corporation to the extent of the right it has acquired in the State of North Dakota. A charter granted by the State of Minnesota would have no effect in the State of North Dakota, except such as it may acquire under the laws of North Dakota. While we could not affect the charter so far as it applied to Minnesota or to any other state, so far as it applies to North Dakota we could affect it and forfeit it, be it a foreign corporation or a corporation organized within this State. If we cannot do that, then what is the object of that provision in our present law

which provides that before a foreign corporation can transact any business here they must file with the Secretary the articles of incorporation of other state or states? They must comply with the law of the Territory of Dakota.

Mr. SPALDING. In answer to the gentleman from Ransom I would say that I did not propose this amendment, thinking for one moment that it would in any way abridge or enlarge the scope of the section, but so that it might be made plain just what we mean; and I had in my mind to suggest that there should be a further amendment to this section providing some penalty for corporations organizing under foreign statutes but operating in this State, but that it should be worded differently from that section which applies to local corporations. I have not been here while this has been under discussion and did not know that it would come up to-night. I think there should be such an amendment as would make it apply, so far as it would be applicable, to foreign corporations.

The amendment of Mr. SPALDING was lost.

The original section—number eleven of the majority report—was then recommended for adoption.

Section fifteen was then read as follows:

SEC. 15. The term "corporations" as used in this article, shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

Mr. JOHNSON. I think that section two of the minority report is a better section than this, and I move that it be substituted.

The motion was seconded and carried.

Section two in question reads as follows:

SEC. 2. The term "corporation" as used in this article, shall not be understood as embracing municipalities or political divisions of the State unless otherwise expressly stated, but it shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships.

Sections sixteen and seventeen were adopted.

THE ARBITRATION QUESTION.

Mr. PARSONS of Morton. I move that section eighteen of this File be made to read as follows:

"Whenever a difference shall arise between any corporation other than municipal and its employes or an industrial society incorporated under the laws of this State, any of whose members are employes of such corporation, if the

disagreement cannot be adjusted by conference it shall be submitted to arbitration under such rules as shall be prescribed by law.

The only objection I have had raised to this amendment, as I originally offered it, was that it would be possible for some person who had been discharged from a corporation to make trouble and difficulty under this clause. But if you will notice the wording of the article, it only includes employes of the corporation. Therefore, when anyone is discharged, he ceases to be an employe and this clause does not apply to him. It only affects those difficulties in which there is a large body of men and difficulties arise while they are in the employ of the corporation or individual. Ninety-nine out of 100 of the strikes that have arisen in this country have arisen from the most trivial reasons and have gradually spread. This measure has been urged in different states for twelve or fifteen years, and it is the only solution that has ever been offered to the problem. I have spoken before of the advocacy by one of the most prominent attorneys in New York in the New York Tribune, of this system, as the only solution of the problem. I don't say that this is a panacea for all the ills, but I ask it as a measure of justice and in the interests of humanity, and I believe it will have a pacific effect on those who would otherwise be belligerent and desirous of using coercive measures. It will tend to have these matters submitted to arbitration, and in nine cases out of ten trouble would be settled in this way, and difficulties would be amicably adjusted.

Mr. PURCELL. Is it intended that this will force a corporation to arbitrate with its employes?

Mr. PARSONS. If that is a matter of law the gentleman should be better posted than I am. He can see readily that there will be absolutely nothing binding in it if the parties did not wish to be bound, and the corporation, if it choose, could discharge every one of its employes. Then this clause would cease to operate, and I think he knows as well as any of us that it is only intended to be a pacific measure. But public opinion and public sentiment generally would be on that side that was willing to submit the question at issue to arbitration.

Mr. PURCELL. This matter was before the committee, and was discussed somewhat. It seems to me if it passes and the Legislature should see fit to follow up the idea incorporated here, that it might require, or it may require, many differences to be arbitrated upon. Under section thirty-four of the Judicial

Bill, they have established tribunals of arbitration, where people may go and arbitrate their differences. But if it is intended to force a corporation to go into an arbitration court, in my judgment it is wrong. As the gentleman stated, many differences exist between corporations and their men at times. Arbitration is generally understood to be a voluntary submission of differences to a third party, but if it is intended by this clause to force them to submit their cases to arbitration it is not good law. Nor is it a good provision to have in this Constitution. Take an imaginary case—here is a farmer with ten or fifteen thousand acres of land under cultivation. During the harvest season he may employ men wherever he can get them. If the superintendent sees fit to discharge a man that may create a difficulty with the others, that should not be cause enough for them to drag him into an arbitration court. Or if he required a man to follow a plow instead of driving a binder, that might create a difference. If this provision prevails, it might be within the power of the men who are employed by that corporation, to compel the corporation to go before a tribunal of arbitrators and make the corportion justify the fact that the superintendent ordered him from the binder to the plow. There is none who is more anxious to give to the workmen all the rights they should have, than I am, but there are some rights that we are bound to respect and must not allow to be trampled underfoot. It is easy enough for one to see wherein an abuse of this power could be worked. I don't believe it to be constitutional or right to force any man to go before a board of arbitrators and justify his acts—to justify what he has done with reference to his workmen, so long as these workmen receive what is their due. If any engineer has disobeyed an order, or if he had an order given him which he did not see fit to obey, and instead of performing his work compels his employers to go before a board of arbitration, I say that it is not right. This matter may seem simple and plain, and it may not appear to be much on its surface, but if we stop and consider we will see that every corporation can be put to a great disadvantage by this section. Therefore I am opposed to it.

Mr. STEVENS. If the section was intended to cover the thing the gentleman intimates it was, it would be a failure on its face. As it stands it does not cover any such provisions as he mentions. It plainly says "employes," and as soon as an employer discharges an employe there is no remedy to be obtained under

this section. Besides that, it does not provide for boards of arbitration, but it provides that the law may establish boards to act between employer and employed. Not between employers and one who has been an employe. I don't see where in our present condition it could have any material effect, but following the line of our National Congress—following the line of the governments of the civilized world, this provision should be incorporated in our Constitution. We have had at least a dozen international congresses met with the sole view of submitting international questions to arbitration. The tendencies of the governments of the day are towards arbitration, and if arbitration between nations is good, if arbitration between states is good, why should not arbitration between employers and their employes be good too? It is in the same line, and therefore I am in favor of incorporating it in this Constitution. I don't see how it can possibly do any harm. It simply authorizes the Legislature to pass such a law. I am not certain that they would not have a right to pass it anyhow, but it is simply explanatory of their power. It can do no harm, and it might be that it would do a great deal of good. As the tendency of the time among all nations is towards arbitration, I am in favor of anything looking in that direction.

Mr. BARTLETT of Griggs. I hope this amendment will not prevail. If the tendencies of the time are towards arbitration, then we may have a general law compelling or inviting all men or all parties into arbitration, I am in favor of it. But why we should single out corporations and similar organizations I don't see. It is very evident that this section is designed to compel a railroad or any other corporation to arbitrate differences that it might have between the Knights of Labor or any other organization and itself. It is said that it will only apply to employes. Admit that an employe is discharged. Then the organization of which he is a member takes it up and attempts to reinstate him, or something or that sort, it becomes a question between an industrial society and a corporation, and it must be submitted to arbitration. It is not fair and it is not just. I believe that railroads have the same rights as individuals, and we should not deal differently with them from what we would with individuals.

Mr. SCOTT, The gentleman from Morton says that under this provision a corporation might discharge all of its employes and they would have no remedy under the section. That being the case I fail to see what advantage there is in having the provision.

If a dispute arises between the employes of a corporation and the corporation, and the corporation desires to evade the submission of the matter to a board of arbitrators, all they would have to do would be to discharge their employes at once. If that is the meaning, then this section is so much lumber. It is not necessary, and is mere verbiage and means nothing, but from its wording I would not so interpret it. I question if there are many other members of this Convention who would interpret it this way. Taking the ordinary interpretation of these words, if there was a dispute arising over a discharged employe, if the Legislature should pass a law, I think it would be a very serious question but that the ex-employe could compel the submission of the matter to a board of arbitrators. I don't think that is fair. I concur with the remarks of the gentleman from Richland. If it means what the gentleman from Morton says it does, it had better be out, for it will do no good.

Mr. MOER. It seems to me that this would be a wise provision to put in the Constitution. I think it would tend to bring about an amicable adjustment of differences between corporations and their employes, and I hope the amendment will prevail.

Mr. BARTLETT of Dickey. I believe that if a man wants to discharge a person who is working for him, he should have a right to do it, and if the employer won't pay his discharged hand what he owes him, let the employe sue. I believe that any railroad company has a right to discharge any of its employes, and any man who works for a railroad company should be able to quit when he wants to and get his money.

Mr. LAUDER. I agree with the gentleman from Dickey. Railroad corporations, or any other corporations, or any private individuals have a right to determine for themselves who they will have in their employ and who they will not. But in the application of this principle we have seen a great deal of difference arise. We have seen a great deal of loss to the corporations and the laboring men, and if any provision can be incorporated here or can be devised by the Legislature that will assist corporations and individuals on the one side, and the laboring men on the other, in coming to an agreement and harmonizing their differences and avoiding strikes, I think it should be encouraged. I think that is the purpose of this section, and the only purpose, and therefore that it should prevail.

Mr. PARSONS of Morton. It is a surprise to me to hear

some of the objections that are urged against this measure by the gentlemen on the other side of the house, especially since the principal portion of the original file has been stricken out, and the matter left almost entirely to the Legislature. We say a man has a perfect right to hire another and discharge him when he chooses, and that is what I say, but what that has to do with the question before the house I can't see. It is a known fact that since corporations have become common, we have had differences all over the United States—we have had loss of property—loss of life and suffering untold. As a gentleman from Chicago told me after the great strike there, he said there were row after row of houses left desolate—people ruined all through strikes. They had struck—had mortgages on their homes and had to get out and leave them. Not long ago we heard of the eviction of 500 families in Illinois; not long ago in Minneapolis we witnessed the spectacle of the citizens traveling on foot, with a corporation on the one side, the employes on the other and the people in between. I ask you if corporations or their employes have the right to step in, and interfere with, and stop the public business? This fall the farmer may have his crops ready to ship—they are liable to become damaged by delay—and a strike occurs. Do you say that the company and their men have a right together to stop the public business—to prevent the farmer from shipping his product to market? I introduce this section simply in the interest of humanity and for the public good. I stand here and speak for those who earn their bread by the sweat of their brow. I admit that an employer has a right to discharge his employes when he wants to, but it is a fact that the present method of settling industrial differences has led to strikes, and starvation, and poverty. This section may be mere lumber. It is easy to call any section that you don't like, lumber or surplusage. But it is a fact that this measure is offered in the interest of humanity. This is offered as a concilatory measure. This measure as it originally stood was adopted as the report of the committee, and in my absence it was reconsidered on the motion of a party, and stricken out of the report, so that you may know how the committee stood. If I had been present at that committee meeting it would not have been done. In God's name and in the name of humanity I ask for this measure. It is not for me that I ask it. I have nothing to gain by it, and perhaps everything to lose, but I have that much interest in my fellow men—in those whom I see in grimy and soiled

clothes, toiling and laboring for their daily bread, to ask this of you, and if I thought it would do any good, I would willingly go down on my knees and ask that you vote for this measure. I claim this government has a right to control any creature it creates. It is a pacific measure, and I beg you to stand by this measure as you would be men.

Mr. PURCELL. I would like to ask the gentleman from Morton if it is not a fact that the bloodshed he referred to in Minneapolis was not caused by the organized labor trying to drive off the unorganized labor? That is a fact in nearly every instance where there are strikes and difficulties between employes and employers. It is not the corporations that make or cause the bloodshed. It is not the corporations that are always in fault. The rule is that whenever there is trouble, and the employers excercise their right to employ others—men in the places of those who have left their employ—then the organized labor steps up and tells the unorganized that it must not go to work. When the gentleman speaks in pathetic tones let us remember that in nine cases out of ten the trouble we see is not between employers and employes, but between organized and unorganized labor.

The amendment of Mr. PARSONS was lost by a vote of 18 to 22.

THE PASS QUESTION.

Mr. JOHNSON. I desire to offer an additional section which will read as follows:

"If any railroad corporation issue passes to any member of the Legislature, it shall in like manner issue passes to all members of the same Legislature."

Seconded by Mr. BEAN.

Mr. JOHNSON. This question of passes is a very difficult and a very interesting question. There has been a great deal of discussion upon it, and I hardly know what is the best method of dealing with it. It was my deliberate judgment when I came here as set forth in File No. 1, that all public servants, when engaged in public business, should travel at public expense. I think the state officers and the members of the Legislature, and judges, when they travel on public business, should not sponge on the railroads. But that principle did not find favor in the committee. Then the gentleman from Traill offered the oath of the Sioux Falls Constitution, but that was not acceptable to this Convention, and I am not sure that I approve of that myself. There

is a correct and an incorrect use of passes. I am not here to condemn the use of passes. I am not sure but that it is correct. I notice by the dispatches in the paper this morning from Montana, that there they have forbidden the use of passes. I have come to this conclusion since the committee had its last meeting —to get the sense of this convention, and it is a question easy to understand. You can see the fairness of the section I have introduced. All members of the Legislature should be treated alike; then I think there would be no injustice in issuing passes. If we all had passes we would be on the same footing, and would not be afraid of the companies, and would not be bound by them. I am not complaining of unfair treatment, for I have got all I deserve out of the corporations. You take my case—I have a good way to come, and while most all the rest of the delegates in the neighborhood got passes I did not get any, and you can see how it is unjust. I would give $100 for one of those passes. It would be worth that to me, and thus they got $100 more than I did. None would say that that was just, and I can hardly avoid the conclusion that these corporations single out certain men for punishment, and I might draw the other conclusion that they single out certain others for reward. I have some passes myself, but I speak of the Manitoba road—a great road that controls everything in our part of the country. The votes on these nineteen sections show that those passes in the pockets of members has not influenced their conduct one hair's breath one way or the other. They stood up for what they believed to be right. But I hold that members of the Legislature who come to sit here year after year should not be treated as we have been treated this year. The members from Nelson and Grand Forks and Cavalier counties should all be treated alike. We should take it out of the power of these corporations to single out a man for punishment as they have singled me out. That is nothing more than fair or just.

Mr. BARTLETT of Dickey. I thought of making an amendment to the effect that we each should also have a chromo. I am opposed to the amendment, and I hope and believe that the delegates will vote it down. I think the railroad companies have a right to do just as they please about these things.

Mr. PURCELL. I move that the resolution of the gentleman from Nelson be referred to the Committee on Militia.

The motion was carried.

STATE DEFICITS.

File No. 140 was then taken up.

Section one was read as follows:

SECTION 1. The State may, to meet causual deficits or failure in the revenue, or in case of extraordinary emergencies, contract debts, but such debts shall never in the aggregate exceed the sum of $200,000, exclusive of what may be the debt of North Dakota at the time of the adoption of this Constitution. Every such debt shall be authorized by law for certain purposes to be definitely mentioned therein, and every such law shall provide for levying an annual tax sufficient to pay the interest simi-annually, and the principal within thirty years from the passage of such law, and shall especially appropriate the proceeds of such tax to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax discontinued until such debt both principal and interest, shall have been fully paid. No debt in excess of the limit named shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the State in time of war, or to provide for public defense in case of threatened hostilities.

Mr. ROLFE. I move that in the third line the word "one" be substituted for the word "two."

The motion was seconded by Mr. BARTLETT of Griggs.

Mr. WALLACE. As far as I am concerned, as a member of the committee I am willing that it should be $100,000. Some of the members thought it should be two, and it was put so. I have no feeling in this matter whatever.

Mr. STEVENS. I hope this amendment will not prevail. I don't believe it is a good idea to bind the State down to $100,000. I don't believe it should be put in this Constitution. One hundred thousand dollars is not a reasonable sum for the great State of North Dakota. You cannot tell what will happen—what public improvements may be necessary to our welfare, and $100,000 will be very little towards making any great public improvement. We have to-day been talked to about a subject which might become very important to the State. If, after it had been demonstrated that it was a practical benefit, we should desire to adopt it, and it was the desire of this State that some measure should be taken to reclaim the arid lands of our western slope, and if our Constitution was so made that we could not possibly make the improvements, it might be a lasting benefit wasted. Two hundred thousand dollars is indeed low enough, if not too low. I don't think there is any state in the Union with a provision so low, and as we are here, just on the boundary between the arid tract and the tract which gets enough natural rain, I hope this Convention

will pause and consider well before they say North Dakota may not at any time go into debt to exceed the amount of a thousand men's private fortunes in this Union.

Mr. HARRIS. I trust this amendment will not prevail. One hundred thousand dollars of indebtedness or deficiency in the revenue is but a very small amount. We expect this State will grow, and the Treasurer of the Territory tells me that on the first of November there will be $140,000 of deficiency this year, with the probability that it will be $160,000. There are a great many things that arise to cause a deficiency in revenue. There will be a large deficiency in the revenue next year. Crops are poor—they are short all over the State; the taxes will not be paid, and the territory will have to wait till they are paid before it can get them. As I said, $100,000 is very small, and I certainly think that we ought not to change this from two to one. I trust the amendment will not prevail.

Mr. MATHEWS. I will move as an amendment to the amendment that we make it $250,000. I think $200,000 is too small.

Mr. BARTLETT of Griggs. $100,000 is not such an insignificant sum as the gentleman from Ransom would have us believe. I would venture to say that if he should ever undertake to irrigate North Dakota or any considerable portion of it, even $200,000 or $500,000 would be but a drop in the bucket. The highest limit that I know of in any state is $250,000. Nebraska is limited to $100,000; the great State of Michigan to $50,000, and now we wish to put this—this new State—to $200,000. The main object of this State should be—the main purpose—to keep out of debt, and we can only do that by throwing restrictions around our Legislature, so that it will be impossible for them to contract for public institutions and other things, an enormous debt. I would like to see this $50,000. I believe it is impossible to make it as low as that, but I think $100,000 is plenty high enough. It is above the average limits of constitutions that I am familiar with, and it should be plenty.

Mr. ROLFE. I notice in File No. 132, the article on revenue and taxation, which we have not considered—yet I take it that the first section is very likely to meet the approval of this Convention—provides that the Legislature may provide for the raising of revenue for State purposes, in an amount not exceeding four mills in any one year. Four mills on the assesable property of a county having $3,000,000 worth of assessable property—and I take it that

that would be a fair average in North Dakota—would result in the raising of a State tax in that county of $12,000. If we multiply that by thirty-eight, considering $3,000,000 the average for the counties—thirty-eight being the number or organized counties, now in the Territory, and possibly by a larger number since new counties are likely to be organized shortly, we shall find that this State may, in any one year, by assessing to the limit imposed by the section on revenue and taxation, raise an amount that will in all reason be sufficient to pay an expenditure other than the most extraordinary one. South Dakota in her Constitution of 1885 fixed the limit at $60,000. She has in her late Constitution raised that to $100,000. That portion of the Territory of Dakota is far richer in population and assessable property than we are, and in all probability will continue so to be for a long series of years to come. They have kept in line with a majority of states which have been careful to get the limit of state indebtedness down to such an amount as to make it impossible for any Legislature to make the State tax burdensome to the people. I don't believe that $100,000 is an insignificant sum as has been suggested, and I think that the annual tax which the State might raise by a four mill levy will be sufficient for the needs of the State for many years to come, and I hope the amendment will prevail.

Mr. STEVENS. I would like, in refutation of what the gentleman has said, to ask him one question—what is the assessed valuation of his county?

Mr. ROLFE. A little over a million.

Mr. STEVENS. And your county is over the average county. There are but few counties in North Dakota that come up to what the gentleman says is the average. Further than that, in answer to what the gentleman has said about public institutions, I don't believe in combinations for public institutions any more than he does, but I say if it is necessary for North Dakota to go into debt for $100,000 to take care of the cripples, the maimed, the blind, the speechless and the sightless, I for one am in favor of contracting that debt and taking care of all those persons in the institutions we will build. Would the gentleman seek to limit the indebtedness of North Dakota when it is taking care of the persons confined in the Jamestown Asylum—would it limit the State indebtedness, and thereby prevent the proper carrying on of the educational interests of the Grand Forks University? Would the gentleman seek to cut off the appropriation that might be had for

maimed, and crippled, and old and decrepit soldiers? Surely not; and yet if you cut down this indebtedness in the manner proposed you might do that very thing. I don't believe that because we ask for $250,000 as a limit that it needs to reach that. The Legislature will not, necessarily, because they have the power, run into debt. Would the gentleman limit the liabilities of the individual citizens of his county—would he say they have no right when necessary for their own interest, to go into debt? Why, then, if it is going to be a benefit to the State to go into debt, should it not be allowed to do so? Consider this proposition well before you say by your votes here to-night that we will not allow the State of North Dakota to contract, no matter how necessary it may be, an indebtedness to exceed $100,000.

Mr. HARRIS. A few cold facts won't do any harm. South Dakota limits her indebtedness to $500,000 and starts in with $750,000 of bonded indebtedness at once. She limits her floating indebtedness to $50,000, and the first day she starts in she will have $150,000 of floating indebtedness, and she can't help it. It does not matter what her constitution says. I wish to illustrate the fact that these things occur and we cannot always shirk them. This section only provides for casual deficits or cases where there is a failure in the revenue, and they will come no matter what the rate of taxation that has been assessed. These failures come when the taxes are not paid, and the warrants of the State must necessarily go to protest or a temporary indebtedness must be incurred. We are not to infer that the Legislature or the officials propose to run to the limit, and run this State into debt every year. We are not to suppose that because in the report of the Committee on Revenue and Taxation a limitation of four mills is fixed, that the State of North Dakota will levy four mills on the assessed valuation every year. Not at all. Any man who is elected to an office in this State will endeavor to keep the expenditures at the lowest possible limit, and this section of File No. 140 is only for extraordinary expenditures or failures in the revenue, and $100,000 is too small if we expect to keep within the limit.

Mr. SCOTT. As the gentleman from Benson stated that South Dakota in her Constitution in 1885 had the limit placed at $50,000, what position would she be in to-day had the Constitution taken effect at that time? The result would necessarily have been that they would have had to increase the tax levy or else their warrants would have been below par. One hundred thousand

dollars is not very much to a state. Already our indebtedness is something over $500,000. We are not in as good a position as South Dakota. There are public institutions which will be absolutely necessary which the State must equip and establish. These all require money, and the question is—shall the State start off and levy a tax which will defray the expenses of these institutions—of the Legislature and the State officers, or will the limit of indebtedness be placed at $200,000 or $250,000? To my mind $250,000 is not a large sum for this State to incur. I don't think it would be good policy to adopt the amendment, for failure of crops or some other cause might render it absolutely impossible for the State to get its taxes paid up. They will be delinquent, and will have to wait till the crops are good, and for that reason it may frequently require $200,000 to meet the deficiency. I should be in favor of an amendment that would make the amount $250,000.

Mr. WALLACE. The only object I have in limiting the indebtedness is to encourage economy. If you want to open the door to extravagence put a large limit on. We have seen cases of other states that have put a much less limit than we have. I don't think it is good policy for us to go into debt. I think the best thing we can do is to put a small limit. The amendment which has been proposed by the gentleman from Grand Forks to increase the amount to $250,000 should not, I think, prevail. As has been mentioned, Michigan's limit is $50,000, Indiana's $100,000, Minnesota's $250,000. I think that $200,000 is enough for North Dakota, and I should be satisfied with considerable less.

The amendment of Mr. MATHEWS was lost.

The amendment of Mr. ROLFE was lost.

The original section was adopted.

CITY AND COUNTY DEBTS.

Section two was read as follows:

SEC. 2. The debt of any county, city, town, school district, or any other subdivision, shall never exceed five (5) per centum upon the assessed value of the taxable property therein, except as otherwise specified in this Constitution; *Provided*, That any city may, by a two-thirds vote, increase such indebtedness three (3) per cent. beyond said five (5) per cent. limit. In estimating the indebtedness which a city, county, or any subdivision thereof may incur, the amount of indebtedness contracted prior to the adoption of this Constitution shall be included.

Mr. SPALDING. I have never seen this report till it was distributed, and had no knowledge whatever as to its contents. In

looking over the Journal I have come to the conclusion that this section conflicts with the section reported by some other committee, and the action already taken by the Committee of the Whole. I have had no time or opportunity to examine it carefully and see what the difference is, and I move that this committee do now rise.

Mr. STEVENS. It seems to me that this is one of the most important subjects that we have to consider. I have never seen the report till to-night. We have had no chance or opportunity to examine it, and for that reason, and that we may better understand this File, I move that its consideration be postponed till to-morrow.

The motion to postpone was carried by a vote of 24 to 11.

The committee then rose.

Mr. SELBY. I move to adjourn.

The motion prevailed, and the Convention adjourned.

THIRTY-FOURTH DAY.

BISMARCK, *Tuesday, August 6, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. MOER. I move that the reading of the Journal be dispensed with.

Mr. HARRIS. The Journal only takes a few minutes to read. I think it is of the utmost importance that it should be correct, and mistakes are liable to occur in it. It has been laid over now for several days and I think we should proceed to have it read up and corrected.

Mr. MOER. I withdraw my motion.

Mr. JOHNSON. Inasmuch as we have dispensed with the regular order of business for two days, I would ask that the Journal of August the 3d be also read.

(The Journal of the 3d was then read by the Clerk.)

Mr. JOHNSON. My recollection of what occurred last Saturday night is a little different from the history as written by the Clerk. He states that sections one to ten were adopted, and eleven was passed, and then he says something about thirteen. My recollection is that we had a very decided scrimmage here on twelve. Why is there no mention made of section twelve? These words mean something—the words that authorize the Legislature to fix rates for the railroads. There have been traditions that have come down to us, handed down by our forefathers and ancestors that sometimes bills that have passed both houses of the Legislature have failed to get on the statute books. If it is not asking too much of the Chief Clerk I would like to trouble him to make mention in the record of the fact that we adopted section twelve.

Mr. PURCELL. Last night when we commenced to consider the majority report on corporations the Chief Clerk stated in the hearing of every member of this Convention, that instead of the Journal saying that section thirteen was adopted it should have read section twelve, and we continued to consider section thirteen yesterday. The Chief Clerk made that statement that it had been adopted by the Committee of the Whole.

Mr. JOHNSON. Then the fact that he read "thirteen" to-day shows that the manuscript has not been corrected, and that is why I called attention to it.

Chief Clerk HAMILTON. It is a mistake of the printer, which has been marked for correction.

Mr. JOHNSON. Mr. PRESIDENT: I desire to ask if people who have not been elected members of this body have any right to the floor to make explanations here?

Mr. PRESIDENT. The Chief Clerk has a right to give information when he is called on for it.

CITY AND COUNTY DEBT.

Mr. BENNETT. I move that the Committee on Revision and Adjustment be and are hereby instructed to insert between the word "city" and the word "and" in the last two lines of section three of File No. 125 as amended the following words—"or for the purpose of constructing sewers." File No. 125 is the report of the Committee on Municipal Corporations. That File was amended in the Committee of the Whole by Mr. Miller's motion, which was made section three of the File. The amendment limits the indebt-

edness of cities, except in the case where they construct waterworks. There are several cities in North Dakota that are intending to construct sewers. Grand Forks and Grafton are among those cities, and we are desirous of having these words inserted as recommended by this resolution.

Mr. PRESIDENT ruled that the motion was out of order, and that the amendment must be made when the article comes back from the Committee on Revision and Adjustment.

Mr. STEVENS. I make a motion that it is the sense of this Convention that the provision contained in this resolution shall be incorporated by the Revision Committee and I do it for this reason. I don't think there is a single gentleman on this floor who voted in favor of the provision for the establishment of waterworks who will not also vote for this provision, as without sewers waterworks are practically of little value, and this provision is necessary to carry out the other provision.

The motion was seconded and carried.

Mr. STEVENS. I move that we now resolve ourselves into a Committee of the Whole for the purpose of considering the business on the Secretary's table.

The motion was seconded and carried.

Section two of File No. 140 was then read, as follows:

SEC. 2. The debt of any county, city, town, school district, or any other subdivision, shall never exceed five (5) per centum upon the assessed value of the taxable property therein, except as otherwise specified in this Constitution; *Provided*, That any city may, by a two-thirds vote, increase such indebtedness three (3) per cent. beyond said five (5) per cent. limit. In estimating the indebtedness which a city, county, or any subdivision thereof may incur, the amount of indebtedness contracted prior to the adoption of this Constitution shall be included.

Mr. FLEMINGTON. Inasmuch as the report on municipal corporations limits indebtedness of cities and towns I would move that the words "city" and "county" be stricken out of this section.

Mr. WALLACE. I think that this matter of conflict should be left to the Committee on Revision and Adjustment. It will be hard for us to take up these matters and decide on the merits of the case. The Committee on Revision will report any conflict. It is their duty and their work.

Mr. FLEMINGTON. I think the remarks of the gentleman from Steele are all right, but there is a difference in the substance. In this case there is a difference in the substance and in the limit

prescribed, and I think it should be settled by this committee at this time. If the sections were alike—if the limit prescribed in this section was the same as that in the other, it might be left to the committee, but as they are not alike, I think the question should be settled here.

Mr. ELLIOTT. I don't think the motion of the gentleman from Dickey covers the ground. Section three of File No. 125, which is File No. 67, provides that no municipal corporation shall ever exceed 4 per cent with its indebtedness, except cities for the purpose of constructing waterworks or sewerage. His motion to strike out the words "city" and "town" would not cover the case. I would move as a substitute that where the figure "5" occurs it be stricken out and the figure "4" inserted.

The motion was seconded.

Mr. ROLFE. I hope the amendment will not prevail, for the reason that while the 4 per cent. limit might be feasible in a case of the larger counties, it is hardly the limit that would be advisable in the case of the smaller counties, upon which the expense of running a county government is proportionately larger than it is in the larger counties. A 4 per cent. in the smaller counties would not allow them to carry on the government as established to the best interests of the county at large. I think the better plan would be when we are acting as a Convention to reconsider the action taken on section three of File No. 125, and increase that to five. Therefore I hope this amendment will not prevail.

Mr. SCOTT. I cannot see where there is any necessity for our having this section two in at all. We have already adopted a provision in the File on municipal corporations, in which we fixed the limit of indebtedness of any municipal corporation, which will include cities, counties, towns and so on, and that has been fixed at 4 per cent. If we desire to reconsider that, it is a proper thing to do, but we have already an article passed, which covers this whole section. This section two and this original File No. 67 vary materially, and for that reason, if it is in order I would move that section two of this File be stricken out.

The motion was seconded.

Mr. CAMP. I differ with the gentleman in the meaning of the term "municipal corporation." Ordinarily it does not include county, town or school district. If we are to fix any limit to the indebtedness of the counties, school districts, or towns, it must be

done explicitly, and cannot be done by the use of the term "municipal corporation," unless we append to it a new definition.

Mr. FLEMINGTON. I agree with the gentleman from Stutsman as to the definition of the term "municipal corporation." I don't think that the provision in File No. 125, section three, governs towns, counties or school districts, and I don't think it would be so considered, so that it would leave us without any limit in the case of a county, town or school district. I think if the words "city" and "town" are stricken out from this bill it will leave us with a 5 per cent. limit, and 4 per cent. will govern municipal corporations which it was intended to cover. I still think that the motion I originally made to strike out the words "city" and "town" will be the best.

Mr. SCOTT. I would like to inquire what kind of a corporation a county is if it is not a municipal corporation?

Mr. CAMP. It is a *quasi* municipal corporation. It would come under the head of municipal or *quasi* municipal.

The motion of Mr. SCOTT to strike out section two was lost.

The motion of Mr. ELLIOTT to strike out "five" and insert "four" was lost.

Mr. SCOTT. I don't see the object of the gentleman from Dickey in wanting to have "city" and "town" struck out, any more than county and school district. I don't see how that will amend this. We then have section three of File No. 125, providing that under certain circumstances the indebtedness may be increased again.

Mr. FLEMINGTON. I was a member of the Committee on Municipal Corporations, and the understanding of the committee was that they were simply to adopt measures in that article relating strictly to municipal corporations of cities and towns. I understand the section we now have to have reference to counties, towns and school districts, and what the gentleman from Stutsman terms *quasi* municipal corporations are not provided for in the section reported by the Committee on Municipal Corporations.

Mr. O'BRIEN. There seems to be considerable conflict over this matter, and I think it would be better to pass this section and let it go to the Revision Committee. They can carefully study over this and so arrange the sections as to prevent any conflict. I think the motion of the gentleman from Dickey should not prevail.

The amendment of Mr. FLEMINGTON was then voted upon and carried.

Mr. WALLACE. If you want to amend this by changing "four" to "five" you will accomplish about all you want to accomplish. I hope there will be no mutilation of this article. It strikes me this matter of public debt applies to everything—city, county and every other sub-division.

Mr. SCOTT. I think it would be well to refer section two and section three of File No. 125 to some committee and have them frame a new article under the head of this report, or under the head of municipal corporations, so that there will be no conflict or misunderstanding. If we adopt this provision even with these words stricken out, it will lead to misunderstanding of the matter and difference of interpretation, and I think we had better have some section properly framed so that all the work won't have to go into the hands of the Committee on Revision and Adjustment. Here is a five per cent. clause in one section and a four per cent. clause in the other, and I think there should be a clause framed so that when a man gets the Constitution into his hands he will know what it means. I move that section two of File No. 140, and section three of File No. 125 be re-referred to the Committee on Municipal Corporations.

Mr. WALLACE. I move that the word "four" in section three of File No. 125 be changed to "five."

The motion was ruled out of order.

Mr. WALLACE. I move as a substitute that the Committee on Revision be directed to change the word "four" in line three of File No. 125 to "five," which would make it correspond with the second section of File No. 140.

The Chair ruled that this motion was out of order.

Mr. NOBLE. I move an amendment to the amendment, that it be referred to the Committee on Public Debts and Public Works. This section has been before that committee, but the section referred to as being incorporated in the article on municipal corporations has never been referred to any committee. It was simply taken up and adopted in this Convention. It is natural to be supposed that the committee has given the matter some little consideration, and I make this motion for the purpose of having it referred to a committee that has already investigated the subject.

Mr. O'BRIEN. The difficulty in the way of this action is this:

File No. 125 was before the committee with the amendment offered by the gentleman from Cass, and is now in the hands of the Revision Committee, so that we have practically lost control of it. The object of his motion is to have section two of File No. 140 referred to the committee. It seems to me the better plan would be to let this section go into the hands of the same committee that has charge of File No. 125 with the amendment. They can report back their action here, and if we deem it best to change the limit from five to four we can do it after the report comes back. That committee can make any suggestions they deem best.

Mr. BENNETT. I am in favor of the 5 per cent. limit. I think it is the proper thing, and if this committee adopts the 5 per cent. limit we can pass a resolution instructing the Committee on Revision and Adjustment to change the 4 per cent. to 5 per cent. in the report on Municipal Corporations, and I think in that way we will avoid any confusion.

The motion of Mr. SCOTT was lost.

Mr. PARSONS of Morton. I would like to ask if the motion of the gentleman from Barnes included Files Nos. 125 and 140 both?

The CHAIRMAN. I understand that it only includes this section.

Mr. FLEMINGTON. On examining this section it seems to me it would be well to include in that motion only a motion to strike out, beginning after the word "Constitution" in the fourth line and ending with the word "limit" in the sixth line. This is a limit simply to cities. If we strike out the words "city" and "town," the article only refers to counties, towns and school districts. This will eliminate from the section all that refers to municipal corporations, and will then include only *quasi* municipal corporations.

Mr. BARTLETT of Dickey. I have been pleased to hear the talent here, but it seems to me that if we would let this go to the Committee on Revision and Adjustment, a great deal of trouble would be saved to us. We have been discussing this matter three-quarters of an hour, and it seems to me it would be better to pass on to other business, and let the committee decide this.

The motion of Mr. FLEMINGTON was lost.

Sections two and three were adopted.

LOANING PUBLIC CREDIT.

Section four was read as follows:

SEC. 4. Neither the State nor any county, township or municipality shall loan or give its credit or make donation to or in aid of any individual, associa-

tion or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the State engage in any work of internal improvement unless authorized by a two-thirds vote of the people.

Mr. WALLACE. I move as an amendment that you strike out all after the word "improvement" in the sixth line. If this amendment is carried it will prevent the State from going into any work of internal improvement. If you are going to build a canal, or if you are going into irrigation works, there is no telling where you will stop. There are a number of things of this sort, which a good many people would like to go into with the State's money and credit. We find in a good many constitutions that the state is prohibited from going into any of these works. The section as it was reported by the committee provides that the State may go into work of this kind by a two-thirds vote of the people. The States of Iowa, Minnesota, Ohio, Michigan, Oregon, Pennsylvania and Wisconsin, and probably a good many more, are prohibited by their Constitutions from going into internal improvements. It is a question whether we want to leave it open as it is now.

The amendment of Mr. WALLACE was lost.

Mr. BARTLETT of Griggs. I move to strike out all after the the word "corporations" in line five of section four.

Mr. BARTLETT of Dickey. This is a matter that was laid before the committee and they gave it serious consideration. After doing this they reported it as we have it here, and I think it would be a good deal better for us to take it as we find it, and send it to the Revision Committee.

Mr. MOER. It strikes me that the tendency is getting to be rather to let the Revision Committee make the Constitution, and while I think that we want to be reasonable, it seems to me that it would be wise not to let them have too much power, for we may find if we keep on that the Constitution when it comes back from that committee will be a very different instrument from what we sent them. I believe the amendment should not prevail. I think the legislative power should be limited. They should not be allowed to go into great works without the sanction of the people. I think a two-thirds vote is reasonable, and if the people decide by such a vote as that that they want it, the State should grant it.

The amendment of Mr. BARTLETT was lost.

Sections four and five were then adopted.

BONDS TO BE ATTESTED.

Section six was then read as follows:

SEC. 6. No bond or evidence of indebtedness of the State shall be valid unless the same shall have endorsed thereon a certificate signed by the Auditor and Secretary of State showing that the bond or evidence of debt is issued pursuant to law, and falls within the debt limit. No bond or evidence of debt of any county, or bond of any township or other sub-division of a county shall be valid unless the same have endorsed thereon a certificate signed by the county auditor, or other officer authorized by law to sign such certificate, stating that said bond or evidence of debt is issued pursuant to law, and is within the debt limit.

Mr. ROLFE. I suppose the committee has well considered the effect of having contained in that section the words, "issued pursuant to law." I have not considered this section at any great length, but it is asking considerable of the officer specified within this section, and therefore I move, in order to bring the matter up for discussion, that the words "issued pursuant to law" be stricken out where they appear in this section.

Mr. WALLACE. I don't think it is necessary to discuss this. It seems so apparent that a certificate or evidence of indebtedness should include the statement that it was issued pursuant to law.

Mr. BEAN. The object of this article is apparent, and it is my opinion that if we carry this amendment we might as well strike out the whole section. How do the people in the east know that these bonds are issued according to law? They are not supposed to have a code or an attorney to refer to, and if the evidence appears on the face of the certificate that it is i sued pursuant to law, the people will have some faith in it. It is not a very serious matter for the Secretary of State or the Auditor to sign such a statement. He has an attorney to refer to, and it is simply an opinion that that certificate is issued pursuant to law, and falls within such limits.

Mr. PARSONS of Morton. It seems strange that a gentleman would raise a question of opinion in this way. The objection the gentleman from Benson has to the section is that there is a lack of authority on the part of the tribunal named in the section. If every auditor in the State, down from the State Auditor would have a legal opinion on the question—a decision of the court, let us say—it would be right and proper, but it seems to me that it is going too far to require an officer whom we elect as a mere clerk to call

on him to form a legal opinion—sit in judgment on these things and say whether or not these bonds or evidences of indebtedness are in accordance with the law. They may be so as he understands it, but if that provision stands there "pursuant to law," we should also make a provision for submitting all these questions to the court first—before the respective auditors are required to pass upon them. It is strange to ask a clerk to pass on a matter of this kind. I agree with the committee on their efforts to place safeguards around the public property, but if the words "pursuant to law" were stricken out I think the Auditor would still endorse sufficiently upon it, for it is not the custom of eastern capitalists to buy bonds in this or any other state or county unless they are first passed upon, and they know they are all right. The fact that an auditor endorsed on them that they were issued according to law would not have any weight, and it might get these officers into serious trouble, when they were acting in good faith. If the bonds through some technicality turned out to be no good, an innocent party might suffer very, very seriously.

Mr. CARLAND. I believe that this is a good section, and will answer a good many good purposes if it is allowed to stand as it is. If this remains here, every purchaser of bonds will be bound to know the law, which will be that any bond is not valid if it does not contain the certificate. There have been cases in which officers have issued bonds without authority, and they have got into the hands of innocent purchasers, and the court enforced them against municipalities and states. Now they cannot come up and claim that they are innocent purchasers, for the State or municipality can say: "You were bound under the law to see that the auditor had put his certificate on the bond before you got it." This clause would prevent officers from issuing bonds without this certificate. Every purchaser would know the law and would require the certificate. This section does not mean that all the technical requirements have been complied with, but that the bond has been issued in pursuance of some law and in accordance with its conditions.

The amendment of Mr. ROLFE was lost.

The section was then adopted.

CHANGING COUNTY LINES.

File No. 139 was then taken up. Section three was read as follows:

SEC. 3. All changes in the boundaries of organized counties before taking effect shall be submitted to the electors of the county or counties to be affected thereby, at a general election, and be adopted by a majority of the legal votes cast in each county at such election, and in case any portion of an organized county is stricken off and added to another, the county to which such portion is added shall assume and be holden for such proportion of the indebtedness of the county so reduced, as the part severed bears to the whole county from which it was severed.

Mr. BARTLETT of Griggs. There is the objection here that they propose to slice off the indebtedness in the same proportion that they do the territory. I move to strike out the word "such" in line seven, and insert in lieu thereof the words "an equitable," and strike out all after the word "reduced."

The amendment was carried, and the section adopted as amended.

LOCATING COUNTY SEATS.

Section four was then read as follows:

SEC. 4. In counties already organized, where the county seat has not been located by a vote of the people, upon a petition signed by a majority of the legal voters of the county, it shall be the duty of the county board to submit the location of the county seat to the electors of said county at the next general election thereafter, and the place receiving a majority of all votes cast at said election shall be the county seat of said county. If, at said election, no place receive a majority of all the votes cast, it shall be the duty of the county board to resubmit the location of the county seat to the electors of said county at the next general election thereafter, and the electors at said election shall vote for one of the two places receiving the highest number of votes at the preceding election. The place receiving the majority of all the votes cast for county seat at said second election shall be the county seat of said county.

Mr. HOLMES. I move that this section be stricken out. I think that we have all we need in section five bearing on this question. There is no sense in having too many sections that cover the same question. I think we can get along very well without it.

The motion was seconded and carried.

Mr. LOWELL. I move that in section two in line five the word "twenty" be substituted for "twenty-four."

The motion was seconded.

Mr. POLLOCK. It would be better to substitute "eighteen" for "twenty."

Mr. WALLACE. I move to insert in place of "twenty-four" the word "ten."

The amendment of Mr. LOWELL was lost.

The amendment of Mr. WALLLCE was lost.

Section five was then adopted.

LIMITING TERMS OF OFFICE.

Section six was then read as follows:

SEC. 6. At the general election in the year A. D. 1890, and every two years thereafter there shall be elected in each organized county a clerk of the court, sheriff, register of deeds, treasurer, state's attorney, surveyor, coroner and superintendent of schools, whose terms of office respectively shall be two years, and, except the clerk of the court, no person shall be eligible for more than four years in succession to any of the above-named offices.

Mr. RICHARDSON. I move that all after the word "years" in the sixth line be stricken out.

Mr. LAUDER. There may be some reason why, perhaps, some of the officers enumerated in that section, shall be restricted in the time they shall be allowed to hold their offices with advantage to the public; but there are officers enumerated in that section which it seems to me should be allowed to hold their offices as long as the people chose to elect them. For instance, take the office of the Superintendent of Public Instruction. Anyone who is at all familiar with matters of education knows well that the superintendent of public schools who has served one or two terms in that capacity—who has become acquainted with the teachers and the schools, is better able to perform in a satisfactory way the duties of that office than a person who is annually elected. That may also be said of a great many other officers, for example, the register of deeds. I have in mind the register of deeds in our county. We have a gentleman who has held that office for the last ten years, and I undertake to say that there is not another man in all our county who could go into that office at the present time, and discharge the duties with the same accuracy and the same satisfaction to the people of our county that the present incumbent can. He is elected right along, with no opposition whatever, and were an election to be held now I presume he would receive five-sixths of the votes in the county without any effort whatever on his part. It seems to me that this Convention should not put a provision in this Constitution that will prevent our people from retaining that man as their public servant to perform for them the duties of the office of register of deeds. If there is any reason why a provision should be incorporated in this Constitution of this character, it should only apply to officers who are obliged from the nature of their office to become the custodians

of public funds. In cases of that kind it might be well, and then if there has been anything crooked in their books or accounts it would come out. As a means of safety such a provision as that might be well, but in the cases of officers whose duties are largely ministerial, it seems to me the public should be left, and have the right and privilege of electing the men who are, in their judgment the best qualified to fill these offices. I speak of another office with some hesitancy, because I hold that office, and I hope no member will think that I am seeking to gain any advantage for myself. I have held the office of district attorney, and know what the facts are. Any attorney knows that a man who has been in the office of district or states attorney, and has had the run and the charge of the criminal cases pertaining to that office, and has accumulated in his office not only the criminal but the civil cases in which the county is interested, that when he surrenders that office and turns it over to his successor, it will take that successor some time to take hold of the cases and carry them on satisfactorily. If the incumbent of this office is competent, and has become familiar with all the details of the cases—many of them perhaps important—it seems to me that the public should have the right to continue him in office if they think proper, and it seems to me that it would not be policy to adopt this section, or to have this principle applied to any officers except, perhaps, those who are custodians of public funds.

Mr. FLEMINGTON. I agree with the gentleman from Richland in the main, and think that this provision should not apply to any officers except it might be to the sheriff and treasurer, and I offer the following amendment to the amendment of the gentleman from Pembina. After the word "years" add the following: "Sheriff and treasurer shall not be eligible to their respective offices for more than two years in succession." That limits the term of the sheriff and the treasurer, and leaves all the other officers to be elected as long as their services are satisfactory to the people.

Mr. BARTLETT of Griggs. I would second that, but I would prefer to make it two terms.

Mr. FLEMINGTON. I think the sheriff and the treasurer should be for one term each. The treasurer should account at the end of each term, and there is no way to have him do that but by making a provision of this sort.

Mr. BARTLETT of Griggs. It often requires half a term for the sheriff to become acquainted with his duties.

The amendment of Mr. WALLLCE was lost.

Section five was then adopted.

LIMITING TERMS OF OFFICE.

Section six was then read as follows:

SEC. 6. At the general election in the year A. D. 1890, and every two years thereafter there shall be elected in each organized county a clerk of the court, sheriff, register of deeds, treasurer, state's attorney, surveyor, coroner and superintendent of schools, whose terms of office respectively shall be two years, and, except the clerk of the court, no person shall be eligible for more than four years in succession to any of the above-named offices.

Mr. RICHARDSON. I move that all after the word "years" in the sixth line be stricken out.

Mr. LAUDER. There may be some reason why, perhaps, some of the officers enumerated in that section, shall be restricted in the time they shall be allowed to hold their offices with advantage to the public; but there are officers enumerated in that section which it seems to me should be allowed to hold their offices as long as the people chose to elect them. For instance, take the office of the Superintendent of Public Instruction. Anyone who is at all familiar with matters of education knows well that the superintendent of public schools who has served one or two terms in that capacity—who has become acquainted with the teachers and the schools, is better able to perform in a satisfactory way the duties of that office than a person who is annually elected. That may also be said of a great many other officers, for example, the register of deeds. I have in mind the register of deeds in our county. We have a gentleman who has held that office for the last ten years, and I undertake to say that there is not another man in all our county who could go into that office at the present time, and discharge the duties with the same accuracy and the same satisfaction to the people of our county that the present incumbent can. He is elected right along, with no opposition whatever, and were an election to be held now I presume he would receive five-sixths of the votes in the county without any effort whatever on his part. It seems to me that this Convention should not put a provision in this Constitution that will prevent our people from retaining that man as their public servant to perform for them the duties of the office of register of deeds. If there is any reason why a provision should be incorporated in this Constitution of this character, it should only apply to officers who are obliged from the nature of their office to become the custodians

of public funds. In cases of that kind it might be well, and then if there has been anything crooked in their books or accounts it would come out. As a means of safety such a provision as that might be well, but in the cases of officers whose duties are largely ministerial, it seems to me the public should be left, and have the right and privilege of electing the men who are, in their judgment the best qualified to fill these offices. I speak of another office with some hesitancy, because I hold that office, and I hope no member will think that I am seeking to gain any advantage for myself. I have held the office of district attorney, and know what the facts are. Any attorney knows that a man who has been in the office of district or states attorney, and has had the run and the charge of the criminal cases pertaining to that office, and has accumulated in his office not only the criminal but the civil cases in which the county is interested, that when he surrenders that office and turns it over to his successor, it will take that successor some time to take hold of the cases and carry them on satisfactorily. If the incumbent of this office is competent, and has become familiar with all the details of the cases—many of them perhaps important—it seems to me that the public should have the right to continue him in office if they think proper, and it seems to me that it would not be policy to adopt this section, or to have this principle applied to any officers except, perhaps, those who are custodians of public funds.

Mr. FLEMINGTON. I agree with the gentleman from Richland in the main, and think that this provision should not apply to any officers except it might be to the sheriff and treasurer, and I offer the following amendment to the amendment of the gentleman from Pembina. After the word "years" add the following: "Sheriff and treasurer shall not be eligible to their respective offices for more than two years in succession." That limits the term of the sheriff and the treasurer, and leaves all the other officers to be elected as long as their services are satisfactory to the people.

Mr. BARTLETT of Griggs. I would second that, but I would prefer to make it two terms.

Mr. FLEMINGTON. I think the sheriff and the treasurer should be for one term each. The treasurer should account at the end of each term, and there is no way to have him do that but by making a provision of this sort.

Mr. BARTLETT of Griggs. It often requires half a term for the sheriff to become acquainted with his duties.

Mr. BARTLETT of Dickey. This all sounds very well, but look at the situation as it is. When it comes to the actual working of the thing you will see that there is a chance for a good deal of robbery outside of these two offices. In the county that I lived in before I came here the treasurer held his office for twelve years, and the man would have been almost mobbed that would have said one word against him. His record for honesty stood preeminently high. What were the facts as they afterwards developed? After he had gone out of office and another man had taken his place, it was found that he had robbed the county of nearly $60,000, and he served his time in the penitentiary for it, David Smith of Keokuk, Iowa. Whenever you permit men to hold positions right along year after year in this country or in any other country, corruption follows. I believe that men holding public office should be put out at certain times, and new men elected that will scrutinize the work of the parties that have been in office, and I believe that as a matter of principle we should not put a clause in our Constitution that would permit any public officials to keep in office without having their record thoroughly examined.

Mr. MOER. I am in sympathy with the motion offered by the gentleman from Dickey, provided he will make it two terms. It seems to me that one is shorter than there is any necessity for having it. The only reason I am in favor of limiting these offices is because both officers have large amounts of money in their hands, but the other county offices are merely clerical and I see no reason to limit them as to time. But I think it is advisable to do it with the treasurer and the sheriff.

Mr. BARTLETT of Dickey. There is a principle at stake here, and it is one that we should look well to. Is there a gentleman here who has not at some time or another taken a hand in fighting the court house ring? I don't believe there is a man thirty years old who has not fought a ring that has run the politics of the county in which he has lived. In passing this section we weed these fellows out.

Mr. LAUDER. I have heard a great deal about court house rings, but I have always found that the men who were howling the loudest were the men who were trying the hardest to get into the court houses themselves. They are the men from whom we hear the most about court house rings. As I stated before, there is reason and logic in applying the provisions of this section to the

men who have the custody and distribution of the public funds, but as to the register of deeds—if he is a good officer, why should not the people have a right to elect him again? What right has this Convention to come here and say that the people of Richland county shall not have the privilege of electing their man as register of deeds who has served them so faithfully during the past ten years? What right has this Convention to come here and say that any county shall not have the right to re-elect a public servant who has been found faithful to his trust? I say it is illogical, unreasonable; it is not right.

Mr. BARTLETT of Griggs. I am in hearty sympathy with the gentleman who has just taken his seat. I should like to see this amendment changed to two terms, but if it cannot be I will vote for it as it is. This section as it stands omits the probate judge. That will have to be put in there, and I undertake to say there is not a delegate here who does not want the privilege of helping to re-elect a probate judge as many years as the people want to do so. It takes more than one term for a man to become familiar with the duties of this office, and if you have a competent probate judge, the county should have the privilege of retaining him as long as it wants to. I would rather it should not be restricted at all, but if we are going to restrict it, let us confine the restriction to those officers who handle public funds.

Mr. SCOTT. There is another official omitted from this section—the county auditor. I think the section is suplusage anyway for the reason that section nine, if it was a little modified would be better than to name the county officers. Section nine provides as follows:

SEC. 9. **The Legislature Assembly shall provide by general laws for such other county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers.**

The only thing that section six covers is their election in 1890. That would naturally be provided for in the Schedule, and if we adopt this section six we have got to have a probate judge and a county auditor. I am in favor of striking the whole section out. I move that the section be stricken out.

The motion of Mr. SCOTT was carried by a vote of 33 to 25.

THE SUPERVISOR SYSTEM.

Section seven was then read as follows:

"**The Legislative Assembly shall provide by general law for organizing counties into civil townships.**"

Mr. CAMP. I move to add at the end of section seven the following:

"But in every county now organized the present system of a county government by a board of three or five commissioners shall continue in force until a majority of the voters of such county, voting at an election held for the purpose of submitting the question of the change of the system of county government to the people, shall have voted in favor of such change."

Mr. STEVENS. There is no provision made for calling such an election. I desire to offer an amendment.

Mr. LAUDER. I would like to ask a question. I would like to know if this section implies any procedure by which the question may be submitted to a vote? Or is it the intention that the Legislature shall provide for it without a vote?

Mr. CAMP. Certainly.

Mr. ROLFE. I would like to ask if the idea he has in mind is not the same as is contemplated in section eight.

Mr. CAMP. No sir. My idea in introducing this amendment is this—a large number of counties of this Territory and some of the large counties, are not at this time organized into civil townships, and they don't want to be. They prefer the present system. The system of county government indicated in section eight is the system by the board of county supervisors. That is all right where the county wants it, but I don't think we should force on these large and sparsely settled counties a system of county government which they may not wish to adopt. It is all right for the Legislature to provide a system of government by county supervisors, and allow any county that prefers that system to adopt it, and that is what my amendment intends. All that this amendment seeks to preclude is the forcing on a county a system of government which it does not prefer. Many of the counties of the State will prefer to remain for a long time, I judge, under the present system of government by the board of county commissioners. They find it cheaper and better.

Mr. STEVENS. I move to amend the amendment of the gentleman from Stutsman by adding to his amendment the following words:

"*Provided*, The question shall be submitted at any time one third of the legal voters of any county shall petition the board of county commissioners so to do."

Mr. CAMP. I accept that amendment.

Mr. ROLFE. I cannot see wherein the amendment offered re-

lieves any county from having forced upon it the supervisor system any more than section eight does. Section eight provides as follows:

SEC. 8. In each organized civil township there shall be elected at the first general election after the admission of this State into the Union for such terms as the Legislative Assembly may by law prescribe, three township supervisors, one of whom shall be designated as chairman, and if the Legislative Assembly shall, by general law, provide that the county board of any county shall consist of less than fifteen members, then upon a petition signed by not less than fifty legal voters of any county, asking that the question of the establishment of a county board to be composed of the chairmen of the several boards of township supervisors be submitted to the electors of the county, it shall be the duty of the county board to submit the same at the next general election thereafter, and if at such election a majority of such electors shall vote in favor of such proposition, then the county board of such county shall consist of such chairmen of the several boards of township supervisors and of such others as may by law be provided for any incorporated city or village within such county.

Suppose the word fifteen be stricken out and three or five substituted. Then each county may vote on the question.

Mr. LAUDER. I am very much in favor of a provision in this Constitution that will enable each county for itself to determine which system of county government it will have—commissioners or supervisors. It seems to me that it can be done in a much more simple manner than is set out in section eight.

Mr. CAMP. It does not seem to me that section eight covers the same ground at all. It says, "If the Legislature shall by general law," etc. Suppose they pass a general law providing that it shall consist of twenty-five members. This section eight does not prevent the Legislature from forcing on every county a system which it does not want. We have a system which is satisfactory now to most of the counties in the State. There is no need to change it until the people want a change.

Mr. ROLFE. It seems to me that the course of the gentleman from Stutsman would be better if he offered an amendment to section eight, than to ask that this amendment be appended to this section. That is all the point I would make. I am in favor of amending section eight in the direction suggested by the gentleman from Stutsman. If that were properly amended then it seems to me in other respects section eight would be unobjectionable.

Mr. LAUDER. I must confess there is a portion of section eight the purpose of which I am unable to understand. This

is the part that I do not understand: "And if the Legislative Assembly shall, by general law, provide that the county board of any county shall consist of less than fifteen members, then upon a petition signed by not less than fifty legal voters of any county" and so on. What is the necessity of having that proviso in? Why not let each county on such a petition, by vote, determine for themselves without any such proviso? I would inquire of the members of the committee the object of that proviso—what it means, what it is for? It may be that I am very stupid, but I can't understand it.

Mr. FLEMINGTON. It looks to me that as section seven is now amended it provides for the continuance of the present commissioner system in any county that desires to continue it, and in section eight it provides that under certain conditions a county may organize into townships, and the county board shall consist of the various chairmen of the boards of supervisors. It seems to me that this whole matter of county organization should be left to the Legislature, and I would like to offer a substitute for sections seven and eight. It reads as follows:

"The General Assembly shall provide by general law for township organization under which any county may organize whenever a majority of the legal voters of such county voting at any general election shall so determine, and townships when so organized shall be bounded as nearly as may be by congressional township lines and natural boundaries."

Under section seven as it is reported by the committee, the Legislature will provide for township organization, and as I understand that section, every county within the State of North Dakota must organize under the township system. I do not read it in any other way. If the commissioner system which the gentleman from Stutsman wishes perpetuated in Stutsman county continues, there is no necessity for any township organization. As I understand it they have none there now. If the report of the committee should prevail, every county in the State would have to organize under this law of the Legislature which this section provides. If the substitute which I have offered for these sections prevails, the Legislature will then pass a law for the organization of townships, and the county may organize under that law if it sees fit.

Mr. STEVENS. While I offered the amendment I believe the substitute is best. I believe so for one reason particularly, and that is that I don't believe we should provide in this Constitution that the present system of boards of county commissioners or

anything else, should be a part of the Constitution. I think that reference to the present system should not be in the Constitution. This is what we call a new deal, and I think the substitute covers the ground.

Mr. SCOTT. This is an important matter. That is why we sent this report back to the committee for them to resubmit a new article. This report as it now comes to us does not appear to be very satisfactory. At least it is not to me, and I expected there would be a different article presented. I am in favor of some such article as the gentleman from Dickey has suggested. It is short, but as we have not got it before us, I don't know whether it is exactly what we want. For that reason I am not prepared to vote upon it. I supposed the committee would have a section fully expressing the opinion of the Convention as ascertained when we discussed the matter before. Then the sentiment of the Convention was that the whole matter should be left to the people in each county. The present commissioner system should be allowed to continue where the counties want it, and they should not be forced into the township organization unless they so desire it. That is practically the substitute, and yet we have not had time enough to consider the substitute in order to vote upon it intelligently, although I think I am in favor of it.

Mr. ROLFE. One word in support of the report of the committee. I believe section seven is almost identical with the section we have relating to civil townships now. If my recollection serves me right this is nearly a literal copy. If so it would not appear that the township organization system had been forced on all the counties up to date. The county from which I come has two civil townships in it. It was the design of section seven to simply limit the Legislative Assembly to passing a law whereby a congressional township could become organized into a civil township. I did not suppose that section seven compelled each county to become fully organized into civil townships. If it does it should be amended.

Mr. CLAPP. I think both the substitutes are open to this objection—they provide that the matter must be put to a vote of the whole county, and a majority cast for it before any township can be organized. In most of these counties there are incorporated cities. They have obtained incorporation privileges without having the matter submitted to a vote of the people of the county, and if a majority of the voters of any township think they want to

organize, they should have the privilege the same as they have heretofore had, and not be obliged to have the whole county vote upon the proposition.

Mr. CAMP. I move to amend the substitute by inserting the word "township" instead of the word "county," so as to require a majority vote of the township instead of the county.

Mr. SCOTT. That destroys the sense of the amendment of the gentleman from Dickey very materially. It is practically a substitute. I understand that we are trying to arrive at some system of county organization, and to decide whether it shall be a commissioner or a supervisor system. This provides now for township organization, and has no reference to whether these townships shall send their chairmen to form a board of supervisors.

Mr. STEVENS. I take it for granted that every man who is opposed to the organization of counties into townships will vote for the amendment. Every man who is in favor of submitting to the people of each county the question whether or not they shall organize under the township system or continue the system which will probably be established the same as the present commissioner system, should vote against this amendment. It is an entire substitute for the whole matter.

The amendment of Mr. CAMP to Mr. FLEMINGTON'S amendment was lost.

Mr. LAUDER. I am in favor of the amendment of the gentleman from Dickey as far as it goes, but I cannot say I see anything in it that provides for a change in the present system of county government from the commissioner system to the supervisor system.

Mr. FLEMINGTON. It is the intention of my amendment that this shall be left to the Legislature.

Mr. LAUDER. I desire that it shall be incorporated in the Constitution—the right of each county to determine for itself whether it will have the supervisor or the commissioner system. There are a large number of counties that for some reason or another do not desire to have this question fairly submitted—do not desire to have the people determine it. I would amend the amendment of the gentleman from Dickey by adding to it the following:

"And upon a petition signed by not less than fifty legal voters of any county, asking that the question of the establishment of a county board to be composed of the chairmen of the several boards of township supervisors be

submitted to the electors of the county it shall be the duty of the county board to submit the same at the next general election thereafter, and if at such election a majority of such electors shall vote in favor of such proposition, then the county board of such county shall consist of such chairmen of the several boards of township supervisors and of such others as may by law be provided for any incorporated city or village within such county."

Mr. STEVENS. I would like to second that with one exception. I would like to strike out the word "general" before "election" so if it came in an "off" year we could have an election.

The amendment of Mr. STEVENS was accepted by Mr. LAUDER.

Mr. HOLMES. I would like to ask the gentleman from Richland if he would accept another amendment. An election should not be forced upon the people by the petition of fifty persons. I should like to see it made twenty-five from each township in the county.

Mr. LAUDER. In some townships there might not be twenty-five people.

Mr. HOLMES. Then make it a third or a quarter of the voters.

Mr. LAUDER. I think if one-fourth of the voters petition that should be enough. I have no objection to a petition requiring that one-fourth of the legal voters as shown by the preceding election shall be the pre-requisite.

Mr. NOBLE. This matter has got entirely too thick. There is too much of it to remember. I believe there is something the matter with this section, and I move that the whole matter be postponed till to-morrow.

Mr. LAUDER. I would suggest that that is no amendment to the substitute. The gentleman from Dickey has accepted what I have offered, so the only question is the substitute offered by the gentleman from Dickey.

Mr. NOBLE. But the substitutes are as long as two sections.

Mr. HARRIS. I trust this matter will not be postponed. I think we are all trying to arrive at the same thing—to put this matter in such shape that counties can have the kind of government they want by voting on it. In my county we are very well satisfied with the commissioner system, and wish to retain it. I think we can act on this matter now, and act on it intelligently.

Mr. STEVENS. We have fought this question from the commencement of the Convention to about three or four days ago, when the matter was compromised, and it was agreed as a compromise to all factions that the question should be left so that the

Legislature should provide for a vote, and allow each county to adopt which system it choose. The substitute here does the very thing we have proposed, and the men who have promised that to us, and who have agreed that they were willing to end this fight by a compromise, are now adopting other tactics, and seek to postpone this matter for the purpose of preventing the passage of this report. This report was agreed on—it was agreed that it should be passed—that it was satisfactory to both factions, and now to delay action means simply to have another fight. If we are going to fight this thing out, let us do it now. Let every man who is in favor of continuing the present system and not allowing the people to vote on this question, let him vote for postponement or against the substitute. I think every man who votes for postponement is in favor of preventing the Legislature from passing such a law.

Mr. SCOTT. I don't know what we are going to vote upon. If there are other gentlemen who, in the present stage of the proceedings, know, they are smarter than I am. I like to know what I am voting upon before I vote. I think it is practically agreed that we will adopt a system just as the gentleman from Ransom has said—and yet I don't believe the section before us is worded properly and I think it should be put in better shape. I think there should be a committee of four or five get together and frame a section so that we can act intelligently. There has been so much amendment and substitution that I think none of us can vote intelligently on this question.

The motion of Mr. SCOTT to postpone was lost.

Mr. SCOTT. I move to amend by inserting the word "general" before the word "election." I don't think any county should be put to the expense of calling a special election for this purpose, and as is well known, it is not a very hard thing to get a petition signed by one-fourth of the voters on any question. It would be a source of considerable expense to submit it specially, and there is no reason why it should be submitted at a special election. We have a general election next fall—a year from this fall—and every two years thereafter, so that at any reasonable time they can submit it at a general election and it will then be no extra expense. As it at present stands, if a petition is gotten up they must submit it forthwith.

Mr. LAUDER. I think in a question affecting all the people as this does, when one-fourth of the people—qualified voters—

ask that it be submitted to a vote, it should be so submitted. The matter of the expense of holding a special election should not be taken into consideration.

Mr. STEVENS. I do hope the word "general" will not be put in here. It simply means another defeat for the measure—that you must wait two years. If it is right to have these townships organized at all—if they should be entitled to be organized—they should have a right to determine this without waiting two years to do it.

The motion of Mr. SCOTT to substitute the word "general" was lost.

The substitute of Mr. FLEMINGTON as amended was then adopted.

COUNTY OFFICIALS' PAY.

Section nine was then read as follows:

SEC. 9. The Legislative Assembly shall provide by general law for such other county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers.

The following amendment was offered by Mr. ALMEN to the section, to be added thereto:

"No county officer shall be allowed more salary per annum, including clerk hire and other expenses, than $2,500 in counties containing 5,000 and not exceeding 15,000 inhabitants; $3,000 in counties containing 15,000 and not exceeding 30,000 inhabitants, and not more than $500 additional compensation for each 20,000 additional inhabitants; *Provided*, That the compensation of no officer shall be increased or diminished during his term of office."

Mr. ALMEN. I offered this amendment for the reason that in our county we pay in fees to the register of deeds, $4,880, and the man who is in that office is not capable of transacting any business himself, and he has a deputy and two clerks who are receiving $2,880. The business in that office could be transacted for the last named amount or for less. I have limited that in my amendment to $3,000. The extra amount that we have to pay in our county amounts to $2,000. I don't think we can afford to keep on doing that in the future, and I don't see any necessity for it. In the Illinois constitution we read that they shall not allow any of their county officers more per annum than $1,500 in counties not exceeding 20,000 population; $2,000 in counties of 20,000 population and not more than 30,000, and $2,500 in counties of 30,000 and not exceeding 50,000. I cannot see any reason why we should pay such enormous sums more than they do there. I have been

consulting with some of the delegates, and they say the business cannot be transacted in Dakota for the same salaries as in the east. But I think that if we allow double the amount, that should be sufficient. I hope the gentlemen of this Convention will take this into consideration.

Mr. WALLACE. I would favor that amendment.

Mr. BARTLETT of Griggs. I am in favor of a classification of counties, but I think the whole matter should be left to the Legislature.

The amendment of Mr. ALMEN was lost.

Mr. O'BRIEN. I move that the word "other" in line two of section nine be stricken out.

The motion was seconded and carried.

Mr. BARTLETT of Griggs. I move that the section be amended by adding the following:

"Also recommend that section nine (9) be amended by striking out the word "other" in the second line thereof; also by adding at the end thereof the following: '*Provided*, That all county officers shall receive a fixed salary. For the purpose of providing for and regulating the compensation of county officers, the General Assembly shall, by law, classify the several counties of the State according to population, and shall grade and fix the compensation of the officers within the respective classes according to the population thereof. Such law shall establish scales of fees to be charged and collected by such of the county officers as may be designated therein, for services to be performed by them respectively. All fees, perquisites and emolument, shall be paid into the county treasury,' and that as amended the section be adopted."

My purpose is to classify the counties so that they may be reasonably apportioned to the amount of work to be done. It is easy to see that the salaries that would be adequate for my county would not be adequate for the county of Cass, and *vice versa*. If the work of classifying them is left to the Legislature, certainly they can do the work a great deal better than we can do it here. I believe the system of paying officers by fees is pernicious. There are counties in this State, I have no doubt, where the register of deeds make several thousands of dollars a year for work which they can readily hire done for half that sum. In the State of Colorado, where they have the fee system, the recorder or register of deeds in Arapahoe county makes as high as $50,000 a year, and they have tried year after year to have the fee system repealed, and salaries fixed for that and other officers, but the county officers of the large counties are enabled through their representatives to prevent it. I believe we should fix this thing

here, and provide that these officers should be paid by salary, and the fees should be paid into the county treasurer.

Mr. ELLIOTT. I call for a division of the question.

The first part of the amendment providing that all officers shall be paid by fixed salaries, was adopted.

The remainder of the amendment was then adopted.

Section ten was adopted.

LIMITING TERMS OF OFFICE.

Mr. FLEMINGTON. I desire to offer the following to become section eleven:

"The sheriff and treasurer of any county shall not be eligible to their respective offices for more than four years in succession."

Mr. ROWE. I should think it would be well to include in this the register of deeds. The gentleman from Griggs just stated that in a county in Colorado this office is worth $50,000 a year. If this officer is paid in fees there is a great deal of county money passes through his hands on the way to the county treasury. Under our present system, I believe, counties having a population of 5,000, limit the salary to $2,000. I think the register of deeds should be included in this amendment.

Mr. FLEMINGTON. Under the present system in this Territory the register of deeds accounts monthly with the treasurer, and quarterly with the county commissioners, and I presume he will be held to strict account under the system which may be adopted here. I don't think we should provide for the limitation of the term of office of any officer except where we deem it to be absolutely necessary—where we consider it is for the safety of the people that it should be made. I don't think the register of deeds should be included in this section.

Mr. ROWE. If the county treasurer can so arrange his books that he can deceive the auditing board, a register of deeds can operate in the same manner. If there are thousands of dollars of county money to pass through the hands of the register of deeds I am in favor of putting him on the same basis as all the other officers who handle the public money.

Mr. POLLOCK. If the argument of the gentleman from Dickey is good, we should also include the clerk of the court, the county superintendent of schools and county auditor into whose hands fees come. I am opposed to including in this list any more that the county treasurer and the sheriff. We have in our county

a register of deeds who has the right qualifications, and people in our county would feel it to be a grievance if they were not allowed to elect him to that office as long as he will accept it. It requires a peculiar fitness, and when we fix it so that we cannot re-elect an officer more than once or twice we are doing ourselves an injustice.

Mr. BARTLETT of Dickey. It was intimated when I spoke of the court house ring that it was a scheme to get in. For my part I am sixty years old, and I never offered myself for a county office in my life. I have had them pull on me, but I have strenously refused. I have been fighting court house rings all my life. I have seen so much corruption among the cliques that I hope this motion will prevail so that we can get rid of them once in awhile.

The amendment of Mr. ROWE was lost.

Mr. CARLAND. Perhaps I don't exactly understand the meaning of the word "eligible." I understand that a man may be eligible and never hold an office at all. I would move an amendment to the amendment to the effect that the officers who have been mentioned shall not hold their offices for more than four years in succession.

The amendment was accepted by Mr. FLEMINGTON.

Mr. APPLETON. I move to amend by adding the superintendent of schools to the list. My reason for doing so is this—in talking with a great many gentlemen in this convention it was argued and shown that the superintendent of schools use their office for political purposes, and not only that, but they abuse the office by issuing certificates to daughters of men who have votes and who can influence votes, that are not competent to hold a certificate, and they use it in other ways to abuse the office. I believe there is scarcely an organized county in this Territory but has got several good men who could hold that position. I move that the superintendent of schools be added to the list.

The motion of Mr. APPLETON was lost.

The section of Mr. FLEMINGTON was adopted.

The committee then rose, and the Convention adjourned.

EVENING SESSION.

Mr. ROLFE. I move that we now resolve ourselves into a Committee of the Whole for the purpose of considering File No. 132.

Mr. SCOTT. I move that we now proceed to consider File No. 143.

Mr. BARTLETT of Griggs. It is the report of the Committee on Public Institutions and Buildings made this morning. The Chairman stated that there was to be a minority report from that committee. I presume the Convention is not desirous of shutting off the minority, and that the courtesy will be extended to them which has been extended in the case of other committees, and that we will not consider this report now.

Mr. MARRINAN. As one of the minority on that committee I desire to say that we have a report to make. The majority report was not given to us till to-day. Since that time we have not had an opportunity of meeting and framing our report, but we will have it prepared and ready to-morrow, and we desire to have time till to-morrow morning.

Mr. STEVENS. I move to strike out the words "one hundred and thirty-two" in the motion and insert in the place thereof "such business as may come before the committee."

Mr. BARTLETT of Griggs. I move to strike out the words "such other business as may come before the committee."

The amendment of Mr. BARTLETT was carried and the original motion was adopted.

File No. 132 was then considered.

Sections one and two were adopted.

TAXING CHURCH PROPERTY.

Section three was read as follows:

SEC. 3. Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the State, county and municipal corporations, both real and personal, shall be exempt from taxation, and the Legislature shall by general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation.

Mr. STEVENS. I move to amend section three by inserting after the word "charitable" in line six the words, "To an amount not exceeding $50,000." My object in making this amendment is to prevent any religious corporation from holding over $50,000 worth of property without paying taxes upon it.

Mr. JOHNSON. There are many religious corporations that have branches. For instance the Catholic, or Methodist, or Pres-

byterian church. Does that amendment mean any one piece of property worth $50,000 or property belonging to one corporation?

Mr. STEVENS. I intend to mean that no religious body—not the whole corporation—but no one church. In the case of Trinity church in New York City this question has caused a great deal of trouble, and the members of this Convention—or at least some of them, have received circulars asking them not to exempt church property. Trinity church corporation in New York owns, probably, $10,000,000 worth of property, and the question as to how to tax that property has become quite a question in New York. I think in the exemption of religious and charitable corporations we should fix a reasonable amount as a maximum—such an amount as they would reasonably use in the exercise of the particular vocation followed by that corporation. If religious, such churches as may be necessary for their worship; such houses as might be necessary for parsonages. If charitable organizations, they might be exempt to a large amount, for in the poor of the Territory everybody is interested. I have aimed to get an amendment so that it would cover that point that has been fought over so much in some other states.

Mr. MOER. I beg to offer the following as a substitute for section three:

"The rule of taxation shall be uniform, and taxes shall be levied on such property as the Legislative Assembly may prescribe."

Mr. LAUDER. I hope that the substitute just offered by the gentleman from LaMoure will not prevail. It seems to me that section three contains the correct idea on this question. This section provides that laws shall be passed taxing by uniform rule all property according to its true value with the exceptions that are enumerated there. Of course the property of the United States is exempt, and it would be folly for the State to tax its own property, or the county or municipal corporations to tax their property. This section says that "the Legislature shall by general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes." It seems to me that that covers the whole ground. The gentleman from Ransom has offered an amendment here which was not seconded, but the purpose is to limit in value the property belonging to either of these institutions which are declared to be exempt. It strikes me that there should be no limitation put on the values of such property as shall be exempt, so long as it is used exclusively for the purposes

enumerated in this section. The gentleman speaks of Trinity church in New York. Fifty thousand dollars would not be a proper limit. For example, you take the Roman Catholic cathedral on Fifth avenue, and the ground alone on which it stands is worth more than $50,000. The land and the building together are worth from a quarter to a half million. It seems to me that it would be bad policy to tax any of that property so long as it is used exclusively for religious purposes—so long as no corporation uses it or any part of it as a means of raising revenue. I would be opposed to a provision which would permit any of these corporations from acquiring large amounts of property, renting them out, or using them for purposes of raising revenue as they do in some of the older countries. But so long as the property is used exclusively for religious or charitable purposes, it seems to me that it should be exempt. No tax should be placed on a man's religion, and none on his charity. The more charity the better, and the more religion we have the better, if it is of the right kind. It seems to me this section is worded well, and covers the ground as well as it is possible to have it. I don't believe we ought to leave it within the power of any Legislature that may come to tax church property, or property used exclusively for church purposes. I don't know what Legislature may be elected here, and we don't know by what motives they may be actuated. We should put it in the Constitution that all property used exclusively for religious and charitable purposes should be forever exempt from taxation.

Mr. BARTLETT of Dickey. I hope the amendment of the gentleman from LaMoure will carry, for this reason—while I hold that the churches are all right and I agree with the gentleman that the more religion we have the better it is for the country, yet I do hold that when people build churches that cost one to two or three hundred thousand dollars, and then sell the pews so that no common man can sit within that church unless he is a millionaire, they should not be exempt. They put up their pews at auction—their church property is free—but the plain citizen who may live within ten rods of them has to go to the little church around the corner, because he cannot put up the necessary amount to get into the other house of God. I believe that when any church accumulates property so that they can afford churches that cost more than $50,000 to build, they ought to pay taxes upon them and I would

be willing that the taxes they pay should all go to the poor of the city.

Mr. LAUDER. The gentleman from Dickey speaks about selling pews. If the revenue derived from the sale of the pews is appropriated or is used for any other purpose than paying the necessary and actual running expenses of that church, then it is not used exclusively for religious purposes, and under this section would be taxable. He says that if the church building cost over $50,000 it should be taxed. Now I don't believe the gentlemen who put their money into the Cathedral in New York City or the gentlemen whose money built the church that the gentleman from Ransom speaks of, ever used a dollar to better advantage than they did when they put it into those churches. If they were rich they used their money for a good purpose, and they should be encouraged in it, and simply because rich men invest their money in this way, the public should not tax them for it.

Mr. STEVENS. I never allow anybody to outdo me on a question of generosity. When I am wrong I am as willing to own it up and admit it as anybody ever was in the world, and when I have carefully read this section I believe the amendment I offered would be wrong. I believe the word "exclusively" covers the point which I intended to cover by my amendment, and when the gentleman intimates what he does about what I said about church property in New York, he forgets that the word "exclusively" was not used in that case. There is a great corporation that is making New York a great deal of trouble—not with the houses that they have dedicated to worship, but with their other interests connected with that great corporation, and these were the things that I alluded to, and not to the church itself. The steeples of the churches cannot be built too high for me, nor can the churches be scattered too thickly over the land. I agree fully with the gentleman that no man ever invested a dollar in the building of a church but what his dollar was contributed to at least one of the best interests of society. I hope the motion of the gentleman from La Moure will not prevail, but I hope the section will be allowed to stand as it was originally framed. I am the more impressed in this direction when I see the opposition it meets. I have not forgotten God in the Constitution. I hope the amendment will not prevail.

Mr. MOER. I don't know what God in the Constitution has to do with the taxation question. I do not seek to prevent the ex-

emption of church property. Nothing of the kind; but it seems to me that the gentlemen have wandered from the point. I seek to substitute a section that is found in the constitutions of most western states, Wisconsin practically the same. Iowa, Minnesota, Nebraska and Kansas have clauses that are very similar. This clause simply leaves the matter to the Legislature to say what taxes shall be levied, how, and on what property. That is all there is to it. It does not attack the church that I know of. I think the gentleman from Richland wandered from the point altogether, because he was talking on the proposed amendment of the gentleman from Ransom, while the question before the House was the substitute that I offered. The only objection I have to section three is that it lays down an iron-clad rule of taxation —no matter what the future circumstances of our State may be— no matter what the necessities of the State may be, the Legislature can never change it. Taxation laws should be elastic, so that they can be changed from time to time if the circumstances demand it. Under such a clause as this which I have introduced the western states have prospered—their legislatures have had full power to tax all property or none, and it seems to me we cannot do better than to follow the example of these states that are strong and wealthy. It simply leaves the matter to the Legislature —where the power of taxatien should be.

Mr. LAUDER. It seems to me that an effort is being made to put this matter in a light which it should not occupy. Ordinarily I grant the Legislature is the proper power to determine questions regarding taxation. But will the time ever come in the opinion of the members of this Convention, when property that has been dedicated freely to religious or charitable purposes, should be placed under the burden of taxation? Will that time ever come in the history of this State. I don't think it will.

Mr. TURNER. I have heard on all hands that these United States are pre-eminently the land of liberty, and I have to some extent accepted that view of the question. But I find a resolution reported by this committee which indicates that it is not a land of perfect liberty. I am in favor of the amendment of the gentleman from LaMoure. I am in favor of leaving this matter to the Legislature. I am in favor of leaving it to the Legislature because I don't think it should be fixed by an unalterable law, or a law that will be as difficult to alter as will be the Constitution of the State. I believe that I should support the religious convic-

tions and views which I conscientiously hold myself, and that I should not ask my fellow countrymen to support any religious denominations to which I belong, unless their contributions were the contributions of free will offerings. I believe as a matter of principle that the church and the State should be separate, and that they should be unalterably separated. I believe as a principle that if we exempt taxation on church property, it is simply another way of taxing the people for the support of the church. Exempting me from taxation which I should bear in common with others, is simply taxing others to pay that share of taxation which I should pay. I hold as a principle of the church, and as one who believes that the churches are doing all that any gentleman in this House can claim they are doing, that as a matter of right and justice those who do not believe in church organizations, should not be compelled to contribute one cent by law to their support. Holding that, I believe every religious denomination should pay a just, fair and equitable amount of taxation—they should pay their just proportion in accordance with the amount of property they have. What difference does it make to me as a member of a church whether these taxes are exempt by the state, or whether I am compelled to pay as a member of the church a certain portion of that taxation? It makes no difference to me, from the fact that I have to bear my share of the burdens of the State. I might as well bear a portion of that on the church property of which church I am a member, as bear it on the personal property which I possess. I don't think it fair to those men who are not members of any church—to those men who in fact do not believe in our church organizations and our church creeds, that they should bear a proportion of the taxes of the State that should be levied upon the property that belongs to the churches. I believe that it is only another way of connecting the church with the State. We do not connect the church and State by saying—"you shall contribute so much towards supporting these institutions," but we do connect them by saying that the property of the church shall not contribute its share of the taxes. I think if you will look into this matter you will see that it is only another way of taxing men who don't believe in our churches and who are not willing to support them, and compelling them to contribute a certain amount which we should bear. These matters should be left to the Legislature, for we don't know what the circumstances may be in the future which will call for action, and if

the Legislature exempt church property for a time, they may see in the end as they are seeing in other countries now, the evil of the system. I believe that if the religious sentiment of the people was stirred up in this matter they would see that it was not fair, square justice which religion itself should give to the people, between every individual taxpayer, and the property that should pay the taxes.

Mr. COLTON. I think the mark is so far off that they don't see it. What is the most danger—of the church coming here with a mob to carry the Legislature or something else? We can get scared over a few churches for fear their buildings won't be taxed and at the same time let a great many things that are much larger slip past us. The danger of leaving so many things to the Legislature is the greatest danger we have to fear, and when we fix it here that the Legislature shall have full power to tax or not to tax one thing and not another, and make the taxes as they have a mind to, those who have the most money and property will pay the least taxes. You need not be afraid of the churches. Neither will there be a Legislature that dare stand up and tax the churches for years to come—not while any of us live. They dare not come here and do that and face any denomination where they live. When you get it so that they can exempt their buildings, there is no danger of our being oppressed by it. But here if we don't have this section as it is we may go back seven or eight years hence where we have buried our fathers and mothers and find their tombstones gone and a crop of wheat on their graves—the cemetery sold for taxes. If this clause is not in here they will be able to tax graveyards; if you give them the power to tax them you give them the power to sell the land for the non-payment of taxes. We want some provision here so that we will know what is going to be taxed and what is not. We want this done uniformly. This section provides for taxation uniformly, and it exempts what is used for religious and charitable purposes. I hope the substitute will not prevail.

The substitute of Mr. MOER was lost by a vote of 37 to 33.

GROSS EARNINGS TAX.

Mr. HARRIS. I wish to offer an amendment to this section, and in doing so I desire to say the question of taxing church property was a blind, and that the meat in the cocoanut was

not the churches. I understand that the gentleman from Ward would like to see the section adopted as it is, and he knows the position I took in the committee. I wish to strike from section three all of line one and part of line two as far as the word "money," and put in the place thereof the following: "The rule of taxation shall be uniform, and taxes shall be levied on such property as the Legislative Assembly may prescribe."

Mr. WALLACE. The gentleman from Burleigh has well said that this discussion regarding church property was entirely a blind. This is simply the question again that we fought over in the matter of corporations. This is to leave the matter of taxation over so that a different rule will be required concerning certain property.

Mr. BARTLETT of Griggs. It strikes me that my colleague is as far off as the discussion on the other point, if the position that the committee took presents an indication of what the section means. As the gentleman from Ransom said, I would go as far as anybody in favor of churches, and I would like to see them so thick that he might wander inside one occasionally. I am heartily in favor of this amendment, to leave it to the Legislature what classes of property shall be taxed. Here it says all property. It compels the Legislature to provide laws taxing all property. I am not in favor of the Henry George plan of taxation, but we should leave this question of taxation open, so that if the Legislature wishes to adopt this plan or any other, it can do it. For years and years this country has been taxed and lived under this same provision, requiring the Legislature to tax all property, and it is while living under that provision that the farmers are generally kicking and saying that taxation is not uniform. They say that the poor man is paying more than his share of the taxes. That is unanimously the cry. I say we should leave this open to the Legislature to devise any means in their power to most justly tax the property in the State. Where they wish to exempt a certain class of property they should have the right to do so. If they want to raise all the revenue on land, let them do so. It is perfectly safe to experiment. You cannot have any more unjust tax laws than you have now. You may change them at every session of the Legislature, and in a century you might get something that would be more equitable than the present system, but you could not get anything more unjust. I believe that the man who has all the property that he has, in sight, pays the taxes, but the moment

a man gets an accumulation of property he escapes taxation. I say let us leave it to the Legislature.

Mr. HARRIS. As I stated in offering this amendment I wish to bring the matter of taxation squarely before the Convention, and I want it settled on its merits, and I propose the thing shall be brought to the attention of this Convention. I believe with the gentleman from Griggs, this matter should be left to the Legislature. There is another point that has not been brought out in connection with this subject, and that is whether this State under any circumstances will ever be in favor of the gross earnings tax system for the railroads. That is the question to settle in this amendment and in this section. There is no other question in it. There is not a man here who believes that the Legislature will ever exempt property from taxation. This amendment or a similar clause has been in force in Wisconsin, and has there been any complaint that property has not been taxed there? It has been in force in Iowa, Nebraska, Kansas and Minnesota. Has there been any question raised as to property not being taxed in those States? Not a complaint, and as I have said the whole question comes to this—will we leave it to the Legislature to say if in the future such conditions exist that this State wants to put a gross earnings tax upon railroads, it will have the opportunity to do it. While I am up—and I don't wish to take the time of the Convention—I would like to say a few words about this gross earnings tax. The gross earnings tax, based on the gross earnings of 1888 was over $167,000 and North Dakota gets out of that, exclusive of what goes to the counties, $53,793. There is a provision in this report which provides that railroads shall be taxed—the franchise and road bed and right of way at not less than $3,000 a mile. This tax at $3,000 a mile on the railroads of North Dakota would amount to about $6,000,000 assessment and at three mills or if you will, four mills, the limit which will be placed in our Constitution, would raise $24,000 of tax, while this year the northern part of the Territory is receiving over $53,000. As I stated in the beginning, the only question before us is whether we shall leave this question to the Legislature that in the future they may enact a gross earnings tax, ane that is all there is in this amendment.

Mr. LAUDER. When I was discussing the question of the taxation of churches and charitable institutions I had no idea that this section would bring up the question of gross earnings. I can not see the occasion for it. But it seems that the gentlemen

are so much in favor of gross earnings, and are so frightened over this clause that provides that all taxes on all property shall be uniform, that they are unable to contain themselves, and must give expression to their fright before we get to the place where there is any danger of their getting hurt. Now, it always struck me as peculiar that men would go before committees and legislatures and say that there was no way in the world—men representing railroads—that there was no way in the world by which you could get so great a tax out of the railroads as the gross earnings law. Did any member ever hear a railroad man or a railroad president advocate any other system? Then we must infer that the railroads are anxious that this Convention shall put in this Constitution a clause under the terms of which the railroads will have to pay the largest possible tax. Is not that logical? The gentleman has given us some figures here. He says we get so much money under the gross earning law, whereas by direct taxation we get so much less. Was not that a fair statement—under his theory? But he infers that under a taxation plan that assessed the railroad property, the railroads would pay only the state tax. Your property and my proyerty—if we have any—not only pays the state tax, but the county and town and city tax—if we live in the city—and school tax. To show you how absolutely unfair these men are in their statements and how they try to get this Convention to form erroneous conclusions and then adopt them, look at the figures. There can be no harm in putting the railroads on the same footing with everybody else here. Let their property be assessed. I am not seeking for this $3,000 clause, but there can be no system preferable to a system that is uniform —that assesses the property of the millionaire the same as the property of the railroad or farmer—put them all on the ground floor where there will be no advantage of one over the other. The gentleman from Burleigh says let us leave this so that the Legislature can change it.

Gentlemen, I ask you in whose interest it is sought to leave it in that position? Is it in the interest of the lawyer? His library is on the shelf in his office, and is always taxed. None would advocate a law that would not tax those books at their value. Is it sought to be incorporated in the interest of the farmer? His property is always in sight. Would anybody go into the Legislature and advocate a measure that would not tax the property of a farmer that is in sight at just what it is worth? No such measure

has ever been advocated in any legislative hall. Then I ask you in whose interest is it—who is it that wants this section amended so as to leave it to the discretion of the Legislature to regulate this matter of taxation? In whose interest is that section sought to be put in here? Is it the farmer, the lawyer, physician, mill-owner? No. Every man in this Convention knows in whose interest it is sought to be put in there. It is in the interest of the railroads, who will be better able to escape thereby their just proportion of taxation. That is the whole purpose of it. I don't want to tax the railroad any more than I am willing to be taxed myself—not a dollar, not a cent. But I demand that they pay just the same in proportion to their property as I do—just exactly the same. The argument is made here that the gross earnings tax is the only tax that is based on justice, because it is said if the company has the road here and it is not profitable—if they are losing money they should not be taxed, because their property is not worth anything. When the assessor comes around to tax your property, if you were to say, "Here, my crop was a failure and I did not make a dollar, and my farm is not worth anything; I won't list it this year for taxation," what would the assessor say? What would public opinion say? Is not that exactly the case with the railroads? It is on such spurious arguments as these that it is sought to palm off on you the clause of the gentleman from La Moure as the sum total of all that this Constitution is to contain on this subject. I want to say to the members of this Convention that if you want to adopt a system that will make all taxes just and uniform and fair—that will not tax one man's property at the expense of another man, and leave no loophole for any corporation to escape, then stand by this section. This section exempts no property, except such as in my judgment should be exempt.

Mr. PARSONS of Morton. We have one affliction in this country that is a great deal worse than any scourge that ever visited the land—worse than cholera, yellow fever or smallpox—and that is the scourge of corporations. My record on this floor is known to you all. And what I say won't, I think, be misunderstood. What I have said is the legitimate deduction to be made from the remarks that have been made on this subject. If there is any one influence that has developed this country—if there is any one thing to which we are indebted for the luxuries we enjoy, it is the corporations. I will join hands with any one in forcing corporations to the mark—so to speak, conforming to their charter

rights—not to depart therefrom. But I will not be one to join in oppressing them, because they are necessary to the welfare and development of the country. I was well pleased with the estimate made by the gentleman from Burleigh in regard to taxation. When this matter came up I was heart and soul for this $3,000 assessment, but I went to figuring and found out that if we went to the maximum we would not get as much tax as we are getting to-day. We would always have to assess to the maximum, but under the gross earnings system, the road's business is increasing, and we would draw a larger revenue than under the assessment plan. Now as to the gentleman's remarks as to why the railroads seek this particular form of taxation. If you and I, as the gentleman from Richland stated, had poor crops, we would like to have our taxes rebated. If we have excellent crops we would be willing to pay a good heavy tax. The railroads are placed in the same position. They say, "so long as we are making money we will pay the tax gladly, and we would like to have this matter arranged so that if our earnings fall off our tax would keep along with our earnings." To some of these gentlemen there seems to be a steal in that—there is robbery in it—and yet there is none of us that think the wheels of progress are going to turn backward. In some isolated cases the taxes might drop down, but in nine cases out of ten the taxes would steadily increase.

If I understand it we are after the dollars. If we can get more from the corporations by that system of taxation, I see nothing wrong in taking it. If it accomodates them to adopt this system, I see no injury done to any man. Now I acknowledge that it would never do to adopt this system generally—apply it to all persons. But here is a corporation. I don't wish to champion the corporations, and if there is one thing I have said more than another it was that they were able to take care of themselves. I am satisfied that they will pay their taxes whatever way they are assessed, and perhaps they will pay just as much in proportion to what they are worth as a great many rich people, for I don't think that class of people pay the most taxes in proportion to what they are worth. The question is—will we adopt an iron clad rule which will prevent enterprises being developed and prevent the development of railroads in North Dakota? The hardest time for a new road is when it is just starting. It is the hardest time of its existence. Do we wish to cripple these new enterprises? Whatever

system of taxation you adopt I don't think you will cripple the Northern Pacific or the Manitoba, but to adopt an iron clad rule which will cripple young roads seems to me to be a foolish policy, until we come to that time in our history when we have our country fully developed and roads scattered throughout the State in all directions. Then the question can be viewed from a different stand point. I want to be understood as not standing here as the champion of corporations, but I don't propose to be frightened by the word "corporation." I claim that their rights should have the same calm consideration as the rights of any other interest that may exist in the State.

Mr. HARRIS. When the gentleman from Richland tried to run the Convention against the taxation of churches, I intended to smoke him out, and I mentioned the gross earnings tax so that it might be brought fairly and squarely before this Convention. He has held me up as a railroad attorney. I am not an attorney at all, and I don't ride on railroad passes. I pay my full fare and have nothing to do with railroads. I am not an attorney. The gentleman has questioned my figures. I stated plainly in the beginning, and I take these figures from the Treasurer's books down stairs, that the railroads in North Dakota—the Northern Pacific, the Manitoba and a few miles of the "Soo" line—paid into the treasury of this Territory on the basis of the 1888 gross earnings, $167,767.97. Two-thirds of that, with the exception of the Northern Pacific's, went to counties along the line. The Northern Pacific tax goes 70 per cent. to the counties, and the Territory received out of that amount, $53,793.51. That was one year's tax. One hundred and fourteen thousand dollars of that goes to the counties along the line; $53,000 remains in the Territorial or State Treasury, and that $53,000 is more than you will raise by taxing these lines at $6,000 a mile and four mills on the dollar. I do not wish to take the time of this Convention in discussing this subject. I only wish to stand by these figures which are cold, hard facts.

Mr. LAUDER. The gentleman from Burleigh speaks about smoking me out on this question. I have had some discussion with the gentleman from Burleigh on this subject in the committee. I had not any doubt but that he would be smoked out of his hole, and that the Convention would see him in his true light before we got through with him. But I was not prepared to see him exhibit himself quite so soon. I cannot see, as I said before,

what this section has to do with the taxation of railroads. But as we are on the subject it might as well be discussed here as anywhere else. The gentleman from Morton says there is a war on railroads. In the name of common justice, where is there any war on railroads in this section or any other section of this article? Where is the war on railroads? What is asked of them? They are asked simply to pay their taxes like any farmer or merchant or mechanic in North Dakota. That is what is called war. I say there is no war at all. It is simply a provision here that they shall be amenable to, and obey the same law as the rest of us, and that is what is called war.

The amendment of Mr. HARRIS was lost by a vote of 30 to 33.

Section three as reported by the committee was adopted.

ASSESSING LANDS.

Section four was read as follows:

"Land and the improvements thereon shall be separately assessed. Cultivated and uncultivated land of the same quality and similarly situated shall be assessed at the same value."

Mr. HEGGE. I move to strike out the words: "Land and the improvements thereon shall be separately assessed."

Mr. NOMLAND. If this section be adopted we shall lose a good deal of taxes.

The amendment was adopted.

Mr. SPALDING. I move to strike out all that part of the section that remains. I make this motion so that we may not have a section in conflict with the one that we have just passed. We have provided that the Legislature shall pass laws taxing by uniform rule all property according to its true value in money, and if we let this section stand as it is, it will conflict with section three. There is no standard of value of land and improvements except its value in money. Is there anything that is more emphatically worth money in this state than improvements on land? Is there a man here who will question the fact that improvements on land are worth money, and I don't see how a man can consistently vote for this section after having voted for the other.

Mr. BARTLETT of Griggs. I hope the motion to strike out will prevail. I thought that when section three was adopted they would find out as they came to the next section what they had done, and now I think you have. To make this consistent you are obliged to strike out the last half of section four, because the as-

sessor, or the Legislature, or any one else, cannot possibly comply with both of them.

Mr. SCOTT. I don't see the force of the arguments of the gentleman from Griggs. He says it is inconsistent with section three. Is it because the cultivated land is worth more than the uncultivated? I believe that it is pretty well established in this country that leaving out the improvements—and improvements according to this section will be taxed just the same—and only taking into consideration the cultivation, uncultivated land is worth as much as cultivated, if not more. I don't believe that it will be contended otherwise by any practical farmer. So there is nothing inconsistent between these two sections. Section three says that all property shall be taxed uniformly. Section four says that cultivated and uncultivated land of the same qualify and similarly situated shall be assessed at the same value. They will aggregate as a rule the same, so that although I don't see why this section should be in here, I don't believe the sections conflict. I don't believe that now the cultivated land is taxed more than the uncultivated. It should not be, it is not worth more.

Mr. STEVENS. I believe in calling things by their right names. I think this clause is put in there more particularly to tax the lands of non-resident speculators equally with the lands of actual farmers. I believe that is the meaning of this section, and for that reason I am going to vote for it, and for any other section that will enable us to tax the uncultivated lands of speculators as high as the cultivated lands of the farmers.

Mr. MOER. The sentiment is all right, but the trouble is that it conflicts absolutely with section three. Take for instance a cultivated piece of land—a section just broken and backset, and that work has added a value of $2.50 an acre to the land. A section immediately adjoining it must be assessed at the same value, while you have a section of this article immediately preceding this, which states that it shall be taxed, not at the same price as the cultivated piece, but at its true value in money. Therefore these two sections are in conflict. If there is any way that we can tax speculators' land, I am in favor of it, but I think these two sections are in conflict. I therefore shall vote for the amendment of the gentleman from Cass.

Mr. NOMLAND. I think that what is left of the section is just about what we want. I think that speculators and farmers would have equal justice. I know that there is a tendency in our country

to tax speculators about one-third more than the actual farmer. That is not in accordance with the law, but there are a number of assessors that do it, and if this section is adopted they would have equal justice with the farmers.

Mr. MATHEWS. I take exceptions to what the gentleman from LaMoure says about the value of broken and unbroken land. In Grand Forks county, land that is uncultivated is worth more than that which has been cultivated for five or six years.

Mr. MOER. Then why tax the farmer for his cultivated land which is less valuable, as much as the speculator for his uncultivated land which is more valuable? If one piece is less valuable than the other, you must tax them both alike according to this clause. If all land is taxed at its actual money value and the uncultivated is the more valuable, you don't need this section. If you attempt to say that two pieces of land of unequal value shall be assessed alike, you say that which will conflict with section three, however you look at it.

Mr. STEVENS. This does not say that lands that are cultivated and those which are uncultivated shall be taxed at the same price, but it says that two pieces of land similarly situated and of equal value shall be taxed equally. The only question is that the cultivation of the land shall not be taken into consideration in fixing the value. The question is, shall the cultivation of the land increase the price at which it shall be taxed. That is the only question there is in it. Cultivated and uncultivated lands of the same quality and similarly situated shall be assessed at the same value. If they are of equal value, one being plowed and one not plowed, they shall be assessed at the same price.

Mr. SPALDING. I disagree with the gentleman from Ransom. The effect of this section will be to take any discretion which the assessor might have, out of his hands. Here might be a piece which was full of foul weeds to such an extent that it is not worth half the price of a piece alongside that has not been cultivated, and this section says that they shall both be assessed alike. Also it says that a section of land which has just had $4 or $5 an acre spent on it to plow, and without any question is worth from $3 to $5 an acre more than a similar piece located side by side, and not under cultivation, shall be taxed the same. The question is not whether land is worth more uncultivated, or whether non-residents shall be taxed more than residents, but whether we shall tax lands according to their true value. That is the question, and

this section takes the discretion out of the hands of the assessor in assessing it. It takes away any question of value, and says, arbitrarily, it shall be taxed the same and valued at the same value, whether it is worth half as much or twice as much as another piece.

Mr. BUDGE. Any land in the Red River Valley uncultivated is worth more than cultivated.

Mr. POLLOCK. In view of the discussion that has been had on this section, I am certainly opposed to it, especially in view of the interpretation that is placed upon it by the gentleman from Ransom. We are forbidden in the Omnibus Bill from discriminating as to the owners of land whether they are residents or non-residents, and if that is the spirit of the section it should be stricken out. If the gentlemen will turn to the Omnibus Bill, page three, they will find the following: "The lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof."

Mr. STEVENS. I did not say that a non-resident's land should be taxed any higher than that belonging to a resident, but I said it should be taxed the same. I know that our present Organic Act and the Enabling Act provide that there shall be no discrimination between residents and non-residents, and that is my point, and the attempt to turn it on to anything else is simply clap-trap.

Mr. POLLOCK. If the gentleman takes a different position, then the objection that I made should not be urged against him. At any rate the Legislature should have the right to regulate this as the circumstances may warrant.

Mr. BARTLETT of Dickey. That clause says that land similarly situated shall be taxed alike. I apprehend that if land is turned over and plowed it is not similarly situated. That is my idea of it.

The vote on Mr. SPALDING'S motion to strike out the section as amended was lost.

Mr. CAMP. I move the following: "Cultivated lands shall not be assessed higher than uncultivated lands of the same quality similarly situated."

The motion was lost.

Mr. SPALDING. I move to amend by inserting in the third line, afther the word "shall," the following in lieu of what is now there: "Not be assessed at the same value."

Mr. STEVENS. I move as a substitute that the section be adopted as amended.

Mr. SPALDING. I think that uncultivated land similarly situated should not be assessed at the same value.

Mr. STEVENS. It is simply another way of gaining time for the purpose of killing this section, and I hope you will just vote down every amendment they offer till you get down to the original section which we should adopt.

The proposed amendments were then voted down and the section adopted.

Section five was adopted.

APPORTIONING TAXES.

Section six was then read as follows:

SEC. 6. All property exempt as hereinafter in this section provided, shall be assessed in the county, city, city and county, township, town, village or district in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in this State shall be assessed by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities, towns, townships and districts in which said roads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and districts; *Provided*, That for the purpose of assessment and taxation said railroad shall not be valued at less than $3,000 per mile.

Mr. SCOTT. I don't understand as to what proportion of this tax shall be paid to the counties. It says:

"And the same shall be apportioned to the counties, cities, towns, townships and districts in which said roads are located in porportion to the number of miles of railway laid in such counties, cities, towns, townships and districts."

It seems to me that the proper way is the way we have at present. The Territory collects the tax, and pays over to the county that portion which is not kept in the Territorial Treasury. I don't see how you are going to pay any to the township or city, because the proportion would be so small that it would not be worth while taking into consideration. I think the whole tax should be paid into the county treasury.

Mr. LAUDER. I think the suggestion made by the gentleman is a good one. Though a member that submitted that report I am in favor of amending this section.

Mr. PURCELL. I move that all after the word "district" in the ninth line be stricken out for the reason that we are placing in the Constitution a value upon land or upon the railroad companies'

property. In many instances, if I understand it, it does not cost nearly $3,000 a mile to build a railroad. In many instances it can be constructed for one half that, and that portion of the lands of the railroads lying west of here might not be as valuable as other land, and for that reason I move to have it stricken out.

The amendment of Mr. PURCELL was lost.

Mr. CARLAND. There is an expression in line two that I think is not applicable to our law. It is peculiar to the laws of California, and I should judge that the section had been taken bodily from the constitution of that state. I refer to the term "city and county." We have no such political organization here. I move that it be stricken out.

The motion was carried.

The section was then adopted.

THE POLL TAX DISCUSSED.

Section seven was then read as follows:

SEC. 7. The Legislature may provide for the levy, collection and disposition of an annual poll tax of not more than three dollars on every male inhabitant of this State over twenty-one and under fifty years of age, except paupers, idiots, insane persons and Indians not taxed.

Mr. NOBLE. I move as a substitute for section seven the following: "The levying of taxes by the poll is grievous and oppressive; therefore the Legislature shall never levy a poll tax for county or state purposes."

Mr. JOHNSON. I move to strike out all that portion of the proposed amendment before and including the word "therefore."

Mr. PARSONS of Morton. It would seem to be a bright idea if the poll tax were eliminated. It has been a question which I suppose will be solved here shortly, whether we desire a uniform system of taxation or not. Here is a relic of the old fedual times. This idea of taxing people so much a head—taxing people who never ride in a wagon, never use the roads from one year's end to another—taxing them to keep up the roads, is an outrage. If you are in favor of justice—if that is what you want, it is a poor rule that won't work both ways. There is no more unjust tax ever levied in this country than the poll tax. I hardly expect to see the substitute carry. I claim that the one who uses the road should be the one to pay the tax in proportion to the property he owns. This is put in this section at three dollars a day. It means that the poor man will go and work out his tax. The rich man

will pay his three dollars. There are men on this floor who would not sell their services for less than ten dollars a day, and this means that we are taxing the poor man two days' work, and the other man less than one-third of a days' work. If we assessed a poll tax in proportion to what each man earned there would be a little more show of justice. But why say that the money to repair the roads shall be raised by direct taxation? There is no one thing that has come before this House that is so unjust as this measure, and I hope sincerely that the amendment will carry and that the poll tax will be forever banished. I don't expect it—the prejudice in favor of this measure is so strong, but I would like to hear some one get up here and show reasons why the poll tax theory is one that is just and right.

Mr. BARTLETT of Dickey. Here is the man. The gentleman puts the amount in his remarks at the extreme allowed in this section. I have never known of a single poll tax that exceeded one day's work, and I believe that it is right and just. Any man can afford one day and that is as much as ever will be charged. Every man, old and young, rich and poor, has to pay a road tax on his land, and in every state that I have lived, there has been a poll tax. It has generally been $3 on a quarter section. The floating population that has the benefit of our roads can well afford to pay one day's work. It is right—it is just and I hope it will prevail.

Mr. WALLACE. It is the only way you can get tax from a good many men.

Mr. PARSONS of Morton. I would like to ask if every poor man in this State does not pay more taxes in proportion to what he is worth than the gentleman who has just spoken here. There is no one who can stand up and deny this. It is rank oppression; it is not just and the theory which we have asserted in the other section of this article which says that all taxes shall be uniform and in proportion to the property, is at variance with this. You may say what you like, the poll tax is not levied in accordance with the amount of property that a man has got. I know that men will vote here for this who will not pay the taxes which they should justly pay for the support of the roads, but would rather put it on the poor man if possible. The very men who will advocate the theory of taxation by which a man should pay in accordance with the amount of property he has, now turn around and

advocate the putting a tax on a poor man whether he has any property or not.

Mr. BARTLETT of Dickey. I think it is quite possible that if I am not rich I am worth more than some men, and the gentleman holds that those men should not pay any taxes. I have worked all my life for the public benefit, and every year since I have been in Dakota I have put a good deal more on the roads in the county where I have lived than the law requires. I am full of public spirit. Every man who knows me knows that. All they have to do is to ask for my team and it goes. But I do say that a man who will drivel his life away and loaf around without earning anything, and will thus keep himself poor should give at least one day in the year to the roads in the district in which he lives.

Mr. SPALDING. I am thick-headed probably, but I don't know what the subject of roads has to do with the poll tax. I have the idea that the theory of the poll tax is that every man who lives under the protection of this government, and under the protection of its laws that are passed by its legislative bodies, bear his ligitimate portion of the expenses incident to the passing of those laws and enforcing them. My idea is that that is the object of the poll tax—to reach those who are protected by its laws, but still have no property on which to levy a tax. I believe that is the only principle on which a poll tax is based.

The substitute of Mr. NOBLE was lost.

Mr. BLEWETT. I move that all after the word "tax" in the second line be stricken out.

Mr. MOER. I move to strike out the whole section.

Mr. BARTLETT of Dickey. I think this is one of the most useful sections we have in this Constitution.

The motion of Mr. MOER was lost.

Mr. NOBLE. I move that in the second line the words "three dollars" be stricken out and $1.50 be inserted in its place.

The motion was carried.

The section as amended was then adopted.

Sections eight and nine were then adopted and the committee rose.

Mr. LAUDER. I move to adjoured.

The motion prevailed, and the Convention adjourn.

THIRTY-FIFTH DAY.

BISMARCK, *Wednesday, August 7, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

THE PUBLIC INSTITUTIONS.

Mr. WILLIAMS. I move that we proceed to the consideration of the report of the Committee on Public Institutions and Buildings, as well as the minority report. The majority of the committee made their report yesterday, and it was agreed to them that the minority should have time to submit their report. That report is here now.

The motion was seconded by Mr. MILLER and carried.

Mr. MILLER. I move that we adopt as a whole the majority report of the Committee on Public Institutions and Buildings, known as File No. 143.

The motion was seconded.

Mr. BARTLETT of Griggs. I desire to offer the following as the first section of the report:

"The following article shall be submitted to the vote of the people as a separate article as provided by the Schedule."

Mr. BARTLETT of Griggs. The unusual manner in which this question has been brought up was unexpected by me. I am well aware that I represent the opinion of the minority on this floor this afternoon, and as far as I am concerned I bow to the majority. However, you may have obtained that majority, you have it. Now I ask in behalf of at least thirty members, and I think more—I ask in all fairness that you adopt this section, and that this matter be submitted separately, that the people may have, if they wish to locate these institutions, that they may have a right to do so. Refuse this section and you compel at last thirty members that sit in this Convention to-day to refuse to sign your

Constitution—you compel at least thirty who have sat here from the Fourth of July until now, trying to do their duty, to go home and say to their people that they have been unable to accomplish it, and to ask their people to refuse to endorse their work. I don't believe that this Convention can afford to do this. Refuse this section—refuse to submit this matter separately, and you forever bar all compromise with the minority here, which I think is a respectable minority. Refuse it, as I say, and you compel us to take the steps that we here and now state that we do not wish to take, and would much rather not take. Refuse this, and the republicans in this Convention endanger the success of the republican party in this new State this fall. You may smile, but it is a fact. We know that not only have the votes of the majority been obtained by every means known to the power of corporations, by promising and farming out so far as that influence could go, every office and position on the State ticket this fall—we know that and are satisfied of it. Refuse this section, and you compel at least thirty members of this Convention to join with any party—to join with any alliance that will forever and forever sit down and permanently sit down on the rule of corporations in this State. Gentlemen, I ask in all humanity—I ask, I plead it, that you accept this provision.

Mr. POLLOCK. I am in favor of this amendment, and I certainly hope that it will be incorporated as the first section of this article. The people of this incoming State have not expected that these institutions were to be located. They have not expressed their desires or wishes on this subject. What is fairer, what is more in accordance with the wish of the American people, than that they shall decide the question for themselves? They have a right to determine it, and unless they do it by their representatives—and we are not their representatives to decide this question—they have a right to do it at the polls. Unless they have this privilege as the gentleman from Griggs has said—it may endanger the adoption of this Constitution.

Mr. MATHEWS. I can endorse all that has been said by the gentlemen who have spoken. I am in favor of this amendment, and not in favor of our saying where the buildings shall be located. I don't think that our people want us to do it, and I am opposed to it.

Mr. JOHNSON. This is an interesting moment, and I fear a sad day in the history of North Dakota. Is it possible that gen-

tlemen in the majority will sit here in silence under the earnest appeals that have been made to them, and give us no reason for this course of conduct? Is there no defense—is it utterly indefensible; so that not one of you gentlemen will open your mouth and say one word? We have labored here faithfully and earnestly and for over a month, and if we were to adjourn at this minute that portion of the Constitution which has been sent to the Committee on Revision and Adjustment would make a very good constitution if adopted. I shall be glad to vote for a motion to adjourn at this moment rather than have this article pass. I think that we would then, although it would be incomplete—have a Constitution that would be better than any state in the Union has. See how we have almost completed our labors. The whole thing has been prepared—the executive, the legislative and judicial departments, corporations, taxation and revenue, school and public lands—all these questions have been thoroughly studied and argued, and we have reached wise and moderate conclusions. Is it possible that you will make the people of this incoming state confront this problem—either to remain in the territorial condition indefinitely or to vote for the adoption of such an article as this? Is it possible that you will make over thirty delegates hesitate, and possibly refuse, to affix their signatures to the document when it is completed? Is it possible that you will compel them to go out and take the stump against this document that a small majority only will sign? The people are in no mood for being whipped into voting for this Constitution. A representative body of men met at Fargo a week before we assembled here and asked for three simple things—things that were utterly insignificant of themselves. Their representatives on this floor have begged with you—pleaded with you, that you recognize these appeals. Every one has been spurned. I beg of you—I plead with you to give us one reason why we should vote for this article.

Mr. PURCELL. I for one, as a delegate to this Convention, supposed it to be our duty to meet here in Convention and as soon as possible draft a Constitution for the people of the new State of North Dakota. The duties devolving upon delegates of this kind are not new in the history of the country. We take as a precedent, and properly so, the Constitution of the United States. The different states of the Union since the origination of that document, have been compelled to frame and form constitutions such as we are presumed to be forming here. So far as our duties

pertain to the forming of a Constitution, we have precedents, but when this Convention attempts to step aside from the duties assigned to it by the Organic Act, it fails to find a precedent in any state for the action sought to be forced here. It was my hope and wish that whatever part I took in the making of this Constitution might be such that it would reflect credit on myself and others. But, sir, we have here to-day seen an effort to put in this Constitution something that must forever damn the men who dare sign their names thereto. We have not been sent here to farm out the public institutions of this great State. We have not been sent here to meet in caucuses and conventions, and as the result of those caucuses seek to foist upon the people of this State a burden they can never shift from under. As a member of the commission that took part in the division of the property of the Territory of Dakota, I was enabled to appreciate the debt with which North Dakota will start out, and that debt is $539,807.46. That is what North Dakota starts out under on her road to statehood. If this report of the Committee on Public Buildings is adopted there is no telling—there is nothing by which we can place a standard, at which the debts of this new State will reach.

As I said before, in making this Constitution we have precedents. We not only have precedents, but our duty was somewhat limited and confined by the Enabling Act under which we met, and by strictly adhering to the principles laid down in that document and confining ourselves to making a Constitution that we might be proud of, we would be doing that which our constituents expect of us. But when we seek to leave that path of duty and enter the path of chicanery, we not only bring on ourselves the disrespect of our constituents, but the disrespect of every citizen of the United States, because, sir, we have had it hurled in our teeth for ten years at least, that the Territory of Dakota was composed of more schemers than all the rest of the Union combined, and when we went to Washington on missions to benefit the people, we were met with these epithets on every hand. It seems to me that men who value their integrity at anything, should be careful when they introduce a measure of this kind and ask to have it placed in this Constitution. It is the sign for the people of North Dakota to start out on missions of chicanery. It has been the custom when in the past epithets would be hurled at us for our scheming traits, that the people of North Dakota would say it must be the people of South Dakota, but to-day we not only

see the handiwork of some bright schemers here, but we see these schemes attempted to be forced into this Constitution and upon the people of the new State. Here is an attempt to locate institutions that there is no necessity for, and the probabilities are that there will be no necessity for them for fifty years to come.

Every man has a right to consider why it is that this measure is sought to be engrafted in this Constitution. I would ask any man whose name is appended to that report, or who is in favor of this measure now, if it was an issue in the campaign, or if it was thought of when he was elected? On the other hand, Mr. PRESIDENT, we have seen no less than four prominent cities in North Dakota, candidates for the seat of government. But to-day by this bill we see these four cities working here as a unit for the passage of this measure. As was well said by the gentleman from Griggs, there is some subtle influence at work in this matter. It does not seem to me that it is being done for the interest of the people at all, but if there is any one thing that will stamp our Constitution with contempt, it will be the engrafting in that Constitution of the report of the Committee on Public Buildings. In years to come when people are turning back and looking on this Constitution, they will ask where it was that we got our precedent for putting an article of this kind in the Constitution. They will say that we must have been suspicious of the Legislatures that were to follow—that we thought that we possessed all the honesty and integrity that it was possible for the State to have within the next hundred years, because in the adoption of this article we forestall the Legislatures for all time to come. There are institutions provided for here that are to-day ridiculous—there are institutions provided for here that it is not possible for this State ever to need, and tell me why it is that these institutions of which some people have never heard are to be located—are to be erected and the debt created to settle on the people of North Dakota? Is there to-day the need for a single institution mentioned in that bill, with the exception of the Capitol and the Insane Asylum? We have all the institutions that we need for the present, and for some future time to come.

There is a phase of this question that should be explained. There was a member of this Convention that moved that a certain committee should be appointed to draft an address to the people of this Territory, and everybody thought that perhaps that motion was a good one—that we should give to the people of

our new state the reason why this Constitution was thus and so. That I understand to be common in many such instances of this kind, but I see that the gentleman who made that motion sits silent to-day, and says nothing in support of this proposition. If he is a member of that committee which will frame that address, I would ask that to him be directed the duty of explaining to the people of North Dakota the reasons why they have imposed on them eleven new state institutions? As was said by the gentleman from Griggs, we have come here to make for our people a Constitution. We hope they will be satisfied with our work, but we cannot claim that they will when we see an article of this kind attempted to be interposed. On every hand will we be assailed with the charge that there was some subtle influence in this Convention to which we were all susceptible. I have talked with men on this floor who will support this measure, and they have told me that influences brought to bear on them were such that they were unable to withstand. I ask you to stop and ponder what will be the influences brought to bear on the Legislatures of the future when these respective localities come forward and ask for appropriations for their respective institutions. It may be said that this is only directory, and the Legislature will simply locate these institutions when necessity requires. By this article these institutions are located now, and the same influences that have come together and sought to push this article through, will be here with the next Legislature, and will work with the Legislature for appropriations to carry out the original plan.

The statement is made here that we simply locate the institutions, and the Legislature will provide them as the State needs them. But won't every locality that has an institution step forward and insist that the necessity for its institution exists now, and won't the same influences that propose to adopt this measure, also come forward and help the people of these different localities to get their institutions? Wherein can the people be injured—wherein can they be hurt one iota by the referring all this matter of the public institutions to the Legislature? Whenever the public sentiment exists in favor of the location of a particular institution it will be time for the Legislature to locate it, and no one will say that the Legislature dare stand up and refuse to give the people what they want in this respect. We want this matter left in the hands of the Legislature. Why is it sought to be engrafted in here? It is something unheard of in the history of

our country. It seems to me that if the gentlemen on this floor who are advocating this measure were honest and sincere—these gentlemen who have been talking to us about honesty and integrity—would look at this proposed article for a moment, they would be surprised at their own unworthiness. It is true that in some states public institutions of the kind mentioned in this article are located and are now being located—it is true th at they are locating such public institutions as they really need—but I venture to say that out of all the institutions named in this bill there are not two, aside from those which are now built, that we will need for the purpose of accommodating our wants. But it has been planned, and it is sought to shackle the people of this State, and put in this Constitution something that they know if it once gets in, must be maintained and thereby create a debt which the people have never expected would be incurred. This is in direct opposition to the duties we have been sent here to perform, because as I consider the article under which we have met here, there are 170,000 acres of this land that have been donated for such educational and charitable institutions as the Legislature may determine upon. Instead of waiting for the Legislature to determine as to these institutions, by a combination these things are intended to be farmed out. I ask you if it is right—if there is a man on this floor who can stand here and justify it? It is true that Wahpeton is represented in this bill, but I care not. I came here to do what seemed to me to be my honest duty, and I feel that I have done just what my constituents require of me.

Mr. STEVENS. It was not my purpose when this matter should come before this body to have one word to say as to whether or not such a measure should pass. But having been attacked by the gentleman from Richland, I feel it is a justice to myself and justice to those who shall vote with me on this proposition, that the reasons which I would be pleased to incorporate in the letter which shall go forth to the people of North Dakota, explaining to them the reasons why this Constitution should be adopted, will be given here. Let me say to the gentleman that while I may possibly, in his mind, be inconsistent in my views, while it may be that the reasons I shall give for the location of these institutions at this time and at this Convention might not seem to be such as would be approved by his mind, he cannot accuse me of ever having swopped horses in the middle of the stream or changed my position when once it had been taken. First. Why should we not

locate these institutions? They will be located by the Legislature if not by this Convention. Are we not as competent to locate these institutions as the Legislature would be? Is there the same motive to influence our conduct that there would be to influence that of the Legislature? The motive which would influence a Legislature in locating these institutions at improper places might be the purposes of other legislation. There is but one question to be considered by us in locating these institutions. No legislation need affect us; no provision in our Constitution is being changed for the purpose of making a combination. The only combination here is a combination of cities of this Territory, where these institutions can be located to the best interest and the best advantage of the Territory, soon to be the State of North Dakota. On our west we have a vast amount of territory. Shall we rob that great territory of its life and vitality—the capital of the Territory—and thereby pay taxes from the eastern part, of thousands and thousands of dollars which we can now save by assisting in building up the western part of our State by locating at the City of Bismarck the permanent capital? Shall we let our capital be shifted from place to place as other capitals have been in different states, and shall we let it become a source of corruption by the lobbyist of every Legislature to work upon, or shall we say—here the people have located and established the capital? Here we occupy one that is a credit to the State of North Dakota, as much so as the capital of any other State of this Union has been at the same age of its statehood.

For that reason, for the purpose of increasing the taxable property of the west and making a railroad center here, and helping to build up our Territory, we have located this institution at this place—which is the proper place. The location of the Capitol at any other place, while it might seem to fit the ideas of the gentlemen who vote on the other side, would be not only an injustice to this country, to this particular place, but an injustice to the whole Territory of robbing one-half of our Territory of an institution that will assist in the up-building of the country. Why have we located the other institutions in the way we have? Because our population demands it; because our population is scattered up and down the Red River and in the counties lying along the Jim River and in the counties lying along the Cheyenne; because they are the most populous and pay the most taxes, and still for some time to come these institutions cannot as-

sist in up-building the country as the Capitol building would, and for that reason we have located these in the region to which they properly belong. Will any gentleman on this floor get up and say that a single location made by this committee is not properly made? Will a single gentleman say that a single location has been made so that it is not beneficial to the people? Is there a suggestion in the mind of any gentleman that any other places would be more appropriate than the ones that have been placed in this report? If that is true, why should we not locate them? In the address to the people I would say that the institutions were located by us, because in the first place they could be located at such places as the people could never object to. In the second place they were located so that when the legislators should meet the lobbyists or corporations and others who come forward and ask to make this one of the factors in passing unjust laws and in discriminating in favor of things that we do not want in our laws, they could not say that if you do not assist our measure we will defeat you in your efforts for your public institution which must be located. We believe that under this arrangement we retain for the people all the benefits and all the rights that they possibly have if they were each one individually to vote on these locations. These, sir, are the reasons that I would give to the people of North Dakota for the action which I hope this Convention will take in the adoption of the majority report and the voting down of the amendment now before this House.

Mr. BENNETT. I want to say one word in reply to the gentman from Ransom, and it is this. He states that his reason for desiring to locate the public institutions at the present time is that corporations—railroad corporations, and so forth, may be prevented from hereafter influencing the Legislatures of this State. I have it from a gentleman who is good authority on this question, and who is a member of this Convention, that the corporations—the two great railroad corporations in North Dakota—are to-day interested in making this combination to locate the capital at Bismarck. I have every reason to know that it is true, and if necessary I can bring the gentleman on the stand to prove it. I don't take any stock—and I don't want the minority of this Convention to take any stock—in the intimation of the gentleman that the corporations are not to-day the motive power in this matter.

Mr. PURCELL. We are all glad to know just why the gentleman will support this article. He supports it because by moving

the capital we would rob this great western country of something that will draw to it; and to-day in the discussion of this question he is particularly liberal in making this as one of his reasons why he votes to sustain the capital at this place. But if I remember rightly, the other day when that gentleman stood here on the floor of this Convention and asked that they be given more representation in the Legislature of the State, the gentleman was not so liberal on matters of that kind as he is on this. He speaks about consistency. Consistency is a jewel, and if there is any man on the floor of this Convention who will hold up his finger and say I have not been consistent I want him to do so. This is not a new matter to us. It has been talked of since the Convention commenced to hold its sessions, but if any man charges me with inconsistency he charges me with that which I have not been guilty of. If it was wise and proper to give this capital to these poor western people, why is it not right and proper to give to these same poor western people the right of representation on this floor which they ask? If that is the only defense he has got to the motion, it will be a difficult task to explain in his address to the people the reason why this infamous clause should be tried to be planked in this Constitution. We have been sent here to make a Constitution that ought to be our pride and glory. We have been sent here charged with a careful duty to perform. In the constituency which I represent are men who are in favor of prohibition, but in every one of their conventions the prohibitionists have said: "You must not vote to put prohibition into the Constitution, because it might endanger its adoption." They have charged me when coming here to perform the duties of a delegate, that in all questions of this kind I should in no way vote to put it in the Constitution and thus endanger its passage. We have heard on the floor of this Convention some delegates who are prohibitionists, and who spend their time and money in seeking to accomplish their end, but when they come here as delegates they come here as men, and say, "Don't put that in the Constitution, because placing it there may endanger its passage," and they sit here—although it may be a measure many of them have worked long and earnestly to see become a law—they sit here and ask only that it be submitted as a separate matter to the people to vote upon. If they are so careful of that small measure which many of us believe would be of great good to the community, why do other members of this Convention spring up here and endeavor to foist

on the people a debt of this kind, and that without submitting it to a vote?

Mr. BARTLETT of Griggs. It was not my purpose to speak a second time, and I should not do so if the gentleman from Ransom had not spoken, and spoken as he did. He says no man can charge him with changing horses while crossing a stream. He says no man can charge him with being inconsistent in this matter. He says that no man can charge him with doing anything but what was right, and just and fair. I wish him to say here in giving his reasons why this Constitution should be adopted—I want him to state what reason he gave less than three days ago, when he was laughing and shaking hands with us, and pledging that he would stand out for all time against this combination. I want him to explain those reasons, and then explain to the citizens here the reason that he is now taking the position he does. Not many rods from where he now stands he told me that he could not justify his change. He told me that the scheme was one that he could not openly sustain, and I quote him now and here. I well understand that I am talking here to no purpose. I well understand that we might talk here till November and possibly we could not change a vote. The question is not whether or not the location of these public institutions is right—whether they are located in the right places, but the question is whether we will put this in the body of the Constitution and compel us to swallow the whole thing, or will you submit it to a vote and allow it to stand upon its merits. If, as the gentleman says, it can stand upon its merits, then why not submit it separately?

There is one thing about this which I have never noticed in any other constitution. It does not say one thing; it is absolutely silent upon the conduct, the disposition and control of the public institutions. It simply provides for their location, and their perpetual location, and that is all. Therefore it can be submitted in a separate article and not endanger the Constitution, without taking one word from it, and without taking one word out of the Constitution that should be in it. Those who know, know that this combination was the cause of having the report of the Committee on School Lands withdraw their report, that it might be changed in accordance with this scheme. They know the first section of this File said that these lands shall be under the control of the Legislature, and those who are in favor of placing any restriction

around our school lands might as well go home. I think this File has changed that provision. He asks: Could we get more appropriate locations for these institutions? I think that with all due respect to the gentleman from Ransom there is one institution mentioned in this report, and that is the institution for the feeble-minded, that ought to be located in nearly every county in this State. It seems to me that that institution would be preeminently proper to be located in the home of the gentleman from Ransom. I have been told that it would not do for me to oppose this measure. I have been told that there was a future in this matter, and that I should be on the right side. I want to say that I have no political future; I have no political life that I wish to perpetuate or sustain by voting for such a contemptible measure to be placed in the body of this Constitution.

Mr. STEVENS. I do not desire to make a speech. I desire to say in the first place that the reason that an institution for the feeble minded is not to be located in my county is because we have no subjects down there. In the second place when the gentleman got up and addressed this Convention, he said: "I bow to the will of the Convention."

Mr. BELL. I am greatly surprised to-day. I am greatly surprised at the gentlemen who have here to-day developed such enormous love for the dear people—such fatherly love for the dear people—that would not give them a say in matters of voting for the Capital—a matter that is of the greatest interest to all the people. This cannot be left to them. They think their fatherly care must decide the matter for the people. The gentleman from Ransom says that he does not want to leave this matter to the Legislature. The Legislature might be corrupt. He certainly would imply by that that this constitutional body is pure and clean. He certainly would make us believe that this was a body offering to legislate for the people for all time to come, and yet yesterday the gentleman said that we have nothing to do with legislation—we are usurping the powers of the people when we undertake to legislate on any matter. Now he comes forward and says we are settling a matter of all the public institutions that the State will ever need to the time of the millenium. Now gentlemen, any man who stands up here and casts his vote for that article—for that report of the Committee on Public Institutions—denies to the people the right to vote on matters that concern themselves. The gentleman claims that there is no scheme in

this matter. I is all for love of the people, and he says the institutions are distributed as they should be distributed—they are distributed largely in the Red River Valley because they have the population, but as there is a smaller population in the west, we have placed but a few there. I would like to ask what is the matter with Walsh county that she has not got an institution though she has 18,000? I will tell you. She certainly has as good a right to an institution as any county in the State. She is the third county in the State—has never got any public institution or public convention, but she will not go into the dirty scheme. She has been offered public institutions in every town and hamlet, if she would only come in and locate the Capital at Bismarck. But I tell you the men from Walsh county can't be caught with a hook with an artificial fly upon it. If we trade our votes we want something for the people. We don't want institutions that won't be built till all the people living there are beneath the sod. The Argus says they are distributed throughout the State, and Fargo has got the Agricultural College and Bismarck has got the Capital. That is the whole business. That is all that will be got. Before there is any money to build any institutions in the outlying counties, I hope the Constitution will be changed. I feel certain that the Constitution, weighted down with that infamous article, never can be adopted by the people. The people are certainly not going to vote for the Constitution that denies them the right to say where the seat of government shall be. Never will they submit to such an abuse as that. I think the amendment offered by the gentleman from Griggs is fair. Some think the report of the committee is right. Others don't think so. Surely the people of North Dakota should be the judges. If it is right the people of North Dakota will endorse it; if it is wrong they will defeat it, as I am sure they will do to the Constitution if you put that in it.

The amendment of Mr. BARTLETT was lost by the following vote.

The roll being called there were ayes 31, nays 43, viz:

Those who voted in the affirmative were:

Messrs. Allin, Almen, Appleton, Bartlett of Griggs, Bean, Bell, Bennett, Best, Budge, Carothers, Colton, Douglas, Haugen, Johnson, Linwell, Marrinan, Mathews, McBride, Noble, Nomland, O'Brien, Peterson, Powers, Purcell, Pollock, Richardson, Robertson, Selby, Slotten, Turner, Wallace.

Those who voted in the negative were:

Messrs. Bartlett of Dickey, Blewett, Brown, Camp, Carland, Chaffee, Clapp, Clark, Elliott, Fay, Flemington, Gayton, Glick, Gray, Griggs, Harris, Hegge, Holmes, Hoyt, Lauder, Leach, Lohnes, Lowell, Meacham, McHugh, McKenzie, Miller, Moer, Parsons of Morton, Paulson, Powles, Ray, Rolfe, Rowe, Sandager, Scott, Shuman, Spalding, Stevens, Wellwood, Whipple, Williams, Mr. President.

Absent and not voting, Mr. Parsons of Rolette.

The motion of Mr. MILLER was adopted by the following vote:

The roll being called there were ayes 44, nays 30, viz:

Those who voted in the affirmative were:

Messrs. Bartlett of Dickey, Bean, Blewett, Brown, Camp, Carland, Chaffee, Clapp, Clark, Elliott, Fay, Flemington, Gayton, Glick, Gray, Griggs, Harris, Hegge, Holmes, Hoyt, Lauder, Leach, Lohnes, Lowell, Meacham, McHugh, McKenzie, Miller, Moer, Parsons of Morton, Paulson. Powles, Ray, Rolfe, Rowe, Sandager, Scott, Shuman, Spalding, Stevens, Wellwood, Whipple, Williams, Mr. President.

Those who voted in the negative were:

Messrs. Allin, Almen, Appleton, Bartlett of Griggs, Bell, Bennett, Best, Budge, Carothers, Colton, Douglass, Haugen, Johnson, Linwell, Marrinan, Mathews, McBride, Noble, Nomland, O'Brien, Peterson, Powers, Purcell, Pollock, Richardson, Robertson, Selby, Slotten, Turner, Wallace.

Absent and not voting, Mr. Parsons of Rolette.

Messrs. Camp, Parsons of Morton, Rolfe, Turner, Williams and Mr. President explaining their votes.

Mr. BEAN. I desire to offer an amendment to section one—the first part. The section reads as follows:

SECTION 1. The following public institutions of the State are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States, in the act of Congress, approved February 22, 1868, to be disposed of and used in such manner as the Legislative Assembly may prescribe.

I desire to strike out the words "in such manner as the Legislative Assembly may prescribe," and put in their place the words: "as provided in this Constitution." I wish to say a word or two giving my reasons for this amendment. This whole matter has been gone over in the Convention before, and I am not in favor of this article personally, but I think the Convention wishes that

there shall be no mistake about this. The subject referred to covers the public lands—the matter of the school lands and other public lands was referred to a committee. That committee have agreed to their report, and it has been reported once and adopted, but was withdrawn to amend certain sections. The committee have now prepared their report and it will be introduced this evening, and it is my opinion that this File No. 143 is not the place for such a provision as I seek to strike out by my amendment. The Committee on School and Public Lands have prepared an article showing how those lands shall be disposed of, and I am not in favor of leaving these lands to be disposed of by the Legislature. These institutions can very easily get the Legislature to put this land on the market, and the result will be our entire system of school and public lands will be thrown away. Everybody in this Convention knows that our lands are not for sale, because there are no purchasers. As I understand this section our school and public lands will be thrown on the market by it, and capitalists can come in and buy these lands as they did in Wisconsin for sixteen to twenty cents an acre. I am willing as far as I am concerned to adopt this report, but I am opposed to putting it before the people in its present shape. I say we should put a clause in the Constitution by which we reserve to ourselves these lands and put them to the uses for which they were intended by the Omnibus Bill.

Mr. WILLIAMS I presume the remarks of the gentleman from Nelson are founded on the report of the Standing Committee. I presume that if the Convention adopts the report of the Committee on Public Institutions it will be the duty of the Committee on School and Public Lands to frame a clause in accordance with the article adopted by the Convention. This does not refer to school lands at all, but has reference to the amount appropriated for the public institutions.

The amendment of Mr. BEAN was lost by a vote of 32 to 35.

Mr. JOHNSON. I move to amend the first section by striking out the words "Bismarck, in the county of Burleigh," and inserting in lieu thereof the words "Jamestown, in the county of Stutsman." Now, Mr. PRESIDENT, and four or five of the gentlemen living in and near Jamestown, it is your ears that I wish to reach. Let me tell you that we of the minority are willing now, and we have got the power to give you the Capital for all time to come in Jamestown. We will do it in good faith, and you now take the

responsibility of choosing whom you will serve. Five votes is enough to do it, and you have got it right there.

The vote was then taken on Mr. JOHNSON'S amendment. Mr. BLEWETT explained his vote as follows:

Mr. BLEWETT. I don't think the amendment was made in good faith, and I therefore vote no.

The amendment was lost by the following vote:

The roll being called there were ayes 19, nays 55, viz.:

Those who voted in the affirmative were:

Messrs. Allin, Almen, Appleton, Bartlett of Griggs, Bell, Bennett, Best, Budge, Carothers, Haugen, Johnson, Marrinan, Mathews, Noble, Peterson, Richardson, Robertson, Turner, Wallace.

Those who voted in the negative were:

Messrs. Bartlett of Dickey, Bean, Blewett, Brown, Camp, Carland, Chaffee, Clapp, Clark, Colton, Douglas, Elliott, Fay, Flemington, Gayton, Glick, Gray, Griggs, Harris, Hegge, Holmes, Hoyt, Lauder, Leach, Linwell, Lohnes, Lowell, Meacham, McBride, McHugh, McKenzie, Miller, Moer, Nomland, O'Brien, Parsons of Morton, Paulson, Powers, Powles, Purcell, Pollock, Ray, Rolfe, Rowe, Sandager, Scott, Selby, Shuman, Slotten, Spalding, Stevens, Wellwood, Whipple, Williams, Mr. President.

Absent and not voting, Mr. Parsons of Rolette.

Mr. BEAN. I move the previous question.

Mr. WILLIAMS. I desire to say the majority have given the minority all the afternoon to submit their objections to the majority report, and I think it has been as ably presented as it possibly could be. Therefore I second the motion for the previous question.

The previous question was then called, and a vote was taken on the main question.

Mr. CAMP. In explaining his vote said: I desire to explain my vote. I rise with reluctance to vote on this article and to explain, if explanation be possible, my vote. I accepted my commission and took the oath of a member of this body with, perhaps, somewhat exalted ideas of the powers and high duties of this Constitutional Convention of North Dakota. Those ideas I have retained. I have not looked upon this assemblage as one in which to trade votes or log-roll measures through by means of caucuses. I have not gone to any member with a proposal to vote for a measure that I did not approve, in order to obtain votes for a measure which I desired to have adopted. But I have wished

to see every separate measure stand or fall on its own merits. And yet I find myself here confronted by a combination of propositions which can only pass this Convention as a whole. None of these propositions would, if standing alone, receive the support of more than a respectable minority of this House. It is only by the assent of members to several propositions which they do not approve, in order to carry propositions which they wish to see adopted, that this article will pass. Of the moral right of such a course I have most serious doubts; of its political expediency I am by no means assured. I know it will deliver those who support the article over to the most scathing criticism. And if I were expecting to take more than a most humble part in the public affairs of the State of North Dakota, I should consider that there would be great danger that a vote in support of this article as it now stands would cast a cloud over the future. But I believe under the difficult circumstances in which we find ourselves, I cannot do better for the county which I represent, and the city in which I reside than to vote for this article, and therefore I record my vote—aye.

Mr. PARSONS of Morton, in explaining his vote, said: I desire to say a word in explanation of my vote. My reasons are the same as have just been given by the gentleman from Stutsman. One important reason is to take from the Legislature the material on which most combinations have been made in the past and would be in the future, and also under protest against that portion of section one which leaves the lands in the hands of the Legislature, I vote aye.

Mr. ROLFE, in explaining his vote, said: I wish to say a word in explanation of my vote on this article. The main question, as it appears to me, is the location of the Capital. That to my mind is a local issue. The interests of the west are brought into direct conflict with the interests of the eastern portion of the new State. I am a western man, and I represent the western section, and therefore I place myself in line with that portion of this Convention, which by its action will locate the Capital in the west, and locate it permanently. I vote aye also for the reason as has been stated by the gentleman from Morton, that the action which we take to-day removes the power from the Legislature to farm these public institutions out to the different sections of the State without regard to population; without regard to centers of population, and to my mind there is no moral question involved, but simply

one of local interest and public economy. There has not been a moral question presented here in its relation to this article to-day —not one, and if I am permitted to affix my signature as a member of this Convention to that Constitution with this article incorporated in it, I shall do it with as much satisfaction as I shall because there is also incorporated in that Constitution an article providing for county courts, which as you all know are so dear to me. I vote aye.

Mr. TURNER. I wish to say a word in regard to the vote which I shall give on this occasion. As a matter of conscience with me, and believing as I do that Bismarck has some claims on this State for the Capital, I would under other circumstances be glad to vote aye. But coupling as it does with the location of the Capital, all the institutions of this new State, and locating these institutions now when this new and growing State does not warrant the location at the present time, I object. If it was left to the Legislature to provide for only one institution at each session, it would prevent the very dealing and combination which appears to have been formed here in this Constitutional Convention—when we are not aware of what the growing necessities of this State will be, or what section will need these institutions most. I therefore vote no.

Mr. WILLIAMS. I desire to explain my vote. As a member of the majority of the committee I have refrained from making any remarks in reply to those that have been made by the minority. I have no hesitancy in saying that I vote for this measure, believing that in so doing we are submitting a proposition in our Constitution which will promote the future welfare and prosperity of this people. It will take from our Legislature a very embarrassing question. The action of the Legislature with the approval of the Governor is final. Our action is not final. To those gentlemen who question the sincerity of our course, I say that we submit our works to all the people of North Dakota. That is the explanation of my vote. I vote aye.

Mr. FANCHER. Since it has been my fortune to reside in Dakota, I have followed the fortunes and endeavored to advance the interests of the people of my county with such loyalty as I possessed. Believing that in the measure we are voting on now I am acting for the best interests of this people—believing as the gentleman from Benson has said that there is no moral question involved, I beg to explain my vote in that manner. I am not a

creature of any corporation. There has been no lobby working on me. I don't believe that this vote means that the tickets of the parties have been fixed up in this matter. Nor do I believe any fair man on the floor of this Convention believes it. I may be wrong in voting this way, but if I am I am honestly wrong. Now I trust I have made myself sufficiently plain. I trust there is no man on the floor of this Convention who misunderstands my position. If there is such a man I would remind him that it is my duty to supply him with information, but the Divine power alone can furnish him with brains to comprehend it.

The motion was carried by a vote of 44 to 30.

Mr. McHUGH. Mr. PRESIDENT: I move that the vote by which this report was adopted be reconsidered, and that that motion be laid on the table.

Mr. WILLIAMS. I second this motion. Until this matter is finally settled and taken from the Convention there is liable to be controversy and an interruption of business. In order that business may proceed I heartily second the motion.

Mr. CAMP. Before that motion is put it is very essential that we know every word of this report is just what as we wish it to be in the Constitution—that there is nothing in it for the revision committee to act on whatever. I don't know the effect at present of the end of section one—the last word of the section.

Mr. BARTLETT of Griggs. I think I voice the sentiment of the minority here when I say that there will be no attempt to fight this ground over again. We will let this matter take its usual course. There won't be any attempt to fight this over again.

Mr. WILLIAMS. So far as the objection raised by the gentleman from Stutsman, I would say that I think this report simply goes to the Committee on Revision just the same as the other reports, and they will have the power to re-arrange any section, but they must retain its substance. The motion will simply take this article from the hands of the Convention and put it in the hands of the Committee on Revision. I am perfectly willing it should go to that committee as the other articles go that we have adopted.

Mr. COLTON. I would amend the motion that it be referred to the Committee on Revision.

Mr. WILLIAMS. It will go there if this motion prevails, and this motion is not capable of amendment.

The motion of Mr. McHUGH was carried.

EVENING SESSION.

Mr. PURCELL. I move that we resolve ourselves into a Committee of the Whole and proceed to consider the report of the committee on Miscellaneous Subjects.

The motion was carried.

AMENDMENTS TO THE CONSTITUTION.

File No. 36 was then read as follows:

SECTION 1. Any amendment or amendments to this Constitution may be proposed in either house of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the Journal of each House, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the General Assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the General Assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the General Assembly voting thereon, such amendment or amendments shall become a part of the Constitution of this State.

SEC. 2. If two or more amendments shall be substituted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Mr. WILLIAMS. I move to strike out the word "majority" in the third line and insert the word "two-thirds."

Mr. MOER. I should be opposed to that for the reason that according to this File it is submitted to two houses—first the house this year must ratify the proposed amendment and the house two years after must ratify it again, and it seems to me that after two houses of the Legislature have said that the proposed amendment shall be submitted, a majority is sufficient. That is the Iowa provision. If it is to be submitted to only one house then I think two-thirds is right, but if to two houses, then a majorty is right.

The amendment was lost.

The first section was adopted.

Mr. WILLIAMS. I desire to offer the following substitute for section two of the File.

"It shall be the duty of the Governor every seven years after the adoption of the Constitution to submit to the qualified voters of the State the following question: 'Shall a Convention be called to revise the Constitution.'

If it shall appear that the sense of the people has been taken, and that in the opinion of a majority of the qualified voters in the State, voting at said election, there is a necessity for a revision of the Constitution, it shall be the duty of the Governor to call a Convention for that purpose.

The delegates to be chosen in the same manner and proportioned as the members of the House of Representatives in the Legislative Assembly; *Providing*, That no amendment shall be made to this Constitution before the same shall be submitted to the people."

Mr. WILLIAMS. We ought to frame a fundamental law here that will meet with the approval of the people of this State, and if it is approved by the voters it ought not to be subject to amendment every year or second year. It strikes me that we will be able to frame such a law that the people of this State will be willing to leave intact for at least a few years. There should be something about our fundamental law which will be permanent and substantial, and the amendment is a provision which is found in several constitutions of the different states. It is simply for the purpose of having something that will stand for at least a few years. I believe the amendment is a wise one and should be adopted.

Mr. PURCELL. Do you offer that as a substitute for section two or a substitute for the whole article.

Mr. WILLIAMS. For section two. I understand that section one is adopted.

Mr. O'BRIEN. I am in favor of allowing the people to say when they please that a revision of this Constitution is necessary. I don't believe it is right to limit them to any particular period. If they desire to change the Constitution in two years they should have the privilege. Let them say for themselves when they desire a revision, and let it be done in accordance with the provisions of File No. 36, section one, which has just been adopted.

Mr. MOER. I am opposed to the substitute, and opposed to it for the reason that no matter what we may adopt in this Constitution at this time it will take us seven years to change it, and that I am not in favor of. We may desire to change something in this Constitution in a very much less time than seven years, and I apprehend that it is very likely that that will be the case. If the Legislature shall first recommend that we submit this question, that is one year. Then two years will have to elapse, and the next Legislature will have to say the same thing. Is not that notice enough to the people that there is a desire to change the fundamental law? It seems to me that this provision

should not prevail. Seven years is a good while before you can change the Constitution. It may be necessary to change it before that.

Mr. WILLIAMS. I think it will take four or five years before we can get any amendment under File No. 36. It seems to me that this Convention should be able to frame a fundamental law under which the people will be willing to live for a period of seven years, and then the question as to whether they will amend it is left to themselves. It is a provision found in a good many constitutions and as I understand it, it has been the desire of most Constitutional Conventions to frame a fundamental law that will meet with the approval of the people—such a fundamental law as they will be willing to live under for at least a few years. Under this proposed article it will take four or five years anyway for a change to be made, while under the substitute, at the end of seven years it is submitted to the people, and if there are serious objections and any desired amendments the people will say so, and a Constitutional Convention will then be held. There should be something settled—something permanent about our fundamental law, and if this section goes through as reported by the committee the matter will be up before every Legislature and be a matter for discussion. It seems to me there should be something more settled and more durable, and I believe this body has sufficient intelligence to frame a fundamental law under which the people will be willing to live for at least seven years.

Mr. MOER. I just want to call attention to the mistake the gentleman from Burleigh is laboring under. He says it will take us four or five years to change this Constitution. I apprehend that it will not take that time under the provisions of File No. 36. I apprehend that if the Legislature meets this year on the first day of January and decide to submit a question to the people, and two years from that date the next Legislature ratify the proposition—I apprehend that the following fall the people will vote upon the question and decide it. It may be very necessary that we should have a constitutional amendment. We are liable to make mistakes, and it seems to me we should not shut off the people of the State for seven years to come. It would only take us two years and some six or eight months to change the Constitution under File No. 36, and not four or five years. It may be necessary to change this Constitution in the next two or three years.

Mr. LAUDER. I believe this amendment ought not to pre-

vail for this reason—as we all know this is a new state. We are growing, and in all human probabilitiy great changes will take place in North Dakota within a shorter period than seven years—changes which may render it necessary to amend this Constitution, and for that reason I think the people should have an opportunity to change their Constitution when the exigencies of the case may require it. It would be different if we were living in a state that had been settled for a long time and affairs of the State were settled—were in permanent condition. Things are shifting, moving, changing here now, and will for some time, and for that reason I believe we ought to leave this matter open so that the people may have an opportunity to vote almost any time. For my part I would be in favor of striking out the part of this section which requires that the proposed amendments shall pass two successive Legislatures. I think it would be better to strike it out, and when the Legislature has passed a proposed amendment it be submitted at once to the people. I am very much opposed to this amendment.

Mr. POLLOCK. As I understand this proposed substitute it would be impossible to amend the Constitution in any comparatively unimportant particular without calling a Constitutional Convention. For that reason I should oppose it for the reason that I would avoid the expense that would necessarily be incurred. There are many matters which may need changing within a short time and they may be comparatively unimportant, but under this substitute it would be necessary for a Constitutional Convention to come together at a large expense and propose this or that amendment. For that reason, if for no other, I am opposed to the amendment.

Mr. WILLIAMS. I proposed this amendment in order that we might have a few sessions of the Legislature that would be quiet, and whose whole interests would be devoted and directed to the passage of general laws affecting the interests of the people. We have to-day adopted a majority report of the Committee on Public Institutions. Perhaps if this section is not adopted that I have introduced, there might be a Legislature that would try to overturn everything that has been done—there might be one a year from now that would make a similar attempt. I believe the action of this Convention has been wise in settling the location of these public institutions—taking the matter out of the hands of the Legislature, so that the Legislature will be free to act

for the interest of the people in the passage of laws that are needed. This provision that I have offered is found in many of the Constitutions that have been adopted during the last few years. A fundamental law is one that it is not desirable to change very often, and most conventions which have been held of late years have made similar provisions. I believe this Convention will adopt a fundamental law under which the people of this State will be willing to live for seven years. If they do not, we shall fall far short of my expectations. I believe this Convention represents the best elements and best interests of the people of the proposed State of North Dakota. I believe the people will be glad to have the Constitution taken out of the hands of the four or five Legislatures which are to follow the sessions of this Convention. I therefore hope that the proposed substitute will be adopted.

Mr. JOHNSON. Will the gentleman allow me to ask him one question. With the exception of the State of New Hampshire, what states have such a provision in their constitutions?

Mr. McHUGH. I move that the consideration of this amendment be indefinitely postponed.

The motion was seconded and carried.

Mr. SCOTT. I am of the opinion that a mere majority of the Legislature to decide that a question of amending the Constitution, be submitted to a vote of the people, is not enough. That is all that this section prescribes. For that reason I would move an amendment to section one as follows: In line three strike out the word "majority" and substitute therefor "three-fifths."

Mr. MOER. I move that when the committee rise they recommend the indefinite postponement of the amendment.

The motion was seconded and carried.

Mr. SPALDING. I desire to offer an amendment to section two and a further section to this article. I desire to amend section two by inserting in lieu of "two or more" the words "no more than three amendments." I desire to add as section three an article offered as a substitute by the gentleman from Burleigh, with the amendment that seven years be stricken out and ten years take its place. I would say that I agree with the gentlemen who have spoken in this—that the condition of things in this new State is changing, and what may now be proper and best to be inserted in the fundamental law of the State may become obsolete in a few years, and for that reason I would leave it so that it will be possi-

ble to submit some amendments such as may be of importance within a short time, and almost whenever desired, and for that reason I would leave this as it is, only providing that no more than three such amendments shall be submitted in any year, so that the Legislature should not be all the time mixed up in revising the Constitution and getting up a practically new Constitution. I would then submit the article proposed with the change of "ten" in place of "seven" so that whenever the people desire to revise the whole Constitution, there will be some power through which they can do it other than through the Legislature.

Mr. MOER. I apprehend the Legislature has full power in this matter if we say nothing about it in the Constitution. I apprehend the Legislature can assemble a Constitutional Convention any day they see fit for the purpose of revising this Constitution. If we accept the amendment we would simply limit the possible power of amendment to three sections. I simply suggest this. I believe the Legislature should have the power to sumbit constitutional amendments at any time. We are putting things in this Constitution that we may want to change three years from to-day.

Mr. PURCELL. I move that when the committee rise they report a recommendation that the substitute for the amendment be indefinitely postponed.

The motion was seconded and carried.

Mr. WILLIAMS. I move the following amendment to the File now under consideration:

SECTION 1. Any amendment to this Constitution may be proposed in either house of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each house, such proposed amendment, together with the yeas and nays of each house thereon, shall be entered in full on the respective journals; and the Secretary of State shall cause the said amendment to be published in full in at least one newspaper in each county (if such there be), weekly for three months previous to the next general election for members to the General Assembly; and if, in the General Assembly next afterwards chosen, such proposed amendment shall be agreed to by a majority of the members elected to each house, the Secretary of State shall again cause the same to be published in the manner aforesaid, and at the next election aforesaid the said amendment shall be submitted to the qualified electors of the State for their approval or rejection; and if approved by a majority of the qualified electors of the State, shall become part of the Constitution. Where more than one amendment is submitted at the same election, they shall be so submitted as to enable the electors to vote on each amendment separately.

Mr. HOLMES. I think that a two-thirds majority of the peo-

ple should be required, and I would amend section one of File No. 36 by striking out the word "majority" in the fourteenth line and inserting in its place "two-thirds."

Mr. WALLACE. I don't hear any second to the motion of the gentleman. I should say that a majority of the people should have the right to say what they want. It is not customary to require a two-thirds vote, and I think it would be unwise to put it that way in the Constitution.

The amendment of Mr. WILLIAMS was lost.

The File was then adopted.

THE NAME OF THE STATE.

File No. 59 was then taken up. Section one was read as follows:

"The name of the State shall be called and known as the State of North Dakota."

Mr. SPALDING. It seems to me we should know what State this refers to, and the word "this" would be preferable to "the" in the first line—the fourth word.

Mr. LAUDER. I think the word "the" is preferable. There is no state yet. It presupposes the existence of something which now exists. We speak of a State that is to be formed.

Mr. SPALDING. No part of this Constitution refers to any State that exists at the present time, and the object is that when this Constitution becomes operative it will then refer to the State of North Dakota, and not to some indefinite State.

Mr. WILLIAMS. I should like to hear from some of the scholars of the Convention—from the gentleman from Nelson, Mr. JOHNSON.

Mr. JOHNSON. I thank the gentleman from Burleigh for the compliment.

Mr. MOER. I think the invitation to the gentleman from Nelson was made in good faith. I would like to ask Judge CARLAND what he thinks about the matter. I certainly am acting in good faith.

Mr. CARLAND. I move that the consideration of the construction of this sentence be referred to the Committee on Revision.

The amendment of Mr. SPALDING was then put to a vote and carried.

Mr. MATHEWS. I understood the vote was that it be referred to the Committee on Revision. That is what I voted on.

The CHAIRMAN. This section will go to that committee and probably will receive attention from them.

BOUNDARY LINES.

Section two was read as follows:

SEC. 2. The State of North Dakota shall consist of all the territory included within the following boundaries, to wit: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same, from thence south up the main channel of the same and along the boundary line of the State of Minnesota to a point where the seventh standard parallel intersects the same; thence west along said seventh standard parallel to a point where it intersects the twenty-seventh meridian of longitude west from Washington; thence north on said meridian to a point where it intersects the forty-ninth degree of north latitude; thence east along said line to place of beginning.

Mr. LAUDER. It seems to me that this section is improper. I have not an amendment that I can offer now, but I will point out to the committee wherein the error exists. The seventh standard parallel does not intersect the Red River of the North. The Red River of the North does not come as far as that. It is the Boise de Sioux river.

Mr. PURCELL. This section does not say along the Red River of the North, but it says "commencing at a point in."

Mr. FLEMINGTON. In the first few days of the Convention there was passed a resolution referring to a certain matter with reference to the southern boundary of the line of the State, to a committee that had the settlement of affairs between the two States of North and South Dakota. A question arose as to whether or not there was a line established, and I would like to have some member of that committee report what was determined, if anything, in regard to that matter.

Mr. PURCELL. I offered that resolution. The Joint Commission determined that they had no power to act in this matter, and therefore have made no report, but the report they might have made would in no way affect the location of the seventh standard parallel. The only question to determine is where that line is.

Mr. WILLIAMS. I move that the section be adopted. I don't know whether this bounds British Columbia or some other point. I think this is peculiarly a section to be referred to the Commit-

tee on Revision and Adjustment, and they will report a correct section on this subject.

The section was adopted.

THE GREAT SEAL.

File No. 142 was then read as follows:

"The following described Seal is hereby declared to be and is hereby constituted the Great Seal of the State of North Dakota, to-wit:

"A tree in the open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left a bow crossed with three arrows, and an Indian on horseback pursuing a buffalo towards the setting sun; the foliage of the tree arched by a half circle of forty-two stars, surrounded by the motto, 'Liberty and Union, One and Inseparable, Now and Forever;' the words, 'Great Seal,' at the top; the words, 'State of North Dakota,' at the bottom; 'October 1st' on the right and '1889' on the left. The Seal to be two and one-half inches in diameter."

Mr. LAUDER. It seems to me that "Liberty and Union, one and inseparable, now and forever" is somewhat transposed. Why is it not put in the original way? It seems to me that if we are taking a quotation from Daniel Webster to be incorporated and made part of the great seal we should take it literally and correctly, and not transpose it from the original. "Now and forever" should come before the "one and inseparable."

Mr. PURCELL. In drawing up this File we used the statute of the Territory and these words were in there just as they are here.

Mr. LAUDER. I think when we quote Webster we should quote him correctly, and therefore I move that this be amended so that the words "now and forever" shall precede "one and inseparable."

Mr. SPALDING. My recollection is the same as that of the gentleman from Richland. But it seems to me that we should be absolutely certain, and the records should not be cumbered with this unless we are sure. It might be well to make the suggestion to the Committee on Revision and have them make the change if there is a change necessary.

Mr. JOHNSON. I move that we strike out the words "Liberty and Union, one and inseparable, now and forever," and insert in their place the following: "Government of the people, for the peope, and by the people shall not perish from the earth." It has been stated on the floor of this Convention that the words recommended by the committee are from a speech made by Daniel

Webster. If I am correct the question of states rights was under argument and the remark had been made that the liberty was desired first, and union afterwards. In reply to that Webster said, "Liberty and union, one and inseparable." That question is as dead as a smelt. It has been buried for twenty-five years. But it seems to me that the words which I have embodied in my amendment embody a living question. They are the words of Abraham Lincoln at Gettysburg. That is a living question, which it will be well to impress on our people and on our friends.

Mr. BLEWETT. As a democrat I would make a motion that we have on the seal the words: "Public office is a public trust."

The substitute of Mr. BLEWETT was lost.

Mr. SPALDING. I see nothing objectionable in the words introduced by the gentleman from Nelson, but it strikes me we should have a seal twice the usual size to accommodate the words.

The amendment of Mr. JOHNSON was lost.

The File was then adopted.

AGAINST CHILD LABOR.

Mr. PARSONS of Morton offered File No. 72 to become a section in this article.

The File was then read as follows:

"The labor of children, under 15 years of age, shall be prohibited in mines, factories and work shops in this State."

Mr. PARSONS of Morton. We are spending thousands of dollars in the cause of education—thousands every year—and the evil which I seek to avert has become so prevalent in eastern states that they have endeavored in one way and another to bring children of school age and compel them to attend school. This amendment is offered in accordance with the wish of a good many people that we should have a prohibition of this kind in the Constitution in regard to this matter, though I would accept an amendment providing that it should include the sessions of the public schools, so that the children may attend the public schools and not be found in the factories and workshops. I see the Constitutional Convention of Montana have fixed the age at fourteen.

Mr. BARTLETT of Dickey. I move that the word "ten" be substituted for "fifteen." In support of this I would say that all over the country there are plenty of children of thirteen years of age that are well able to work. A reasonable amount of work—it can be restricted to two-thirds of a day—is better than to have the

children running the streets, and I hope the motion will not carry. I believe a little work is better for the children.

Mr. MATHEWS. I am in favor of the amendment to make it "ten" years. In New York and other states in the east lots of children are left homeless and without father or mother, and they have to earn livings of their own, and in many cases this is a great deal better than that they should become objects of charity. I have earned my living since I was eleven, and I am all the better for it.

The amendment of Mr. BARTLETT of Dickey was lost.

Mr. BARTLETT of Dickey. I hope this section will pass as it now stands. If you want to save the country from tramps and vagabonds, give them work to do while they are young. I went into the world and worked for myself ever since I was a little boy. I grew up one of the strongest men in the country I lived in. I tell you, get boys and girls that don't do any work till they are fifteen years old, and you will fill your country with tramps and vagabonds. There is a certain part of the population that will go to school, and if they are inclined that way, there is where you will find them. Work, labor is what makes useful men and women.

Mr. FLEMINGTON. I move to amend the motion by striking out the word "ten" and inserting in its place the word "twelve."

Mr. MOER. I don't exactly understand what the objects of these amendments are. I have heard something about schools, but it is not provided that the children shall go to school. It seems to me that it would be well to leave this to the Legislature. We have not got any factories here. I move that when the committee rise they recommend the indefinite postponement of this section.

The motion was seconded.

Mr. SCOTT. I don't think it wise to incorporate this section in the Constitution. I don't think it wise to limit the age at which a child may begin work. In the case of some children it is absolutely necessary that they work for themselves. They are without mother or father, and if we prohibit them from working we may be working a serious injustice. We have not many factories and workshops in North Dakota yet and are not likely to to have for years to come. I think the whole matter should be indefinitely postponed.

Mr. PARSONS of Morton. It is amusing to see some of these old fatherly gentlemen trying to decide this question. I

did not know that they had had the experience in some of these matters that some of them seem to have had. This is simply a File that has been introduced here by request, but I would like to state, while I don't pose as an educator particularly, I have had a little experience in that line, and after eight years spent in the service, I would say that I have been in schools where we had a law on the subject from the Legislathre, but I have seen the children daily at work in the mines and the factories, when they should have been in school. We are spending thousands of dollars yearly, and not accomplishing what we should accomplish to-day. The very class we wish to reach we don't reach to-day.

The Chair ruled that the motion of Mr. MOER was out of order.

Mr. MOER. I move that the committee recommend that the proposed article and amendments be not adopted.

Mr. WILLIAMS. I hope the motion of the gentleman from Dickey—Mr. FLEMINGTON—will prevail. I think boys twelve years of age are able to do pretty well a man's work. Many of them on farms come near doing a man's work, and sometimes they are compelled to support aged and infirm parents and if they are ordinarily strong they should have the privilege of working.

Mr. MATHEWS. As I said before, I started for myself when eleven years of age. I left home at that age. When I was sixteen years old I had charge of a store in New York State and was running it independent of my employer and conducted it on a paying basis. When I became of age I was in shape to do business for myself and I am in favor of the mbtion of the gentleman from Dickey. I think it is wrong to prohibit children who may be in circumstances that need their work, to prevent them from earning their living when they reach the age of twelve.

Mr. PARSONS of Morton. My father was a Yankee farmer in Vermont, and by hard work he has managed to acquire a moderate fortune. He told me this—he said, "Young man, try to profit by the hardships that I have gone through. Try to have your children well educated." I wish to see our citizens grow up educated. I desire to have ignorance banished from our land if possible. I wish that we shall have educated voters—desire to see our people prosperous and happy. The Legislature by supplementary action can go on and make provision for those who are not in such circumstances as to be able to maintain themselves in schools, and I believe every true hearted citizen will support measures of this kind. I am not going to cavil over the exact

age of the child, but I hope the principle embodied in my motion will prevail.

Mr. MOER. This whole question seems to me to be one of education, and if the gentleman from Morton will fix it so that the Legislature may provide for compulsory education, it would be different, but it simply provides that children shall not work at certain places. I apprehend that it may be necessary if we have factories established in the State that some children work, and if they don't work they will probably be in idleness. Let the Legislature attend to this. If the gentleman will make it so that there will be compulsory education up to the age of fifteen years I will vote for it, but as it is it provides that they shall live in idleness, and that is all there is in it. It seems to me that where children are able to perform manual labor it should be left to their parents and the necessities of the case.

Mr. SPALDING. While I admit it might be entertaining to the Convention, I will not attempt to rehearse my personal history, but it seems to me this is a very good section. The object of this section is this: it does not prohibit child labor when the children are able to work out of doors, but it is intended to prohibit their laboring in mines, factories and workshops. Those are the places where children under fourteen years of age cannot work and be shut up during the working hours of the day without dwarfing them, damaging their physical health—without impairing their future capacity to labor, and they have had a great deal of trouble in the east in the States where factories and mines are numerous in dealing with this subject. The owners of such places have discharged full-grown workers in many places and employed children—shut them up for ten or twelve hours a day in close confinement in rooms that were unhealthy and badly ventilated, where grown people could have lived and not seriously suffered any evil consequences therefrom, but where it was entirely out of place to keep children. That is the object of this amendment —to prevent this sort of thing in this State. Let the children work out of doors or in the stores, and in such places as will not dwarf them physically or injure their development. While this may be said to be in the nature of legislation, yet we have incorporated so many things that are in the nature of legislation, and this is a good thing, and should not be struck out on the ground of legislation without doing the same with many other things that we have put in here.

Mr. BARTLETT of Dickey. I feel this is a matter of great importance. As the gentleman from Morton says, he thinks it is an educational matter. I agree with him that where children have brains it is a good thing to give them education, but above all things in the world the most pitiful thing, creature in life, is an educated fool. You will see many of them start in life, grasp their diplomas as being all that they have in life, and they sink to insignificance in no time. We all know any number of boys and girls who, at the age of twelve or fourteen years are able to do a good day's work. We know that. I feel just this way—we will very probably in the near future have a system of artesian wells and a good many factories and water power. I feel that the children that are growing up should have the privilege of going in and aiding to support their aged parents where they have them, from ten years up. There will be thousands of them here who will fit themselves for men and women this way, and I believe at ten years old there are a great many who are able to earn half the wages their parents can, and not hurt them one bit.

Mr. WILLIAMS. I think "twelve" should be inserted rather than "fifteen." With a boy twelve years old there are some positions in factories that he can fill as well as a man and earn nearly as much. While I agree with the gentleman from Cass that it is not hardly proper for us to recite our personal experience, I know that at twelve years of age I came very near earning the same wages that a grown man earned, and I think it is wrong to put "fifteen" into this provision. I think the young folks should be allowed to work in the factories at twelve years of age. This limitation of fifteen years I don't think is right.

Mr. MOER. It would seem that in Dakota, where we have not got a factory, and scarcely a mine, it is absolutely useless to put this into the Constitution. Were this Massachusetts and it was sought to keep children of 12 or 13 from working in factories, I should certainly vote for it, but here in the absence of all factories, it seems useless. Here is a boy 12 years of age, and under ordinary circumstances it is no hardship for him to go to work. I worked in the harvest field when I was 12 years of age, and I don't believe that my parents should have been prohibited from allowing me to do it, nor if it had been railroad shops should they have been prohibited from allowing me to work there.

Mr. LAUDER. I fail to see the force of the remarks of the gentleman from LaMoure. He says we have no factories. If we

have no factories this provision can do no harm. But we expect to have some here. He tells us he has worked in the harvest field; but this does not prevent boys from working in the harvest field and working out of doors where they will breathe the pure air. These employments are healthful and right. This section aims to prevent the crowding of boys and girls into factories where they are dwarfed, and their health injured, and they are prematurely broken down. The gentleman from Burleigh says a boy of 12 can nearly do the work of a man. That is the difficulty. Because a boy can do that he is often required to do the work of a man. Boys should not be required to do that, and it should not be put into the power of any person to work them like so many cattle in the shops. That is just what this section means, and the same thing will be tried here without doubt when our cities grow up and factories are established.

Mr. ROLFE. Considering that in this State it is proposed to locate several cold storage plants, I think it is advisable for us to incorporate some section in this Constitution that will prevent children of tender age from being employed in such works, and I think 12 years is about the proper limit.

The section was adopted, with the word "twelve" inserted.

Mr. FLEMINGTON. I move to adjourn.

The motion prevailed, and the Convention adjourned.

THIRTY-SIXTH DAY.

BISMARCK, *Thursday, August 8, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

APPORTIONMENT.

Mr. PARSONS of Morton. I move that the report of the Committee on Apportionment be adopted.

The motion was seconded.

Mr. HARRIS. The Committee on Apportionment labored with this question for three days. There were a number who were not satisfied, but we withdrew our objections and agreed to this report. Every man who had any objections withdrew them in a spirit of conciliation and compromise, and it is the unanimous report of the committee of twenty-five, and I trust it will go through just as the committee reported it. It was agreed by the committee that it was the fairest apportionment that we could arrive at.

The report was adopted.

SCHOOL AND PUBLIC LANDS.

File No. 130 was then taken up and discussed, being the report of the Committee on School and Public Lands.

Sections one to five inclusive were adopted.

Section six was read as follows:

SEC. 6. No lands shall be sold for less than the appraised value, and in no case for less than $10 per acre. The purchaser shall pay one-fifth of the price in cash, and the remaining four-fifths as follows, to-wit: One-fifth in five years, one-fifth in ten years, one-fifth in fifteen years and one-fifth in twenty years, with interest at the rate of not less than six per centum payable annually in advance. All sales shall be held at the county seat of the county in which the land to be sold is situate, and shall be at public auction to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall

not have been specially subdivided shall be offered in tracts of 160 acres, and those so subdivided in the smallest subdivisions. All lands designated for sale, and not sold within two years after appraisal, shall be reappraised before they are sold. No grant or patent for any such lands shall issue untill full payment is made for the same. *Provided*, That all lands contracted to be sold by the State shall be subject to taxation from date of such contract. In case the taxes assessed against any of said lands for any year, remain unpaid until the first Monday in October of the following year, there and thereupon the contract of sale for such land shall become null and void.

Mr. CAMP. It seems to me that the penalty imposed is very severe. It is going far beyond any tax law I ever read. I never knew of a man losing title to his land on his tax becoming delinquent. In this Territory we have three years—two years after the date of the sale in which to redeem. It strikes me that for the neglect which might readily occur a man should not lose his entire title to his land beyond hope of redemption where there is perhaps four-fifths of the money paid.

Mr. BEAN. There is a great difference between cases where the title belongs to individuals and cases where it still lies in the state. I think this proviso is perfectly proper.

Mr. SPALDING. This proviso regarding the contract being null and void is intended to follow out the same provision which is provided under the contract of sale, in case of non-payment of the interest or the purchase money. We should feel the same interest regarding the taxes that we do regarding the purchase money or the interest. That clause was inserted to get around the decision of the Supreme Court of the United States in the case of the county of Traill against the Northern Pacific railroad company, where the court made the decision on a case exactly parallel with what this case would be, provided we taxed these lands and then there was a failure to pay the taxes. You could not enforce the payment of the taxes unless you could sell the lands and give title. If you sold the lands the State would be depriving itself of its lien on those lands. It would be selling the lands for a song and depriving the State itself of four-fifths, perhaps, of the purchase price, and the only way to get around that and leave these lands taxable is to put this proviso in.

Mr. MATHEWS. I see that the words "not less than" before the words "one hundred and sixty acres" have been struck out. Take it on the section line along side of me—there is 400 acres and 240 of that is no good. It is not worth anything for cultivation, and it would make part of that section of land almost worth-

less, while the other would not sell for enough to overcome the loss on the 240, while the whole section would sell for the full value of $10 or more per acre. I think it would be well not to have these words stricken out. I think we should be able to sell a section if necessary in a piece. Now we cannot sell more than a quarter section to any one party. I move that our former action in regard to this matter be recinded—I mean to insert the words "not less than" in line twelve, section six.

Mr. BEAN. This amendment made in the Committee of the Whole was as the Committee on Schools and Public Lands intended it to be. They did not intend those three words to be in there. They did not intend to have more than a quarter section offered at any one time, and it seems to me that this is the proper way to do it. If these school lands are to be sold to the farmers an ordinary farmer is not supposed to be able to buy a full section at $10 an acre. A quarter section of 160 acres is about all an ordinary farmer is supposed to be able to buy at one time. That is why we favor selling only 160 acres.

Mr. MATHEWS. My object was to be able to sell it to the best advantage to the new State and the school fund. I think it would be wrong for us to arrange it so that we could not get as much for the land by selling it as a whole as by selling it in smaller parcels. I think the Legislature should be empowered to sell this land in the way that will best serve the interests of the State at large.

Mr. SCOTT. I think that the State should be allowed to dispose of these lands in such a manner as would the best advance the interests of the State. Frequently they would be able to sell 160 acres to the best advantage, and sometimes they would be able to sell a whole section better than 160 acres. If they are allowed to sell only 160 acres at a time the best portions of the sections will be picked first, and the poorest portions will be left, whereas very often a purchaser would be found who would take the whole section at the price you would get for the best quarter. I don't think it is policy or wisdom to restrict the State in the matter of selling these lands and say just what it shall sell at one time to any one purchaser. I believe if they can sell eighty acres and the board who appraises the land thinks it is to the best interests of the State to sell the land in so small a piece, they should be allowed to sell it that way. But if they can sell 640 acres or two or three sections at the price set for them to good responsible par-

ties, they should be able to sell them. We want an endowment fund for the schools. You would not now say how in all future time to come we would want to dispose of our own farms. I think it is policy to have no restrictions, and the utmost liberty should be given our officials in charge of this business, so that they would be able to look after the best interests of the State, and get as much money out of these lands as possible. If this amendment prevails it is a great deal better than to have the words stricken out. Then you will not be able to offer these lands in tracts other than quarter sections. I think the words "not less than" should be inserted.

Mr. BARTLETT of Dickey. This all sounds very nice to people who have not had experience, but just so sure as you fix this land so that it can be sold in large quantities the rich men of the country would gobble it up. The poor man would have no show. It is an unfortunate thing that money has an influence, and if you follow the advice of the gentleman who has just spoken, wealthy men who will want to control the purchase and sale of these lands will tell the men who have the selling of them that it will be better to sell in large quantities. I want to say that it is not true. It will cut out all of these small men—men who are striving to get homes. I know how it works, and that will be the tendency —to wipe out all the men who can possibly rake and scrape up enough money to buy 160 acres of land. The result will be, the very men you want to benefit will not be able to get any of this land.

Mr. SCOTT. This talk is all very well—claiming that the amendment would be in the interest of speculators, but let us read the section. According to this article the purchaser must pay only one-fifth in cash; the next one-fifth he cannot pay till five years. He has got to pay 6 per cent. interest. He cannot pay the next fifth till ten years after the first payment, and so on. I ask if there is any probability that the speculator is going to buy a land on those terms? He can buy all the land he wants in North Dakota and pay cash for it, exclusive of school lands, so that there is not going to be much running around for the privilege of picking up the school lands. They are not better than other lands. He is not going to buy school lands if he is a speculator, and on such terms as we are putting in here, when he can buy other lands just as good on his own terms. Speculators won't pay one-fifth cash and taxes and interest on the balance for

twenty years. No man will buy these lands except he wants them for actual cultivation—he can't afford to do it.

Mr. CAMP. It seems to me that some limit as to the quantity of land that will be sold to any one person should be placed in this article. The United States has established a rule as to this in the case of its public lands. Before the present pre-emption laws were enacted the public lands were sold at auction, and vast quantities of these lands passed into the hands of speculators in this way. The present policy of the United States is known to all of us. No man can come and buy a foot of these lands except by scrip. The other States have had the same experience as the State of North Dakota will have if there is no limit. Speculators have gone into States adjoining us, and bought up as much as one hundred thousand acres by one fell swoop. The matter of the limitation as to price is referred to in the new report of the committee. File No. 138 provides that the price at which some of these lands may be sold may be less than ten dollars an acre provided Congress pass an act modifying the terms of the grant. It seems to me that in case an act is passed by Congress as referred to, and all restrictions as to quantity of lands to be sold to any one person be removed, the inducements to speculators to take these lands would be great. They would only have to pay one-fifth down, and they would hold these lands for a rise without a large investment, and that is just the way speculators like to operate.

Mr. BARTLETT of Dickey. I do say that if you sell it in large quantities the moneyed men would have the influence, and the result would be that the poor man would not get any of the land. I would like to see the law fixed so that the man who can just raise enough money to get 160 acres can get it.

Mr. LAUDER. I am in favor of the proposition laid down by the gentleman from Dickey. It seems to me that we are taking a great deal of time over this proposition. We went over this same ground a few days ago. I was at that time in favor of putting in this Constitution a provision that no man should be permitted to buy more than 640 acres of this land at one time or at any time, thereby reserving it to actual settlers and preventing it from going into the hands of speculators. That having been voted down I do not care to bring it up again, but I am in favor of every provision the effect of which will be to put this land in the hands and under the control and in the possession of actual settlers—men

who are living on small farms and cultivating them, and to place every obstacle we can, consistently with the interests of the State, in the way of permitting these lands to go into the hands of speculators.

Mr. SCOTT. If the gentleman will notice, it reads as follows: "Such lands as shall not have been specially subdivided shall be offered in tracts of 160 acres." There is a public sale, let us say, and I have made up my mind to gobble up all the lands in my county and I attend the sale. They are offered in tracts of 160 acres on certain terms. I take out the best quarter sections, and it is very seldom that you will find a section of land that is all good. I will buy those quarter sections and leave the poor land, and that they cannot sell. Then they have got the best land sold and the poor land is left. If we did not limit the sale to 160 acres I would be compelled to buy the whole section. That is why I say it is unwise. We will sell our best quarters in this way.

Mr. CLAPP. It seems to me that this section is entirely in the interest of the rich man, for they wish to provide that it shall be sold in lots of not less than 160 acres. If they are going to put it on a fair footing why do they put any limit. Why do they limit it one way and not another? Why not change it so that a poor man can buy eighty acres if the commissioners think it is advisable to sell it in such small parcels?

Mr. STEVENS. I move as a substitute the adoption of the section as it came from the committee. After the action that was taken yesterday, there are a great many here who are afraid that some change may be made in this section for a purpose. It is possible there may. Under the action of yesterday we got 40,000 acres of land down in my county, and we want all the money we can get out of it, and I want the report to stand as it is for I believe it will get the most money out of it.

Mr. JOHNSON. I wish to offer an amendment—to strike out 160 acres and insert the words "quarter section." We have had a good deal of difficulty with quarter sections not being exactly 160 acres in some cases. I live along a line—and I presume some of you have had a similar experience—which Sparks investigated and found contained fluctuations. It was considered at one time that a quarter section of land was the same as 160 acres, but it was found different. Mine was 181 acres and a fraction, and Sparks cancelled all the claims on that line because of that "fraud." The government decided that they could not sell their land in more

than 160 acre lots, and we had committed fraud. I appealed to the Secretary of the Interior and the matter is still held up. Many of the settlers gave up the struggle immediately, and gave up large quantities of well improved land. I think it is the intention that we should sell a quarter section, no matter how much it contains, whether it is more or less than 160 acres, and not allow these difficulties to arise. In section thirty-six you will find that it is very seldom that a quarter section will be exactly 160 acres.

The amendment of Mr. JOHNSON was accepted by Mr. STEVENS.

The motion of Mr. STEVENS was carried.

Mr. SCOTT. I move that line twelve be amended so as to read as follows: "Shall be offered in tracts of not less than a quarter section and not more than 640 acres."

Mr. BEAN. We have just adopted the section, and this amendment is not in order.

Mr. SPALDING. I know, or I think I know, what the motion of the gentleman from Ransom was, but the Chair did not put it so as to make the motion an adoption of this section, and I did not vote on it with that view. I am confident we did not vote on it that way.

Mr. STEVENS. I am perfectly willing to have this put to a vote again, but I am opposed to having this open to further amendment, and if the gentleman will consent that we will take a vote on this question and vote for the adoption of this section without further amendment, I am perfectly willing that it shall be put to a vote again.

Mr. SCOTT. If the question is open for discussion again I would like to hear the gentleman from Ransom say why it is the best policy to insert in the Constitution a provision which will say the State must sell 160 acres, neither more or less. I want to know why that is good policy.

Mr. LAUDER. That is what we have been talking about for an hour. I was convinced of this when this question was before the Convention three or four days ago. We have talked this over for nearly a day, and it seems to me every member has made up his mind how he wants to vote.

The section was adopted.

Sections seven and eight were adopted with verbal corrections. Section nine was read as follows:

SEC. 9. The Legislature shall have authority to provide by law for the leasing of lands granted to the State for educational and charitable purposes, but no such law shall authorize the leasing of said lands for a longer period than five years. Said lands shall only be leased for pasturage and meadow purposes, and at public auction after notice as heretofore provided in case of sale. All rents shall be paid annually in advance.

Mr. STEVENS. I move that section nine of File No. 138 be substituted for the section just read.

The proposed substitute reads as follows:

SEC. 9. The Legislature shall have authority to provide by law for the leasing of lands granted to the State for educational and charitable purposes, but no such law shall authorize the leasing of said lands for a longer period than five years. Said lands shall only be leased for pasturage and meadow purposes, and at public auction after notice as heretofore provided in case of sale. *Provided*, That all of said school lands now under cultivation may be leased for other than pasturage and meadow purposes until sold. All rents shall be paid in advance.

Mr. SCOTT. I move as a substitute that section nine of File No. 130 be adopted.

Mr. ROBERTSON. I hope the motion of the gentleman from Barnes will not prevail. This provision amending section nine was made by the committee in response to an almost unanimous demand, and it seems to me that we should adopt the section from File No. 138. I would therefore urge that the motion of the gentleman from Barnes do not prevail.

Mr. PURCELL. As I understand section nine of File No. 138, it differs from section nine of File No. 130 in this—that it provides for those lands which are not cultivated, that they may be leased and some revenue derived from them. That I understand is the difference. A large portion of the school lands today are being cultivated, and the idea is to derive some revenue from them.

Mr. MATHEWS. I am in favor of section nine, File No. 130. Take it through our county, and a great many school lands are being broken up now so as to take advantage of just this amendment that is proposed. There were parties who had got on the Saturday before to the school section within a short distance of where I live with eight teams, and for the purpose of taking advantage of this, and every acre of these lands has been broken up in this way, and it serves to depreciate their value. I am in favor of adopting section nine, File No. 130.

Mr. McKENZIE. I hope the section—nine, File No. 138—will

prevail for this reason--when the committee had this under consideration this fact was apparent, that if lands were only sold, and not leased except for pasturage and meadow purposes, from some of them we would not get any revenue for a long time. Again, in case of school lands under cultivation, those cultivating them will have the benefit and use of the lands without paying anything to the State, and the committee was of the opinion that this clause should be inserted so that lands now under cultivation shall be rented and then we will get a benefit of the rent that will be paid which will amount to thousands of dollars. If we rent them for one year, which we can do under this clause, we can collect some rental. Otherwise these people who are cultivating these lands can go on using them and they will have next year's crop in spite of you and you will lose that rent which will amount to thousands of dollars.

Mr. SCOTT. We can sell these lands as soon as we can make a contract to lease them. As soon as the State government is in force, and they are forced to lease these lands, they can sell them to the parties in possession. If the parties in possession do not choose to buy them they should not remain in possession. If they don't choose to buy them as soon as they can get a title from the State, then they will not buy them after they have taken one crop off. I think it is poor policy for us to begin renting school lands for other than pasturage purposes. It will destroy their value, and a party in possession, if he desires to buy them, can buy them as soon as he can lease them, and if he does not desire to buy them he should get off the land.

Mr. BARTLETT of Dickey. We had that matter under consideration for a long time, and made the change because we thought there were some lands that we could get something out of in this way and in no other. The gentleman says that if they don't want to buy the lands they should get off. There is no power that can make them get off, and the result is that they cannot be appraised and offered for sale. They might live there for years and we should lose everything from those lands that we might have. It seems to me that this is the section to protect the State.

Mr. PARSONS of Morton. The gentleman from Sargent and the committee have fully considered this matter, and it seems to me a very wise provision indeed for one reason—the school lands in this State that have been cultivated are the best lands we have got. They are the most valuable for cultivation, for it stands to

reason that if a person is going to cultivate any land he is going to select the best. Now then, it seems to me to be foolish, to say the least, to allow those lands which have been cultivated—to allow them to grow up to weeds and remain idle and have no rental from them when they are just the ones that would bring in an income. If parties wish to buy them, all right; if they don't want to buy them, allow this commission the privilege of deriving some revenue from them. It is foolish to say the best of our school lands shall lie idle because they shall not be used except for pasturage purposes. When we consider that the best portion of our lands have been broken up, it is the height of folly to say we shall not derive any income from them.

Mr. CLARK. We gave this matter long and serious consideration in the committee, and this was one of the main features we desired to consider in having the bill sent back to us. Though there may be a few instances like those cited by the gentleman from Grand Forks where people are breaking up land to take this advantage, I think there will be only a few to do this; whereas, on the other hand, these lands can't be rented for pasturage or meadow lands, and cannot be sold, and will lie in idleness and grow up to weeds. Every member of the committee, after giving the matter consideration, was desirous that this section (nine of File No. 138) should be adopted.

Mr. SPALDING. There is another reason. You take it especially in the Red River Valley, and if the school lands that have been cultivated are not allowed to be cultivated any more, they will, inside of three years, seed the whole country from Manitoba to South Dakota with weeds. It would depreciate the value of the adjoining land thousands of dollars, and it looks to me as a matter of self protection and public policy that we must rent these lands. They must be rented as a matter of self protection—as a matter of protection to the adjoining land owners.

The various amendments were voted down, and the report of the committee adopted.

Section ten was adopted.

Section eleven was read as follows:

SEC. 11. No law shall ever be passed by the Legislature granting to any person, corporation or association any privileges by reason of the occupation, cultivation or improvement of any public lands by said person, corporation or association subsequent to the survey thereof by the general government. No claim for the occupation, cultivation or improvement of any public lands shall

ever be recognized, nor shall such occupation, cultivation or improvement ever be used to diminish, either directly or indirectly, the purchase price of said lands.

Mr. POLLOCK. I move that this section be stricken out. I make this motion for the reason that there are a good many actual settlers on small pieces of this land especially in the Red River Valley, and they are men who have gone and erected buildings more or less valuable with the expectation that the same rule would prevail when the State came into the Union as prevailed in Minnesota and Wisconsin and many other states, giving them a chance to purchase their land at the price it might bring—giving them the preference over others. The objection that may be urged is that there are others who have large tracts who have farmed them and have taken the best they could. I have no defense for those who have farmed the land as a matter of profit and have taken the best that it would yield, but I have for those who under a misunderstanding and in good faith made their improvements there and live there. The Legislature can provide in what manner these parties shall be treated, who have really settled on these tracts, and how those who have not actually settled on the lands, but have taken off the produce of the lands, shall be discriminated against. It seems to me that in view of the circumstances something ought to be done to arrange it so that a settler will not have to buy his own improvements. The legitimate result of the passage of this section is that the man who is living on that section must move his improvements or buy the improvements he has placed on his land. As a matter of strict justice and right it may be proper to pass this section, but in view of the precedents that have prevailed in other states it is no more than right that these men should be protected.

The amendment of Mr. POLLOCK was lost.

All the remaining sections were adopted and the committee rose.

EVENING SESSION.

Mr. WALLACE. A very valuable portion has been stricken out of section thirteen, of File No. 130. We simply provide now that the Treasurer shall deposit the funds in the name of North Dakota. We stop there. The part that has been stricken out provides for the safe keeping of the funds and I think it was very

unwise to strike it out. If you will examine the section you will see the point I wish to make. I move that the report of the Committee of the Whole be accepted with the exception of that part of it referring to section thirteen of this File.

The motion was seconded and carried.

Mr. PARSONS of Morton. I move the adoption of the following resolution:

"*Resolved*, That the Committee on Revision and Adjustment be instructed to report the following as section eighteen of the report of the Committee on Corporations Other than Municipal, and that the same become a part of the Article on Corporation.

SECTION 1. Whenever a difference shall arise between any corporation other than municipal and its employes or an industrial society incorporated under the laws of the State, any of whose members are employes of such corporation, if the disagreement cannot be adjusted by conference, it shall be submitted to arbitration under such rules as may be prescribed by law."

Mr. BARTLETT of Griggs. I think we argued this matter pretty thoroughly, and I move that the resolution be laid on the table.

Mr. NOBLE. I make the point of order that a resolution of this kind cannot be placed in the Constitution without a first, second and third reading.

Mr. PARSONS of Morton. It is simply instructions to the Committee on Revision.

The motion of Mr. BARTLETT was adopted.

Mr. PARSONS of Morton. In accordance with the wish of recommendation of Major Powell, the National Geologist, I offer the following:

Resolved, That the following be reported to the Revision and Adjustment Committee with the request that the same be reported as adopted as an article or section of the Constitution:

"All flowing streams and water ways shall forever remain the property of this State."

The motion was temporarily withdrawn.

Mr. LAUDER. I desire to offer the the following resolution and move its adoption:

Resolved, That the Committee on Revision and Adjustment be requested to report the following as a section of the article on corporations other than municipal: "Laws shall be passed by the Legislative Assembly providing for the amicable settlement of difference between employers and employes by arbitration.

Mr. STEVENS. I desire to know if that is not already covered in the provision which provides for boards of conciliation.

Mr. LAUDER. No, that is not provided for. The boards of conciliation provided for in the judicial report simply provide for the settlement of differences that may arise without a law suit. It does not provide for the settlement of differences that arise between employers and employes. This provides for an entirely different thing and I hope it will pass.

Mr. BARTLETT of Dickey. I arise for information. I want to know whether the gentleman intends this to be without appeal, for if that is the case I should in my feeble way, oppose it. I don't believe that it is right nor just that any company or creature should be compelled to leave serious matters to arbitration simply in this way. I don't believe it is right. Never in my life have I had a misunderstanding that I wanted to have left to my neighbors. That I shall be arraigned here and compelled to stand by an arbitration whether I want to or not, realizing all the time that it was a put up job on me, is not right, and I don't think it is right that a corporation shall be compelled to do anything of the kind.

Mr. LAUDER. This does not provide for any arbitaray submission. It provides or suggests to the Legislature that it provide some means by which parties can submit their differences to arbitration if they wish to, voluntarily.

Mr. STEVENS. I desire to read section thirty-four of the report of the Judiciary Department. It is as follows:

SEC. 34. Tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law, or the powers and duties of the same may be conferred upon other courts of justice, but such tribunals or other courts when sitting as such shall have no power to rei der judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunals or courts.

Now, unless the concilitroy measures to be adopted as a Board of Arbitration conform to this section, it would be in conflict with this section, and if it does conform, it is covered by this section, and these courts could settle differences between employer and employe as well as differences between any other parties. It seems to me that the matter is fully covered by this section, and any other board to be established would be in conflict with this section.

Mr. LAUDER. It would simply be another section, providing for an entirely different thing. The court that is contemplated by

the section just read by the gentleman is a court of justice that parties can go into and submit their differences without a summons being served. This contemplates an entirely different thing. It simply means that in order to avoid a strike, parties can go before a Board of Arbitration if they voluntarily submit themselves to the board. This provides for settlement of differences where differences arise between employers and employes as to wages. There is no right of action either way—no right of the employer to cut down wages and no right of the employe to demand more. There is no legal right in the matter as legal rights are viewed now under our law. But where these differences may be referred by them to an Arbitration Board to be settled, a strike may frequently be avoided. It contemplates an entirely different purpose from the section the gentleman from Ransom has read. I believe it is in the interests of humanity that it should be so, and I think anything we can incorporate in our Constitution that is reasonable; that does not infringe on the rights of anyone and still in any measure tends to the desired result, should be adopted.

Mr. PARSONS of Morton. I desire to supplement the remarks that have been made by saying that this provision is simply to cover something which has no standing in the courts whatever. You cannot bring it into the courts in any way, shape or form, and it is simply to cover those differences which may arise and settle them and stop striking. It is a pacific measure and that is all there is to it. I wish to extend the hearty thanks not only of myself but of thousands of laboring men in North Dakota to the gentleman who voted against tabling that resolution, and I wish to say the record of that will not stop here, but will go to those who are interested all over the United States.

Mr. STEVENS. I desire to say I was heartily in favor of the other motion, but this is gotten up without any ultimate good to anybody. It is got up simply as a catch-penny, and I move that it be laid on the table.

Mr. LAUDER. I desire to have that read again, and let us see how much of a catch-penny there is in it. I say it is not a catch-penny. It is offered here in good faith, and the purpose of it is a noble purpose.

Mr. STEVENS. The motion is not in order. We have no right to instruct the Revision Committee to bring in such an article. It must go on its first and second reading.

The CHAIRMAN. It cannot be passed as an article. It may

be voted on simply as the sense of the Convention that the Revision Committee should do that.

Mr. SELBY. It is unusual in a discussion of this character that a member of this Convention, for the purpose of holding out an inducement to members to sustain a measure, will make the statement that was made here by the gentleman to the effect that this goes over the United States. I wish it distinctly understood that I made no vote here that was not intended to go out as far as it will reach. It seems to me that in the article adopted several days ago, this point is substantially covered. To say that because I voted against this resolution it is to go all over the United States, and to say it in such a way as to intimidate my vote, will have no effect on me, and I vote aye on the question of laying this motion on the table.

Mr. PARSONS of Morton. I rise to a question of privilege. I have not waved any club or used any threat in this House to anyone, but the remarks I made were in relation to the vote that had been taken—the roll call that had been taken, and I expressed the heartfelt thanks of myself and those who had requested me to introduce this. The record is there. The resolution is not mine. It is that of the gentleman from Richland, and I again desire to thank those who have stood by me in my measure.

A vote was then taken on a motion to lay Mr. LAUDER'S motion on the table. It was laid on the table by a vote of 39 to 30.

Mr. PARSONS' resolution relating to flowing streams was then reintroduced.

Mr. SCOTT. I think the resolution is all right, but where are we coming to? It has been our rule ever since we met here to have no article go to the Committee on Revision and Adjustment until it had had a first and second reading. The first and second reading could not be had on the same day. If we allow ourselves to go into this business—if any member is now free to offer an article and we merely instruct the Committee on Revision to present it as part of the Constitution, where are we going to? It was supposed that every original proposition should be referred to its proper committee, returned from the committee and pass its first and second readings. But now we propose by resolution to send this article to the Committee on Revision and Adjustment. I think the section is all right, but I don't believe we can afford to adopt this measure and allow various members to introduce measures of this kind.

Mr. CAMP. I move that the rules be suspended and the article be put upon its second and third reading.

The motion was seconded and carried.

Mr. JOHNSON. There are a good many flowing streams that are now the property of individuals. Does this Convention contemplate the confiscation of the streams?

A discussion ensued on the question of adjournment and the Convention decided that when they adjourn they would adjourn to Tuesday at 2 o'oclock.

Mr. CAMP. There is a matter of great importance and the Revision Committee cannot act upon it until it is settled. The whole matter of the Schedule has not been reported to the Convention. I desire also to move that the resolution introduced by the gentleman from Morton, and which has had its first and second readings be referred to the Committee on Revision and Adjustment, with instructions to report the same as part of the Constitution.

Mr. SCOTT. The gentleman from Nelson suggested a few minutes ago that a great many running streams and waterways in this State are private property. Now what effect will the incorporation of this section in the Constitution have? Nearly all the streams in the Territory, except the larger ones, are the property of some private individuals. That being the case, I think we should be careful what sort of a clause we insert in this Constitution in regard to them. There is another class of streams. Suppose I dig an artesian well, and there is a flow of water. Would the State reserve the right to use that water when it was my individual property?

Mr. PARSONS of Morton. The gentleman I believe is a lawyer. I would like to put a proposition to him. If a man owns land on both sides of a stream and owns the land under it, he may utilize the portion that is on his land, but has he the right to turn that stream from its course—to appropriate it in any way to the detriment of anyone else below him who may need it? I don't think he has a right to control that water or get up a syndicate that should control it in any way. The matter of irrigation may become one of the most important questions and in fact one of the most vital interests, and it seems strange to me that any man should endeavor to withhold from, or keep out of the power of the State the natural waterways. It seems to me to be common sense that they should remain the property of the State.

Mr. HOLMES. I move that the matter be referred to the Attorney General.

Mr. STEVENS. Is this the resolution that was passed to its first and second reading a few moments ago? If so the second and third reading cannot be had on the same day, and it cannot be taken up without a suspension of the rules.

Mr. CAMP. I am heartily in favor of this article and am anxious that it should go to the Revision Committee, and we can discuss it. I hope it will go to that committee.

The motion to send it to the Revision Committee with instructions to embody it in the Constitution was carried.

Mr. BARTLETT of Griggs. It seems to me we should find out if there is anything on the Clerk's table that we can act on, and if so clean it up and get it into the hands of the Revision Committee. We want that committee to do its work well and thoroughly and they can only do that when we have got everything into their hands. I don't know but there are some matters that can be acted upon.

Mr. WILLIAMS. The Committee on Schedule cannot make their final report till they know what is going in the Constitution.

Mr. O'BRIEN. When the motion was put here to adjourn till next Tuesday, it was done for the purpose of giving the Revision Committee an opportunity to take advantage of that time in performing their labors. If they cannot do the work that is allotted to them because of the failure of the committee to report, I am in favor of reconsidering the vote by which we decided to adjourn. We want to get through, and we don't care to go home and come back and then have to stay several days longer. I move that the vote by which we decided to adjourn till Tuesday when we adjourn, be reconsidered.

Mr. NOBLE. If the Convention will permit me I will explain something about this Schedule Committee. The committee is ready to report everything except the question of expenses and a few minor questions which it is impossible to report on until other committees report. For instance, the Committee on Expenses. It can all be handed to the Committee on Revision, and any little thing of that kind can be added to the Constitution by the Convention when in Committee of the Whole.

Mr. WALLACE. I desire to move that section thirteen of File No. 130 be adopted as printed. It reads as follows:

SEC. 13. The Legislature shall pass suitable laws for the safe keeping, transfer and disbursements of the State school funds, and shall require all officers charged with the same, or the safe keeping thereof, to give ample bonds for all moneys and funds received by them, and if any of said officers shall convert to his own use in any manner or form, or shall loan, with or without interest, or shall deposit in his own name, or otherwise than in the name of the State of North Dakota, or shall deposit in banks or with any person or persons, or exchange for other funds or property any portion of the school funds aforesaid, or purposely allow any portion of the same to remain in his hands uninvested, except in the manner prescribed by law, every such act shall constitute an embezzlement of so much of the aforesaid school funds as shall be thus taken, or loaned, or deposited, or exchanged or withheld, and shall be a felony, and any failure to pay over, produce or account for the State school funds, or any part of the same intrusted to any such officer as by law required or demanded, shall be taken to be *prima facie* evidence of such embezzlement.

Mr. SPALDING. The Committee on School and Public Lands considered this matter very carefully and decided to cut out the matter that was cut out, and to insert the amendment that was inserted, for the reason that there is nothing in the part that was cut out except what is in the statute, and there is no reason why we should lumber up this Constitution with a definition of a crime of embezzlement. We can't undertake to define every crime in the code here.

Mr. WALLACE. I think it is very important that we should place every safeguard around the money of the Territory that is possible. It is in the Constitution of the State of Minnesota.

Mr. MOER. In view of the fact that it is getting late I move the previous question.

The motion of Mr. WALLACE was carried by a vote of 32 to 23.

Mr. CARLAND. As one of the members of the Committee on Revision and Adjustment I ask authority for that committee to have a sufficient number of copies of its report printed to furnish every member of this Convention with a copy. My idea is that the Constitution should be in the hands of every member of the Convention when we come to consider it after it has gone through the hands of that committee.

The suggestion of Mr. CARLAND was put in the form of a motion and adopted.

Mr. CAMP. I move that the Committee on Schedule be requested to hand their report to the Committee on Revision and Adjustment to-morrow morning at 9 o'clock.

Mr. SCOTT. That is an important committee. It is a little

out of the regular course to have this done, but under the circumstances I see no other way than to report to the Committee on Revision. But if they don't report to-morrow I don't see how we are going to compel them.

The motion of Mr. CAMP was seconded and adopted.

Mr. APPLETON. I desire to offer the following resolution and move its adoption:

Resolved, That the Committee on Revision and Adjustment be requested to report the following as an article of the Constitution:

"The State Treasurer shall invest all funds that may come into his hands as such Treasurer belonging to the State of North Dakota in Government bonds, except the sum of $50,000. All interest collected from said bonds to go to the State, and shall sell said bonds whenever the funds shall be needed."

Mr. SPALDING. This resolution is out of order without a suspension of the rules.

Mr. APPLETON. I move that the rules be suspended and that the article pass to its first and second reading.

Mr. McHUGH. I move that the further consideration of the resolution be indefinitely postponed.

The motion was seconded and carried.

Mr. WILLIAMS. I move to adjourn.

The motion prevailed, and the Convention adjourned.

FORTY-FIRST DAY.

BISMARCK, *Tuesday, August 13, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Communications were read from Grand Forks, Casselton, Jamestown, Lisbon, Minto, Park River, Sheldon, Portland, Hatton, Mayville, Lakota, Wheatland, Fargo and other places relative to File No. 143.

Mr. SCOTT. I move that the further reading of these resolu-

tions be referred to a committee of five, to be appointed by the Chair.

The motion was seconded by Mr. MILLER.

Mr. PURCELL. I hope this motion will not prevail. It seems to me that these expressions of the people should be heard here. It seems to me the people have a right to send petitions to this body, and that we have a right to hear them.

Mr. BARTLETT of Griggs. I wish to endorse the sentiment of the gentleman from Richland. We have adopted a section which gives the right of our citizens to petition their representatives, and says that it shall not be denied, and I don't doubt the very man who made this motion voted for that section.

Mr. BARTLETT of Dickey. I think the motion should not prevail. I think it is no more than right that these communications should all be read.

(The remainder of the communications were read.)

Mr. MILLER. I move that all these communicatinos be referred to a committee of five, to be appointed by the Chair.

The motion was carried.

The committee was appointed as follows: Messrs. MILLER, JOHNSON, SELBY, STEVENS and COLTON.

Mr. MOER. I find on my desk the report of the Revision Committee. It gives us the Constitution in full as recommended by that committee, and in view of the fact that we have had no time to examine it, and I think we need time to do so, I would move that we adjourn until 8 o'clock this evening.

The motion was carried.

EVENING SESSION.

The Convention proceeded to consider the report of the Committee on Revision and Adjustment.

The Preamble was read as follows:

"We, the people of North Dakota, grateful to Almighty God, for the blessings of civil and religious liberty, do ordain and establish this Constitution."

Mr. ROWE. As a substitute I move that File No. 38 be substituted for this Preamble. It reads as follows:

"We, the people of North Dakota, in order to establish justice, insure domestic tranquility, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution."

Mr. BARTLETT of Dickey. I hope the members will give these two sections serious reflection. It is a matter of some importance. Those who are conversant with ancient history know that this question of religion in the constitutions or in the law has been the means of deluging the world with blood. It has been the means of more human sacrifice—the destruction of more human life than everything else, and for my part while I believe in a Deity—while I believe it is right to worship, and I don't believe there is any good man that does not worship, I don't believe that these things should be in a Preamble of a Constitution. I hope they will give this matter consideration and put File No. 38 in the Preamble.

Mr. STEVENS. This question has been once definitely settled by this Convention that the Preamble of this Constitution should contain the name and words "Almighty God" and for that reason I move that the gentleman's motion be laid on the table

The motion of Mr. STEVENS was carried and the Preamble as read was adopted.

THE BLACK LIST.

Section twenty-three with the recommendation of the Committee on Revision was read as follows:

SEC. 23. Every citizen of this State shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, keeping a black-list, interfering or hindering in any way, a citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of conspiracy against the welfare of the State, which offense shall be punished as shall be prescribed by law.

[Committee recommend that this section be stricken out as in conflict with section nine of "Declaration of Rights."]

Mr. PARSONS of Morton. As we have discussed this matter, I move that the recommendation of the committee be laid on the table.

The motion was seconded and lost by a vote of 24 to 39.

Mr. SPALDING. I move that the words "keeping a black list" which occur in the section be stricken out.

The motion was seconded.

Mr. SCOTT. I move as a substitute that the recommendation of the committee be concurred in.

The motion was seconded.

Mr. LAUDER. I desire to amend by moving that the section as it appears in this Constitution be adopted.

The motion was seconded.

Mr. CARLAND. Perhaps it is due the Convention for some member of the Committee on Revision and Adjustment to state in a brief manner what the ideas of the committee were in regard to this section. It is not the black list part of it that is so objectionable. But let us read it. Section nine is as follows:

SEC. 9. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictment or informations for libels the jury shall have the right to determine the law and the facts under the direction of the courts as in other cases.

In all countries having a republican form of government this section nine is the common law, almost. Every man shall have the right freely to write, speak and publish his opinions on all subjects, being held responsible for the abuse of that privilege. That is the fundamental right guaranteed in the bill of rights. What do you say in this section twenty-three? If any man shall interfere, or hinder in any manner a citizen from obtaining or enjoying employment already obtained he shall be guilty of conspiracy. I may have employed help, and the man may have been guilty of embezzlement. A friend or relative who knows the man writes to me and says that he is not trustworthy and that makes him guilty of conspiracy against the State. A mercantile agency could not report the condition of a merchant. The law is that a man may express his opinion, and he may publish and write his opinions, but he is responsible in the law for the abuse of that privilege. If I wrongfully slander a person I am liable for damages. If a railroad corporation has done wrong to a man who has been in its employ, or in the employ of another corporation, the man has his remedy. The claim for damages is the only remedy a person slandered has got. The two sections are in direct conflict.

Mr. LAUDER. I do not desire to occupy the time of the Convention in discussing this question. It was discussed at great length before the Convention on the second reading. It seems to me that the arguments adduced by the gentleman from Burleigh were all met at that time to the entire satisfaction of this Convention, so much so that the position he now takes was defeated by a very large majority. I hope in the meantime the members have not changed their minds. I dare say there is not a State in the

Union that has a constitution in which there is not incorporated a section exactly similar to section nine—the section which the gentleman from Burleigh says meets every want, or supplies the place of the section under consideration. In other words, with section nine the section under consideration (23) is unnecessary. Now, we were told when this question was before the Convention the reason why the section under consideration was inserted here. I grant that there will be times when it will be to the public interest that there be kept a black list so that one business man might inform another of a customer who would not pay—that one corporation might inform another of the character of men who make application to that corporation for employment. As was said at the time, if that was all there was to it there would be no necessity for this section. But that is not all there is to this question. These black lists are kept, as everybody knows, simply to intimidate laboring men—so that a man shall not only do his work well, so that the corporation which owns him shall not only have the benefit of his services, but will own him body and soul; so that he dare not assert his manhood and be independent, or if he does he will be put on the black list, and it does not make any difference as to how well or how ill he performs his tasks. They want the man's vote; they want him to sink and surrender every particle of his manhood, and if he does not he is put on the black list, and he cannot get employment elsewhere, unless he will submit to the demands of his employers. It is to prevent anything of that kind that it is sought to put this section in the Constitution.

Mr. MOER. I was not here at the time the discussion took place, but if this section is in conflict with section nine—and we have the opinion of a gentleman on this subject whom we all respect—it seems to me it should not stand. Still, the point raised by the gentleman from Richland is a good one—that it is wrong to have a black list. It may be one of those wrongs that we cannot right without working a greater injury. It would seem that we ought not to pass a section here so if we tell one of our friends or neighbors not to employ a certain man we will be guilty of conspiracy. The point raised by the gentleman from Burleigh is well taken—that is, if any person is put on the black list he has his legal remedy at law, and it seems to me this section is so far reaching that in the long run it would do more harm than good. Certainly we should not put two sections in this Constitution that are in conflict with each other.

Mr. BARTLETT of Dickey. The gentleman who has just spoken goes on and talks about good men being beaten out of employment. I have hired a good many thousand men, and I never yet heard of a good man wanting work if there was any to be had. I stand up here and say that I believe in the black list. I am willing that my constituents and friends should know it. Railroad companies and all other companies will never blacklist a good man. Good men are the men they want, and it is the fellows who are all the time hatching trouble that they black list. It is all a mistake about good men being black listed. I tell you it may do to talk in politics—it may do to talk it here among delegates who are not in the habit of hiring men, but when you talk to men who have been in the habit of hiring others to work for them, it is all wind. It is nothing but the merest sham.

Mr. CARLAND. There is another objection to section twenty-three, which it seems to me is fatal to its going into this Constitution, and every lawyer will see it. It says, "any person, corporation or agent therefor, keeping a black list, interfering or hindering in any way a citizen from obtaining or enjoying employment already obtained from any other corporation or person, shall be deemed guilty of conspiracy." I would like to have some one tell me how any one person or corporation can be guilty of conspiracy? It is impossible in law—impossible under any circumstances for one person or any one corporation to be guilty of conspiracy.

Mr. PARSONS of Morton. I am not sufficiently educated in legal language perhaps to make the point clear to the gentleman that he wishes to have explained. I would like to say, however, that this measure has met all these objections from the same gentlemen who stood on the floor and argued and talked this, and it is the same old story. The gentleman from Burleigh started up by saying there is nothing in File No. 23 but what is contained in the common law. I ask him what anyone is kicking for if this is the case? But now he turns round and objects to it strenously because it is contrary to the common law or some other law. It seems to me that consistency would be desirable in this as well as in other things. The gentleman speaks of conspiracy. Anyone will see at once that before a person can come under the clause specified he must have committed some offense. This offense must be known and must be committed with others, and I don't know any rule that governs us that would prevent us from putting

this in the Constitution. The Constitution is the fundamental law, and if the Constitution says a thing it will be supported in the courts or anywhere else. If the Constitution says that such an act shall be conspiracy it will be so and the courts will hold it so. I am not going to quibble over the word conspiracy. If he wishes to state that it is "contrary to public policy" or "contrary to the welfare of the State" it will suit me. It is shown by the remarks by the gentleman from Dickey that the men who are opposing this section are not the men who earn their living by the sweat of their brows. There are many farmers here, and the word "farmer" includes, we suppose, the man who earns his bread by the sweat of his brow. I don't know a man who toils and labors at days' wages who has ever been opposed to the measure of the gentleman, and did not wish that it might be carried. There is no resource under section nine, for the men we are seeking to protect, or under any other section of this Constitution, and it is in the interest of justice and right that this measure has been introduced. It has been fully explained, and unjust and notorious efforts have been made to mislead. I ask you to stand by the action that you have already taken. I believe that there is no clause that can go into the Constitution which can lead more hearts to be sincerely thankful than this one. I am a railroad man, and have become experienced in this matter. I know how it works, and there are men to-day who are as good as any man on this floor who are persecuted from one end of the United States to the other, and all because they dared to go against the wishes of some corporation. It makes a great deal of difference where a man stands. I ask for this section on behalf of the poor man. It has been asserted here that these measures were introduced in behalf of corporations. I don't believe there is a delegate here on this floor who is so blind and stupid as to believe that assertion. It is simply the remark of a demagogue. There is a principle of right and justice at stake. There have been decided changes in this country during the last twenty-five years. We see evils growing up at an alarming rate on every side. It has been discussed on the floor of this House, and there is nothing in the arguments that have been advanced. I ask that those of you who have listened to what has been said will stand by your former action.

A vote was taken on Mr. LAUDER'S motion to adopt the section. It was lost by a vote of 24 to 38.

The substitute of Mr. SCOTT that the recommendation of the committee to strike out the section was adopted by a vote of 37 to 25.

Mr. LAUDER. I move that the following be inserted as section twenty-three of the article on Declaration of Rights in this Constitution:

"Every citizen of this State shall be free to obtain employment wherever possible, and any person, corporation or agent thereof, interfering or hindering in any way a citizen from obtaining or enjoying employment already obtained from any other corporation or person, shall be deemed guilty of a misdemeanor and shall be punished as shall be prescribed by law."

Mr. CAMP. I rise to a point of order. The motion is not in order.

The CHAIRMAN ruled that the motion was in order.

Mr. SCOTT. I move that the motion be laid upon the table.

The motion was seconded.

Mr. LAUDER. It seems to me that there is a disposition here to enforce a sort of a gag rule. I hope every member of this Convention will study this section—look over it carefully, and see, satisfy yourselves, if you can, that there is nothing wrong about it. It provides that every citizen shall be free to obtain employment wherever possible. That protects a man who is seeking employment from interference by those who are on strike, or who would prevent it. "Any person, corporation or agent thereof, interfering or hindering in any way a citizen," and so on. That protects the man who is seeking employment from being hindered and if there is anything wrong about that I would like to have it pointed out to me.

Mr. SPALDING. I move to amend the section so that it will read as follows: Insert the word "maliciously" before "interfering" and change "a" in the fourth line to "any" and leave out the latter part of the section in regard to punishment.

The substitute offered by LAUDER was adopted.

The Preamble and Declaration of Rights, as amended, was adopted.

Mr. PARSONS. I move to adjourn.

The motion prevailed and the Convention adjourned.

FORTY-SECOND DAY.

BISMARCK, *Wednesday, August 14, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Communications were read from Mayville, Clifford, Hillsboro, Baltimore and Mandan.

Mr. WALLACE. I object to those Traill county people saying that Steele county endorses the action of the Convention.

Mr. STEVENS. Before we commence with the third reading of articles, there is a question of privilege I desire to speak to. At the time we commenced our labors the question arose as to the plan we should adopt in forming this Constitution. It was agreed that articles should be prepared, referred to the different committees; that those committees should report; that the articles would receive their second reading before the Committee of the Whole; they whould then be passed on by the Convention to the Committee on Revision and Adjustment, whose duty it was understood to be to settle any ambiguities that might have arisen between any two sections—harmonize any discrepancies and correct any grammatical errors or inconsistences that should appear in the sections. This committee have taken to themselves an authority that was never recognized, and never delegated to them by this Convention. They have seen fit in their report to this Convention not only to correct errors that may have appeared—not only to strike out ambiguous sentences that may have been incorporated, but they have seen fit to go further, and recommend to this Convention to strike out articles that this Convention has, by a unanimous vote, passed to that committee. They have seen fit, when compromises have been made between the different factions for the purpose of having harmony, they have seen fit to recommend the striking out entire of the section that has been compromised

upon and agreed upon as one of the articles to be incorporated in this Constitution. I refer more particularly to the article which appears on page twenty-nine, section 174 of the printed Constitution. This Convention will remember that was a discussion here as to whether or not we should have a township organization system in North Dakota. Some of the members were opposed to it and some were favorable and it was finally agreed that as a compromise measure, satisfactory to all parties and unanimously passed by this Convention, that the vote should be taken in each county—that the question should be submitted to those counties where there was a desire to have the township organization system. The gentleman from Cass was the most loyal man in this Convention in opposition to the township system, and he agreed that the measure which we incorporated in the Constitution was just and fair and that the compromise was one that every member of this Convention could agree to. Now this self-appointed committee—because it is self-appointed so far as its action in regard to this section is concerned—have seen fit, because they were in opposition to this township system, to relegate to themselves a power that no man ever voted they should have, and they ask that this section be stricken out. Last night there was a motion passed in this Convention that where there was no opposition to the sections they should be passed, and where there was opposition to the suggested amendment of the committee or to anything else it should be considered by the Convention. The Chair in its very first ruling said: "If there are no objections, this section will stand approved as amended by the committee." By what authority have they done this? Can you find a single resolution in our proceedings giving this authority? If you are going to concur in this way in the recommendations of this committee you will find something before this Convention that will keep us here till next week. If that is the proceeding we are to have, we should before this have stood here and fought for something that is nearer and dearer to us than public institutions—the proper organizations of our counties. We will rebel, and will fight your Constitution. If we have to have a fight on the floor of this Convention to get a measure that we have compromised upon, we want to know it, and we want to know it soon.

Mr. BARTLETT of Griggs. I would like to ask the Chair if the gentleman is at liberty to fire off that kind of a speech every time he wants to do it?

Mr. PARSONS of Morton. I desire to heartily endorse the remarks of the gentleman from Ransom.

Mr. NOBLE. I move to amend section twenty-nine by inserting after the word "district" in the next to the last line: "And no county shall be entitled to more than one Senator."

The motion was seconded. Lost.

REPRESENTATIVE DISTRICTS.

Mr. Purcell introduced the following resolution:

Resolved, That the Legislative Assembly shall divide the senatorial districts into representative districts, and no more than one representative shall be elected from one district.

Mr. PURCELL. I am well aware that this matter was under discussion in the Committee of the Whole, but it seems to me that proper care and thought has not been given to the subject. The intention of having a lower house is that members may come from the different sections of the country directly from the people to express the sentiment of the different localities which they represent. As the matter stands now the Representatives and Senators are elected without regard to districts. The same people vote for Senators who vote for Representatives, and the Representative is as directly a Representative of the senatorial district as the Senator is. The intention of this motion is that the Representative districts shall be specific—that they should be limited in territory and the party who represents that district simply comes here to represent the specific people who sent him. The people in the district will under this motion be divided into senatorial and representative districts. As stated before, in the National Congress the Senators represent the states, and each state is entitled to two Senators, and each state is entitled to members in the lower house in accordance with their population. But the intention is that the states should be divided into congressional districts, and each congressional district sends its Representative to Congress—to the lower house. The purpose is that the different interests in the different parts of the State may be represented, and instead of fighting over the Congressman at Large, they have the Congressman each come from his district. That is exactly the premises we argue from in this matter and that is the reason why the representative districts in this State should be fixed so that the people of a certain locality can have to themselves exclusively the right of selecting the man they want in the

lower house to represent them. To say that the Representative shall be elected in the same way as the Senator—you make no distinction. In that case the Representative not only represents the locality from which he comes, but he also represents the district at large, and so does the Senator from the same district. But if the districts are fixed, and if the law requires that from each district there shall be a representative, then as in the National Congress the interests of that particular district will receive the attention of that member. Then again, under the present plan it places it in the power of the large cities to say not only who shall be the Senators, but the Representatives, and there is no guarantee and no safeguard thrown around the people of the country to have their interests or their measures looked after here. The large cities will be able to make their nominations and force the elections. But if the districts are fixed, and the law requires the Representatives to go from separate districts, the people of the several districts will have their interests looked after. For that reason I think this matter should have careful consideration.

The motion was lost by a vote of 30 to 34.

THE TERMS OF SENATORS.

Mr. JOHNSON. I ask leave to offer an amendment to section thirty. Insert after the word "class" where it last appears in the sixth line the words, "in the Senate first elected under this Constitution."

Mr. BARTLETT of Griggs. Do we elect Senators this fall? My idea was that we did not until after this Constitution is adopted.

Mr. SCOTT. I desire to call the attention of the delegates to the fact that this amendment would only apply to the Senators first elected. The Senators we elect now should only be for three years. One class will hold their term for one year, retiring after this next session, and there will be some more elected for four years a year from now.

Mr. JOHNSON. The Schedule undoubtedly provides the same for these officers as for other officers that they shall hold the first term for one year instead of two, but according to the explanation of the gentleman from Barnes this section as it appears in the printed copy is intended to apply in future years. See what confusion we shall have. If it is not intended to apply at the first session only, they would have to divide by lot every time. You

would always have this question arising—which of these clasess should hold for two years and which for four years. It is evident that this casting of lot should only occur at the start, so that it can be determined which of the Senators shall hold the short term and which the full term. If not it will be a question at the opening of each Legislature to be decided by casting lots to see which class shall hold for two years and which for four years. Unless this amendment carries the objection will always be before every Legislature.

Mr. CAMP. I think if the gentleman from Nelson will examine section sixteen of the Schedule he will find the objection is all covered.

Mr. JOHNSON. I submit to the gentleman if there is any provision in section sixteen of the Schedule providing for when these lots shall be cast and what Senators shall hold for two years and what for four.

Mr. SCOTT. It seems to me that if they cast lots in the fall of 1890 they cast lots to see who will hold two years and who will hold four. The short term men will go out in two years, and there is no necessity of the members of the Senate ever again casting lots. They can only cast lots once.

The amendment of Mr. JOHNSON was lost.

Mr. SPALDING. I desire to amend section thirty by inserting after the word "class" where in last appears in the sixth line the words "elected in 1890." I do that for the reason the gentleman from Nelson offered his amendment, but I think that this will make it a little more specific. It seems to me that it is the intention of the section to have lots cast only once, and after that the Senators will hold their office for four years each. The way it reads now it is very indifinite, and it might mean that they should continue to cast lots at every election.

The amendment of Mr. SPALDING was carried.

Mr. SCOTT. As I understand it when a section is read it will be adopted. I move that hereafter when that is done we cannot return to a section to reconsider, unless by unanimous consent.

Mr. JOHNSON. I think the precedent set last night was a very fair and reasonable one. Some of us have not had an opportunity to study the sections that have been prepared by the committee as thoroughly as those we have been working on. We have not the time in the few minutes or seconds that it takes to read a section to think what it applies to. It can do no harm to not defi-

nitely pass any sections until the article in which these sections are contained is passed altogether.

Mr. PURCELL. It seems to me that this motion should not prevail because if we have inadvertently overlooked a section that contains something ambiguous this Convention should not hesitate to go back and correct it. There may be some misunderstanding as to the effect of some section, and the fact that it has been passed should not hinder a correction. We are here to make a Constitution that the people want to understand and where there is any clause we don't understand it is our duty to go back and rectify it.

Mr. BARTLETT of Dickey. I can see how dangerous it would be. There are a good many sections that we have not digested yet, and we see intelligent men who have examined them, and voted in favor of them, and yet we find things that need changing. It would be dangerous in the extreme to pass this motion.

Mr. SCOTT. If a section has already passed a critical examination from all the committees, from the members of the Committee of the Whole and by the Committee on Revision and Adjustment, it should be enough. If we keep going back to these sections we are liable to stay here till next fall. If we can't see where a section is ambiguous without going back to it so many times we had better quit.

Mr. PURCELL. That may all be true, and yet the different sections of this Constitution, after having received a critical examination, are liable to have slight errors. As a fair example, in the Senate of the United States the Judiciary Committee is supposed to be as well versed in the law as anybody, yet we know that acts have passed that committee and the Senate, that have been found afterwards to be unconstitutional. Wherever a division of opinion exists as to the meaning of a section we should make it plain, so that there may be nothing ambiguous about it. We should do this if it takes all the year.

Mr. CLAPP. I move that whenever any changes are desired to be made they only be considered at the end of the article, after we have been through the article. That would give members an opportunity to bring matters up.

The motion was seconded.

Mr. WILLIAMS. It seems to me that this Convention should not at this time start in to adopt new rules. The motion made by the gentleman from Barnes contains a harsh rule, and if this Convention should make a mistake in a section it could not be

corrected without unanimous consent. I think our rules that we have adopted are sufficient and I don't see why we should change them at this late day.

On motion the motion and substitute were laid on the table.

NEW APPORTIONMENTS.

Mr. CAMP. By some unaccountable oversight the Constitution has failed to provide for any census or reapportionment of the senatorial districts. I offer the following addition to be made to the end of section thirty-five.

"The Legislative Assembly shall, in the year 1895, and every tenth year thereafter, cause an enumeration to be made of all the inhabitants of this State, and shall at its first regular session, after each such enumeration and also after each Federal census, proceed to fix by law the number of Senators which shall constitute the Senate of North Dakota, and the number of Representatives which shall constitute the House of Representatives of North Dakota, within the limits prescribed by this Constitution; and at the same session shall proceed to re-apportion the State into senatorial districts, as prescribed by this Constitution, and to fix the number of members of the House of Representatives, to be elected from the several senatorial districts."

This proposed amendment is based on File No. 33, introduced by the gentleman from McIntosh early in the session.

Mr. WILLIAMS. It seems to me that this should not prevail. This is a new country, and if we have to wait ten years before we can have a re-apportionment, this western part will suffer. I think this matter should be left to the Legislature as it has been under the territorial system. They can take the vote, while under the proposed system counties containing a large population might be denied representation for several years.

Mr. CAMP. I am willing the apportionment should be made every five years, and this does not prevent the Legislature making it every five years. It simply compels them to make an apportionment every ten years. There is one State that has suffered seriously from the effect of the system proposed by the gentleman from Burleigh. That is Delaware. They have been in shackles because the Legislature refuses to re-apportion the State, and I believe a similar section, carrying out the same idea, will be found in almost every constitution requiring the census and territorial apportionment.

The amendment of Mr. CAMP was adopted.

Mr. JOHNSON. I move that the words "and also after each Federal census" be inserted after the word "enumeration."

The motion was seconded and carried.

Mr. PARSONS of Morton. I move the reconsideration of section thirty-five. I desire to make this point. The tide of immigration is westward, and there is no question but in years to come every county west of the river, except, perhaps, a very narrow portion of the country, fourteen miles wide and thirty miles long, will be settled nearly as thickly as any other portion of the State to-day. It seems unjust that we should take from the Legislature the power to regulate that matter in the future. Do we wish to hamper the immigration to this State by saying that no matter how many people you have—no matter how many counties you have, you shall not have more than so many Representatives? It seems unjust to all the country to do this. Here is an open country to be settled up. It is not a question of local interests—one part of the State against another, but one of fairness and justice. I don't believe there is a man on this floor that wishes to retard immigration to this country or wishes to work injustice to anyone. It very frequently happens that the population of a county will double or treble, and perhaps quadruple in one year. It is a known fact that the railroad has been sending all these immigrants to Washington Territory this year. What would be the effect if during the next year they were to locate their emigrants in Dakota? The section as it stands would prohibit any apportionment, and there might be a hundred for one that is here now, and yet you would not allow any Representative for these people. I ask in a spirit of fairness and justice to these people who come here, that we may have the same privilege that we have now, and the Legislatuoe may have the power to change the apportionment when it is desirable. If we were in an old state,where this question of immigration does not come up—where it is thickly settled, I would vote for ten or twenty years, because the population would increase in such a state all over alike. But our circumstances are entirely different. I think this section would be a barrier to the population of portions of our country which are not taken up now, and I hope the motion to reconsider will prevail, so that whatever part of the State is settled by new immigration may be reapportioned according to the number of votes it has got. We have a stretch of country north, and west and south of us, and the time is coming when just as surely as the eastern part of the State was settled, so the western part will be settled. Do you wish to place a provision in this Constitution which will debar these people from securing their rights? If the matter is left to

the Legislature it can be readily adjusted to meet the needs of the day.

Mr. BARTLETT of Griggs. If the gentleman had been in his seat he would have learned that this section did not restrict the Legislature from making an apportionment every year. It simply compels them to do it once in ten years. I hope we shall not have a re-discussion of this matter. I don't think it is right that a member who does not happen to be in his seat when a discussion is going on should be permitted to come in here and force us to re-discuss a question. It is left to the Legislature with the injunction to do it at least once in ten years.

Mr. PARSONS of Morton. Do I understand that when this Constitution says that the Legislature shall do a certain thing at a certain time, that they can step in and do it at some other time?

Mr. CAMP. In my opinion there is nothing in this section to prohibit the Legislature from apportioning the State every six weeks. It simply requires them to do it every ten years.

Mr. PARSONS of Morton. I simply wanted to protect the counties west of the Missouri. I want to see the Legislature compelled to re-apportion the State once every five years.

Mr. ROLFE. I desire to add the following amendment to section thirty-five: "Provided that the Legislative Assembly at any regular session may re-district the State into senatorial districts and apportion the Senators and Representatives respectively."

Mr. ROLFE. I think there is a fair question as to whether the article as it has been adopted would not prohibit the Legislature from making a new apportionment oftener than once in five years. I suppose we know as much about this Constitution as anybody, and with us there is some question whether under the section as it stands, whether the Legislature would not be prohibited from making an apportionment oftener than once in five years. If we have doubts the people will have them, for they have not had occasion to study the matter as a good many of us have, and this amendment will certainly settle a question in regard to the matter. Of course, the Legislature need not apportion oftener than once in five years if they see no occasion for it.

Mr. JOHNSON. I think the section is well enough as it is. I think once in five years is enough. If you apportion for the term of one State Senator, I think that is enough. We have seen in the older states that where the apportioning is done too often there

are shoe string and panhandle districts made, and this practice has always led to confusion and bad morals in politics. I think the census arrangement is the only fair one. If there is a storm raging in the western part of the State and not in the eartern part on the day of the election, you will have an unfair apportionment if it is based on the vote. In some places in the larger counties you will have to go forty miles to vote and that county will have a disadvantage over the more thickly settled counties. In the thickly settled states they will poll a larger vote in proportion to population. Another thing in regard to the western counties—as we have now this morning passed on the fact that representation shall be based on population and not on counties, the preponderance will be immensely in favor of the Red River Valley, and if the State should be re-apportioned by the vote this part of the State—the western part—would be at a disadvantage.

Mr. PARSONS of Morton. I repudiate the arguments of the gentleman. I have not the pleasure of having visited the Red River Valley country except in Fargo, but I expect as fair treatment from the people there as I would have from the people outside the Red River Valley. I don't believe that gentleman will come in here and subscribe to a solemn oath and then try to cheat us out of our rights. I am sorry the gentleman from Griggs (Mr. BARTLETT) has left his seat. I object to any criticism of any member for leaving his seat. If he has not a right to do this what rights has he?

Mr. PURCELL. I move the following amendment to the amendment of the gentleman from Benson:

"The Legislative Assembly shall have the power to apportion the senatorial districts into representative districts."

Mr. HARRIS. I trust the amendment of the gentleman from Benson will pass. The tide of immigration in 1890 will be turned into North Dakota. The Northern Pacific and Manitoba railroads are doing all they can to turn the tide of immigration into this State next year, and it is coming. It will not only be the counties in the west that will feel it, but every county in this Territory is going to receive the benefit. I don't think we should be tied down to an apportionment for five years. New counties may be organized, and if they come in as organized counties in 1892 they will have no representation till 1895. As to the shoestring districts and panhandle districts, if one Legislature makes

districts of this kind we want the next Legislature to have the power to correct the fault. I believe it should be left to the power of the Legislature in this new State to make the apportionment as they see fit. The older states are no criterions for us to go by. The State of Delaware is settled up. It has been an even thing for years, but in this new country where it is settling rapidly, we want the matter left in the hands of the Legislature. I trust the amendment of the gentleman from Benson will prevail.

Mr. CAMP. I have not the slightest objection to the amendment of the gentleman from Benson.

The amendment of Mr. PURCELL was carried by a vote of 29 to 28.

The amendment of Mr. ROLFE as amended was adopted.

AFTERNOON SESSION.

President FANCHER called Mr. NOBLE to the chair.

Mr. FANCHER. On Thursday evening of last week I, as President of this Convention, received three telegrams—two from Grand Forks and one from the Governor of Idaho. These telegrams were received at my boarding house while I was at supper. Immediately on going to the Convention a gentleman met me at the door who had learned that these telegrams had been received, and stated that he should raise a point that as they were addressed to me personally they should not be read in this Convention. I immediately told the gentleman—Mr. STEVENS of Ransom—that I should overrule his point of order when it was made, and these telegrams would be read promptly. I then stepped to the Clerk's desk at 8 o'clock in the evening and gave the telegrams to the Chief Clerk with instructions that they be read at the first opportunity. I have in my hand the Grand Forks Herald of date August 11th. One of the delegates from Grand Forks on this floor, Mr. BENNETT, in making a speech at Grand Forks on the night of the 10th made this statement: "At the evening meeting President FANCHER refused to have the Grand Forks telegrams read." Since that time editorials have been written in this paper and in others denouncing me for unfairness in not reading these telegrams. I feel quite certain that there is not a delegate on this floor who since I have been presiding officer honestly believes that I have ever in any way treated any delegate, or any message received for this Convention, unfairly. I therefore ask the gentle-

man who made that statement to correct it here and now. Various gentlemen on the floor of this Convention saw the Clerk take those telegrams in his hands and attempt to read them. As you all know, we were very much hurried that night for some reason. When I took the chair I had no idea that we were going to adjourn at all. But we did adjourn. Various motions came up to adjourn till the next day, till Monday, and for two weeks, and the members were engaged in fixing their papers and matters of that kind. I desire to have a correction. The Chief Clerk will substantiate what I have said, and I am sure there are a good many delegates who will do the same.

Mr. BENNETT. I shall be very happy to correct any mistake I may have made in the meeting at Grand Forks. I did not state in my speech that the Chairman refused to read the telegrams. After I was through with my remarks some gentleman in the audience asked me if President FANCHER refused to read the telegrams. After thinking for a moment, I said: "Yes, by his acts I consider he refused to read the telegrams." I stated that with all sincerity at the time and I believe now and here that by his acts he refused to read the telegrams.

Mr. FANCHER. I beg to state that under the rules of this Convention it would have been a perfectly proper ruling for me to make, that those telegrams could not be read that night. Our rules provide that letters, petitions and remonstrances should be read immediately after the Journal. We had long since passed that order of business; we had been in discussion and had other business before us, but I was very careful in this matter that I went out of the regular order of business so that these people might make their protests known. In view of that fact it seems to me remarkable that "the President by his acts tried to suppress those telegrams."

Mr. STEVENS. What the gentleman states as a conversation between himself and myself is exactly correct. He came up and I said, "FANCHER, I am going to object to those telegrams being read. They are addressed to you." He said, "Yes, and I will overrule the point of order."

Mr. PARSONS of Morton. Inasmuch as there has been free expression in regard to this matter, no matter with the subject matter may have been in the telegrams; inasmuch as there has been free expression on both sides, and there has been no check placed on anyone, and there has been no check placed upon anyone

from the day when we first assembled to the present time—the Chair has been lenient in his rulings and allowed people to speak out of order, and has gone ahead with the earnest desire to oppress and gag no one, I move that it is the sense of this Convention that we entirely exonerate the President of the Convention from the charge as presented by the gentleman from Grand Forks.

The motion was seconded.

Mr. WILLIAMS. I am perfectly satisfied that the President of this Convention is innocent of this charge. On Thursday night I made a motion to adjourn several times and it was, I believe, on my motion that the Convention finally adjourned. Once or twice when I was on my feet to make this motion the Chief Clerk was also on his feet for the purpose of reading these telegrams, and I was cognizant of the fact. I had seen the dispatches but I thought that they pertained to matters that we should have time to consider before we allowed them to be read. I really moved for the adjournment in order to prevent their being read.

The motion of Mr. PARSONS was adopted by a vote of 71, four members being absent and not voting.

Mr. JOHNSON. It is my recollection that at least twice, delegates on the floor that Thursday evening asked if there was anything else for disposition, and my recollection was that the answer given was in the negative. If I am mistaken it would be a great relief to me to be informed of the fact.

Mr. MOER. I should like to hear the Chief Clerk explain the matter.

Chief Clerk HAMILTON. The recollection of the gentleman from Nelson is entirely at fault. No such question was ever asked on Thursday night at the time when those telegrams were here. I am not in the habit of prevaricating or lying. I try to do my duty faithfully, honestly, without fear, favor or affection, and I believe that that is the sentiment of the Convention.

REPRESENTATION.

Mr. ROLFE. I move that the Convention do now reconsider the vote by which it resolved that the Legislature may subdivide senatorial districts into representative districts.

The motion was seconded.

Mr. PURCELL. I move that the motion of the gentleman from Benson be laid on the table.

The motion of Mr. PURCELL was lost.

Mr. MILLER. I move the adoption of section thirty-five as it appears in the report of the Committee on Revision. It reads as follows:

"The members of the House of Representatives shall be apportioned to and elected at large from each senatorial district."

Mr. CAMP. The motion to reconsider only went to the amendment of the gentleman from Richland.

The Chair ruled that the point was well taken.

Mr. STEVENS. I understand the question is now before the House. I move to strike out the words, "the Legislative Assembly shall have power to apportion senatorial districts into legislative districts."

The motion was seconded and carried.

RESTRICTIONS ON MEMBERS.

Sections thirty-five, thirty-six, thirty-seven and thirty-eight were read and approved, and section thirty-nine was read as follows:

Sec. 39. No member of the Legislative Assembly shall, during the term for which he was elected, be appointed or elected to any civil office in the State which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected; nor shall any member receive any civil appointment from the Governor, or Governor and Senate, during the term for which he shall have been elected.

Mr. STEVENS. I move to add at the end of the section the following words: "Unless he shall have resigned before his appointment."

Mr. MILLER. It strikes me that a better plan would be to strike the section out entirely, than to add these words, for "Unless he shall have resigned" will simply give him an opportunity to talk it over with the Governor in advance, and get his appointment.

Mr. STEVENS. A Senator is elected for four years. Under this section he cannot be appointed to any office during that four years. He serves the first term as a Senator—the first session—and he cannot again appear as a Senator for a year and a half. It is unreasonable to say that during that year and a half he may not, if properly qualified and if the choice of the appointing power, receive the appointment for some office he is capable of filling; and under this section he would have no right to accept

any office during that year and a half, except holding down the position of Senator, waiting for the next session.

Mr. MOER. It seems to me that the suggestion made by the gentleman from Cass is correct. The gentleman from Ransom says he could not be appointed during the second year and a half, but he knows that before he is elected to the State Senate. I guess we can get along with the section as it is.

Mr. WILLIAMS. The intention was to prohibit members of the Legislature from using their position to secure appointments from the Governor, and at the same time it is a very good provision to place in the Constitution. Cut the members of the Legislature off from using their influence in that body to secure for themselves an appointment from the Governor. I think if the amendment proposed by the gentleman from Ransom prevails, we might just as well strike out the whole section. I think we will have plenty of Senators and good Senators, and plenty of men to fill every position. When a man accepts a position in the Legislature he knows that he won't receive any other appointment.

Mr. STEVENS. If the gentlemen who are going to return to the Senate are willing it should stand, I am willing, for I am not going to return.

Mr. STEVENS withdrew his motion.

Sections thirty-nine, forty, forty-one, forty-two, forty-three and forty-four were adopted.

When section forty-five was reached Mr. JOHNSON moved to strike out the words "five dollars a day," and insert in the place "$500 per session."

When the vote was taken Mr. PARSONS of Morton said: I vote aye simply because I wish to make it possible for a poor man to attend the Legislature.

Mr. STEVENS in voting said: I vote no, because I believe it is the poorest place in the world for a poor man.

There were 11 votes aye and 62 no.

Sections forty-five and sixty-eight inclusive were adopted.

Mr. POLLOCK. It seems to me that the provisions contained in sub-division fifteen of section sixty-nine are covered by sub-division twenty-four. The first named sub-division reads as follows:

"The sale of mortgage of real estate belonging to minors or others under disability."

Sub-division twenty-four reads as follows:

"Affecting estates of deceased persons, minors or others under legal disabilities."

I move that sub-division fifteen be stricken out.

Mr. JOHNSON. The gentleman from Cass and I argued this question in the Committee of the Whole, and at that time the committee sustained my views. I still hold that the real estate under our laws as now provided for in section fifteen is no part of the estate. That goes directly to the heir. An administrator has nothing to do with it. I think they should both be left in.

The motion of Mr. POLLOCK was lost, and the section was adopted.

The article was adopted and the Convention proceeded to consider article three.

RESTRICTING THE GOVERNOR.

Section seventy-one was read and adopted, and section seventy-two was then read as follows:

SEC. 72. No person shall be eligible to the office of Governor or Lieutenant Governor except a citizen of the United States, and a qualified elector of the State, who shall have attained the age of 30 years. and who shall have resided five years next preceding the election within the State or Territory, nor shall he be eligible to any other office during the term for which he shall have been elected.

Mr. ROLFE. I move to strike out all after the word "Territory" in the fifth line. I believe we are tying up the hands of the people too closely in prohibiting them from exercising the right of choice of a Governor.

Mr. BARTLETT of Griggs. I hope this amendment will not prevail. If there is any reason for adopting this section which we have just passed, that members of the Legislative Assembly should not be appointed by the Governor, there is certainly a much stronger reason why the Governor should not be appointed or elected by the Legislative Assembly during his term. I hope we shall not strike out a part of this section that will enable the Governor to use his appointing power to secure his election to the United States Senate or any other office.

Mr. WILLIAMS. I fully endorse the remarks of the gentleman from Griggs. This provision was put into this section with the express understanding that it disqualified the Governor from election to the United States Senate. We don't believe the Gov-

ernor should use the patronage at his disposal to promote his elevation to the Senate, and we desire him to know in advance that he is not eligible to election to the United States Senate. If we strike this section out, the section disqualifying members of the Legislature from holding other offices should be stricken out also. This has been placed here in the interests of good government.

Mr. LAUDER. The arguments urged by the gentleman from Burleigh for the retention of this clause is that it would prevent the Governor from being elected to the United States Senate. I do not understand that that section would have that effect, because we cannot prescribe the qualifications for a United States Senator. The United States Senate is the judge of the qualifications of its own members, and this clause will be inoperative so far as affecting the election of the United States Senator is concerned. I was opposed to the section to which he refers, rendering members of the Legislature ineligible to any other office. It seems to me that we are going in the wrong direction. The people of Dakota have the right to select any man they choose—to select whom they please, and it seems to me that their hands should not be tied in this way.

Mr. WILLIAMS. The gentleman from Richland has told us nothing but what the Convention fully understood—that the United States Senate is the judge of the qualifications of its own members. But we were of the opinion that no honorable man would take the oath to support the Constitution of the United States and the Constitution of the State of North Dakota, and threafter accept an election to the Senate of the United States with this provision in our Constitution, which he was sworn to support.

Mr. LAUDER. I don't understand that an unconstitutional law has any binding force on anybody. When the Governor says that he will support the Constitution he implies that he will support every clause that is constitutional. So far as it refers to the election of a United States Senator—or his qualifications—it is so much waste paper, and amounts to nothing.

Mr. STEVENS. If I recollect aright the gentleman from Richland was one of the warmest supporters of having salaries placed at such figures or at such a rate that we could command talent in judicial and other offices. Following that to its legitimate conclusion, we would have a thousand dollar man to fill a

thousand dollar place, and a three thousand dollar man to fill a three thousand dollar place. A thousand dollar man would not be supposed to be as talented as a three thousand dollar man. It would therefore probably interfere with the best interests of the Territory to have a Lieutenant Governor become Governor of the State when he was never intended to have been elected to fill that position. You see here that a State Senator when he assumes the duties of that position, assumes it with the full knowledge that he can never be elected to any other office while is State Senator. Why not let the Governor have the same understanding? Why should not the same rule apply to the Governor? Surely if a man can take the petty office of State Senator with the full knowledge that he will be debarred from having any other office for the next four years, a man could accept the greater office—the greatest office under the State government—with the full knowledge that he could not have any other office while he was Governor. I say that this amendment is not moved for the best interests of the State, but it is somebody's scheme for this fall.

Mr. LAUDER. The gentleman from Ransom intimates that I have had a good deal to say about judges' salaries and so forth. I think, Mr. PRESIDENT, the gentleman is very much mistaken. The subject has not been under discussion.

Mr. STEVENS. The matter was talked of more than once in the Committee on Judiciary, and you took part in it. You don't deny that do you?

Mr. ROWE. I conceive that in all the list of officers named, there is not one paid for his services and his ability that he exercises better than the Lieutenant Governor. Furthermore, it is generally considered when you place a man in the second position on a ticket, that he shall be qualified to hold the highest position should circumstances demand. We have plenty of cases where we have secured some of the finest, ablest Senators in the United States that have gone from the gubernatorial chair, and some of our ablest war Governors went from the Lieutenant Governorship. I say it is no more than right and fair to citizens of North Dakota, that they have the right to send their Governor to the United States Senate if they choose, and also their Lieutenant Governor to the Governor's chair. I say there is no question about this, and I am heartily in favor of striking out this sentence.

The motion of Mr. ROWE was lost by a vote of 13 to 55.

Sections 72, 73, 74, 75, 76, 77 and 78 were adopted.

Section seventy-nine and the recommendation of the Committee on Revision, were read as follows:

SEC. 79. Every bill which shall have passed the Legislative Assembly shall before it becomes a law, be presented to the Governor. If he approve, he shall sign, but if not, he shall return it with his objections, to the house in which it originated, which shall enter the objection at large upon the Journal and proceed to reconsider it. If after such reconsideration two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections of the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members present, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the Journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the Legislative Assembly by its adjournment, pevent its return, in which case it shall be filed with his objections, in the office of the Secretary of State, within fifteen days after such adjournment, or become a law.

[Committee recommend that all after the words "shall be a law unless" down to the words "with his objections," be stricken out, and that the following be inserted, "he shall file the same," also that the last four words be stricken out.]

Mr. PARSONS of Morton. Here is a case where the committee has been legislating for the benefit of the Convention. If there is a grammatical error they should point it out, but here is a recommendation that they strike out a certain important provision which this Convention has passed upon. It is simply a matter of legislation. There is one committee that has sat upon and determined these matters; reported them to the House; they have been before the Committee of the Whole and now comes a recommendation of the Committee on Revision in which they pretend to do a little legislating on their own hook. As the gentleman from Ransom said this morning, there should be a stop put to this. It cuts out one important provision which the House has passed.

Mr. CARLAND. I don't see where the committee has cut off anything or exceeded their duty, and I dont see why this committee should periodically be talked about in this way. It will be seen that this section closes as follows: "In which case it shall be filed with his objection, in the office of the Secretary of State, within fifteen days after such adjournment, or become a law." It was the opinion of the committee that the words "or become a law" in the place where they occur, were not as well phrased, grammatically and otherwise, as it would be to end the section as

recommended. It was considered by the committee that it would be better to end the sentence in the way recommended.

Mr. FLEMINGTON. I move the recommendation of the committee be adopted.

Mr. PARSONS of Morton. I have no objection to the recommendation as read by the Secretary, but I claim that the wording of the Committee on Revision as printed is very different from what was read by the Clerk.

Mr. MILLER. I move that the word "present" wherever it occurs in this section be stricken out and the word "elected" be substituted.

Mr. SCOTT. If I remember correctly the amendment of the gentleman from Cass is the way this thing was originally passed. It was not two-thirds of the members present, but two-thirds of the members elected. I don't know how it happens to be printed this way.

The amendment of Mr. MILLER was carried.

A SALARY QUESTION.

The sections were adopted up to section eighty-four. This was read as follows:

SEC. 84. Until otherwise provided by law, the Governor shall receive an annual salary of $3,000; the Lieutenant Governor shall receive an annual salary of $1,000; the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Insurance, Commissioners of Railroads, and Attorney General shall each receive an annual salary of $2,000; the salary of the Commissioner of Agriculture and Labor shall be as prescribed by law, but the salaries of any of the said officers shall not be increased or diminished during the period for which they shall have been elected, and all fees and profits arising from any of the said offices shall be covered into the State treasury.

Mr. WALLACE. I move that this section be amended by fixing the compensation of the Lieutenant Governor at double that of a State Senator.

The motion was seconded.

Mr. WALLACE. I wish to say that in most constitutions this provision is incorporated—that the Lieutenant Governor shall receive double the pay of a State Senator. As it now stands he receives about $33 a day for the same services, practially as are performed by a State Senator who receives $5 a day. His duties are to preside over the Senate. You pay $1,000 for a year that he does not do anything. He receives $2,000 for sixty days service in the Legislature. I think there is such a thing as consistency. Paying $2,000 for this service is ridiculous.

The motion of Mr. WALLACE was lost.

Mr. BARTLETT of Griggs. I move to amend section eighty-four by striking out the words "and Attorney General" in line six, and inserting the same words after the words "Lieutenant Governor" in line three; also in line three insert the word "each" after the word "shall." I believe the salary is too much. I think we have have got all the salaries too high. The office of Attorney General is one that takes but a small part of the time of the occupant; it is in his line of business, and I believe that $1,000 is ample for the duties he is called upon to perform.

Mr. CAMP. I have never been Attorney General, and don't know how much time it would take, but it strikes me that $1,000 will not go far toward paying for the services of a competent Attorney General in trying the cases of the State of North Dakota for the State in the Supreme Court. Every prosecution that is appealed from the District Court will stand for the Attorney General to prosecute in the Supreme Court. He will be the counsel for every officer of the State, and it seems to me, although it will not take one-quarter of his time, yet the services are of such a nature that they are well worth, and if paid for by a private individual would cost, more than twice—more than three times—the sum specified as his salary.

Mr. WALLACE. I hope the motion will prevail. The gentleman from Stutsman does not know how much time it takes. I have never been Attorney General myself and don't expect to, but I think we all have a general opinion as to how much time it takes. I undertake to say it is a pretty good time for us to make some amendment in regard to this matter of salaries. The pay is too high. It is beyond that which men in other callings receive, and I think we should do ourselves credit by reducing it at least one-half.

Mr. LAUDER. It seems to me that the gentleman from Griggs cannot have seriously considered the responsibility that devolves upon the Attorney General, and the nature of the important duties that he is called upon to perform, when he gets up and advocates a salary of $1,000 a year. Why, Mr. PRESIDENT, nearly every organized county in North Dakota pays a greater salary than that for its district attorney. What are his duties in comparison with those of the Attorney General? He simply advises the county board and county officers, and represents the county in any litigation it may be engaged in. But as

the gentleman from Stutsman says, any case that is appealed from the district court, the Attorney General has to take care of before the Supreme Court. I would remind the gentleman that that work requires the highest order of ability. Almost any lawyer can thrash around in the justice court, or the district court, but when he comes to the Supreme Court it requires the highest order of talent, and that is where the most of the work of the Attorney General will come. Besides that, he is the legal adviser of every one of the State officers. He is also called upon to advise the Legislature when they are uncertain as to the constitutionality of a law. If he is a competent man for the position, certainly his services are worth more than $1,000 a year. An opinion from this man— one single written opinion—if he is competent to fill that office, is worth at least $100. His opinion on the constitutionality of an act if it is worth anything, is worth at least one-fourth of his salary, and you could not get a competent lawyer to prepare an opinion that the Legislature would be authorized to rely upon for less than a quarter of his salary.

Mr. SPALDING. I don't believe in fixing the salaries at an extravagant figure, and especially when we are just coming into the Union, and I would draw a line in fixing salaries between those offices which are honorary in their nature and those which are not honorary—those which take all or nearly all the time of the occupants, and those which take very little time. The office which is purely honorary, like that of Lieutenant Governor for the great portion of his time, I would reward by a small salary. I would give him ample compensation for the time that he has to devote to the State, but no more than that. On the other hand the office which takes a man from his business—requires a profound education to fill it—and requires much deep study and investigation in complex subjects I would give him such a salary as would be a reasonable compensation—as would be reasonable compensation for the skill required. I have been partner of an attorney general, and I know something about the time it takes, and I apprehend the duties of the Attorney General of the Territory of Dakota will not take up one-half the time of that they will take during the first year or two of the existence of the State of North Dakota under its present Constitution, and during its transformation from a Territory to that of a State. The officers will be met with conundrums and questions continuously as to what their duties are under this Constitution. I do know that the office of Attorney

Genoral in this Territory has required the careful, close attention of a skilled occupant for more time than there is in a day, and I believe that it will require the skill and attention of more than two men for the first year after we come in as a State, to properly counsel and advise the officers, and perform the other duties of the office. It is true, also, that the Attorney General has many duties to perform in court, but they are the smallest part of his duties. It is made the duty of the Attorney General to advise the county officials and the district attorneys on all questions that they may ask his advice upon. There is not a day passes that the Attorney General has not a large number of inquiries asking his opinion on complex questions of law, many of which take several days or a week to investigate. That is the fact as it has existed under the territorial system, and it must of necessity continue to be the same under statehood. For that reason I say the Attorney General should be given such a salary as will command the ability and time of a man competent to fill that office and advise these officers on grave constitutional questions that will come before them. No man with any knowledge of the subject—with any knowledge of what a competent attorney can earn, will say that $1,000 will secure such a man. Two thousand dollars is a small salary. You are giving your members of the Legislature $5 a day, and they are men, many of them, or probably will be, if we are judges of the past, who will not have spent one hour to fit themselves for the performance of their duties. They will come from the farm, the workshop and the store, or anywhere else when they are elected, without any special preparation for filling the office, and you pay them at the rate of $1,500 a year, and yet here is an office requiring to be filled by a man who has spent years in preparation—who has spent years in obtaining the reputation as an attorney that will for one moment make the people of the state consider his name, and yet you propose to cut him down to two-thirds of what you give a member of the Legislature.

Mr. WALLACE. I would call attention to the fact that the Constitution of the State of North Dakota provides that the salary of the Attorney General shall be $1,000. I think their business will be fully as important as ours, and I think they are very good judges of what time they will be employed and what the attorney will have to do.

The motion of Mr. WALLACE was lost by a vote of 10 to 52.

Sections eighty-four, eighty-five, eighty-six and eighty-seven were read and adopted.

Section eighty-eight was read as follows:

SEC. 88. Until otherwise provided by law, three terms of the Supreme Court shall be held each year, one at the seat of government, one at Fargo, and one at Grand Forks.

Mr. NOBLE. I move as a substitute that the section shall be made to read, "three terms shall be held each year at the seat of government."

Mr. BARTLETT of Dickey. I believe it is the feeling of the people of the State that the terms of the Supreme Court should be held at the seat of government, and I hope the motion will carry.

Mr. FLEMINGTON. I agree with my colleague.

A call of the House was made, and the Convention subsequently adjourned.

EVENING SESSION.

The substitute of Mr. NOBLE for section eighty-eight was lost by a vote of 21 to 49.

The section was adopted; also section eighty-nine, and section ninety was read as follows:

SEC. 90. The judges of the Supreme Court shall be elected by the qualified electors of the State at large, and except as may be otherwise provided herein for the first election for judges under this Constitution, said judges shall be elected at general elections.

Mr. STEVENS. I move to lay the motion of the gentleman from Cass on the table.

Mr. SPALDING. I move to insert the word "not" after the word "shall" in the fourth line.

The motion of Mr. STEVENS was carried.

Sections ninety, ninety-one and ninety-two were read and adopted. Section ninety-three was read as follows:

SEC. 93. There shall be a Clerk and also a Reporter of the Supreme Court, who shall be appointed by the judges thereof, and who shall hold their office during the pleasure of said judges, and whose duties and emoluments shall be prescribdd by law and by the rules of the Supreme Court not inconsistent with law. The Legislative Assembly shall make provisions for the publication and distribution of the decisions of the Supreme Court, and for the sale of the published volumes thereof.

Mr. JOHNSON. I move to amend section ninety-three by inserting after the word "clerk" the words "of the Supreme Court, who shall be elected by the people for the term of four years."

Mr. MOER. I move to lay the motion on the table.

A vote was taken and Mr. LAUDER explained his vote as follows: I wish to explain my vote. As one of the members of the Convention, particularly those who were members of the Judicial Committee, I was opposed to the appointment of this Clerk. I was in favor of the election of the Clerk, and took the position that the people were as competent to judge of their services in the capacity of Clerk as the judges were, and I think now that that is the better plan—that the power of electing a Clerk of the Supreme Court should be left with the people. But that question was fought over in the committee and the Convention, and it was voted upon and the vote was decisive, and I vote to lay this on the table because I am opposed to fighting these battles all over again. It consumes time and in all human probability there will be no change made.

The motion to lay on the table was carried by 45 to 27.

Sections ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, 100, 101 and 102 were adopted. Section 103 was read as follows:

DISTRICT COURT JURISDICTION.

SEC. 103. The district court shall have original jurisdiciion each within its territorial limits, except as otherwise provided in this Constitution, of all causes both at law and equity, and such appellate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of habeas corpus, *quo warranto, certiorari,* injunction and other original and remedial writs, with authority to hear and determine the same.

Mr. CARLAND. I have grave doubts about the effect which the expression of this section, in the second line, is going to have "each within its territorial limits." I know what it was put in there for. It was for the purpose of preventing persons from being sued in counties other than those in which they reside. It is a question purely of venue. I think it is a proper thing to be left to the Legislature. I can conceive that it will prevent the issuance of a writ or judgment by the district court of the Sixth District which can be levied on any other county out of the district. I can conceive of a good many instances where a party who had commenced his action in the Sixth District would de-

sire to get provisional remedy. He might want to have it served in another district. If this court is going to be confined to its own district for the purpose of trying cases, it seems to me it is going to tie up the hands of the court in a very serious manner, and I think it is a very dangerous provision to leave in this section. I move that the words be stricken out.

Mr. MILLER. I desire to second the motion. The practical effect of that section will be such as is not intended by the parties who desired to have the jurisdiction of these courts limited. In case a writ of attachment in the Sixth District was issued, and there was other property in other districts, that writ would be useless in the other districts. The plaintiff would have to commence action in the other districts, and it would hamper all business in a thousand ways.

Mr. STEVENS. While that may be true it would also relieve a thousand persons of being sued away from home and putting them to unnecessary expense, and while it may be true that it would be inconvenient for the lawyer who has a large collecting business or an insurance business, or a vast amount of foreign collections to make, to go to the district where the party lives, it would be very convenient for the man against whom the suit was brought. We have fought this thing over before, and I hope the Convention will vote the motion down. Remember the hardships that could be imposed upon a person if these words were stricken out.

Mr. BARTLETT of Griggs. The gentleman from Ransom has expressed my views exactly. I am happy to be in accord with him in this matter. As he says, this matter was thoroughly discussed. It was simply a question whether the district court should have territorial jurisdiction or jurisdiction within its district. Why have any limits to the district court? Why not have five district judges and have them elected at large from the State? Why have any district if they can sue as well out of the district as in it? It seems to me if we have district judges, and the districts are limited, their districts should be limited each to that district. I will admit that some hardships will occur, but it may be remedied by an amendment. We don't expect these gentlemen who live in the center of a judicial district will vote for it. It is very nice for them to sit in their offices in Fargo and sue every man in the Territory, and if this is to prevail, let all the attorneys go to Fargo and live, and let the district judges live

there, and we can sue farmers in Walsh county, or any other county without leaving our offices. A man should be sued in the district and county where he lives, and no where else.

Mr. MILLER. The question of suing a man outside the district in which he lives is not one that disturbs me at all. I am satisfied to require a man to be sued in his own county unless personal service is made on him elsewhere. But there are grave questions about this matter of jurisdiction. For instance, the judge in the Third District is sick, or is inevitably away from home. A man is incarcerated in jail who is unable to give bail. A writ of *habeas corpus* would lie for the release of the man as soon as you could get to a competent court. It would be impossible to go into any other district, and he might lie in jail till he dies, or his family dies waiting for the judge to come home or to recover from sickness. No other judge could interfere. In the second place a judge sick, or away from home, or worn out, or interested in some particular case that is in his court, may have been an attorney in the case, and he cannot call in a judge from another district to hold his court. No, the judge has jurisdiction only in his territorial limits. So the business is suspended if the judge is sick or disqualified. What are you going to do with suits now pending? It is to be presumed that lawyers now practicing will be elected as judges. It is presumed that they have some cases pending in court, and they cannot be tried in their courts because they are disqualified. They cannot call in another judge because the business would be outside his territorial limits. In the next case, suppose a man in Griggs county desires to procure an injunction. Immediate and irreparable damage is to be done. The judge of the district has gone to St. Paul on business. He cannot go into any other district court for the injunction—he has got to allow the man to destroy the property at stake, or run away with it. He is powerless; he cannot go to the Supreme Court. It seems to me that every reason, if a man stops to consider the matter, exists in favor of giving the judges of the district court, jurisdiction much wider than is provided in this section. In regard to the cry to startle people that somebody is to be sued out of his county, I don't think it is worthy to be considered in a question of this importance, because that can all be arranged and provided by law. It seems to me the plan proposed by this section would hamper justice in a very serious manner.

Mr. LAUDER. I appreciate the force of the arguments used

by the gentleman from Cass county, but it seems to me under the pretext of asking for a thing that is just and right, the gentleman is going to get a great deal more that is wrong and that ought not to be granted. I can understand why provision should be made here for one judge—a judge of one district—to act for and instead of another judge who may be inevitably absent or sick, or is disqualified, or for any other reason. It would be all well enough to have a provision of this kind in this Constitution. And that is the only argument I have heard on this point to my mind that has any force. I desire to heartily concur in what has been said by the gentlemen from Ransom and Griggs counties. I don't believe we want to leave this Constitution in such shape that a man in Griggs or Stutsman or Richland counties may be sued in Cass county and compelled either to go down there and defend his suit away from home, or incur the expense of procuring a change of venue. This was all gone over when it was before the Convention before. The same argument was used then. The statute provides for a change of venue, but it entails on the defendant an expense to go into another county for the change of venue. It should be his right, without cost and price and trouble, to have his case tried in the county in which he lives. As was stated before, these insurance or machine notes are small, and a man had better pay the note than go to the expense of procuring a change of venue. If he lives here he must go down and hire a lawyer at Fargo—appear there on a day certain before the court to present his motion. The judge may be absent. If so he will have to go again. I know how this thing goes. I have had experience, and it is an outrage on the people of the State to permit even the possibility of their being sued out of the county in which they live.

Mr. CAMP. I also have had some experience, and it has never yet cost a client of mine 1 cent to have his case tried in the proper district. It has never put me to more than this trouble—I have written a letter to the attorneys on the other side and told them I should demand a change of venue, and I have never found an attorney so obtuse or so bull-headed but that he at once signed a stipulation granting a change of venue, for the law is mandatory as it now stands. This talk about the expense and cost is the simplest nonsense in the world. The law is perfectly plain as it now stands that a man can compel a suit to be changed to his own county, and he can do it without any cost. He does not have to go to Fargo, and if the attorneys on the other side are so persis-

tent as to refuse the change of venue, they have to pay the costs of obtaining it.

Mr. LAUDER. The gentleman from Stutsman has been very fortunate in his experience in securing a change of venue of his cases. I will ask him—when he demanded a change of venue, suppose the attorney had refused to sign the stipulation, then what would he have done?

Mr. CAMP. I would have made a motion before the judge.

Mr. LAUDER. You would have been obliged to go before the court and present your papers or employ some other lawyer to do it for you. If there is any other way to procure a change of venue I would like to have my attention called to it.

Mr. CAMP. The change is always granted as a matter of course.

Mr. LAUDER. Yes, when the proper showing is made before the court. But that can only be done by appearing before the court and making your showing there, either by yourself or by employing some other lawyer. The gentleman from Stutsman has an easy way of doing work which I have never acquired.

Mr. CAMP. I have never found any attorney so ignorant or discourteous as to put me to the trouble of going before the court.

Mr. CARLAND. I ask leave to withdraw the motion.

Mr. MOER. So far as this question is concerned, I don't believe there is any Constitution in the United States that attempts to limit the district court like this. I believe the arguments offered for it are the merest demagoguery. Any lawyer knows that all he has to do to get a change of venue in such a case as we are discussing is to forward his motion with proper affidavits. A change is granted as a matter of course on any showing. The danger of limiting the jurisdiction of the district courts is greater than any possible harm that can come from being sued outside the district. It seems to me that this is pure demagoguery to take such a position as is being taken here.

Mr. LAUDER. I rise to a question of privilege. My remarks have been criticized as demagoguery. I desire to say that what I have said here on this question has been the result of conviction. There is no demagoguery about it. My remarks have been based on convictions based on actual practice in Dakota Territory.

Mr. PARSONS of Morton. It seems that the principle argument advanced against this section is the fact that the judge may be absent, sick or disqualified. Simply to meet this, I would

offer the following to be inserted in section 103 after the words, "confered by law" in the fourth line, "and whenever a district judge is absent, sick or disqualified, any other district judge may have jurisdiction during such sickness, absence or disqualification in remedial writs."

Mr. STEVENS. I desire to say one thing only. Our support of this motion which has been sustained by a large majority in this Convention has been denominated demagoguery. The arguments in support of their position by the opposition yesterday were that if this section stands as it has been reported by the committee, no judge could act in the district of another judge and hold court. As far as the charge of demagoguery is concerned, I am willing to abide by section 116 of this Constitution, which reads as follows:

"Judges of the district court may hold court in other districts than their own under such regulations as shall be prescribed by law."

The amendment of Mr. PARSONS was lost.

The motion of Mr. CARLAND was lost.

Mr. BARTLETT of Griggs. I move that the vote just had be re-considered, and the reconsideration be laid on the table.

Mr. SCOTT. It seems to me that we are acting hastily in this matter. We have the judgment of as competent men as there are in this Convention, for whom I have the greatest respect, that this section in its present shape is improper, and should not stand in this way, and that some amendment should be made to it. If we turn to section 116 we find the only authority conferred is on judges in other districts, to hold court out of their districts, but should a judge be sick in his own district or be absent temporarily or otherwise, there is no provision by which any person can go to the judge outside of his district and obtain any relief. It is a very serious state of affairs, and there is no reason why we should be left like that. If the gentlemen of the Convention would consider for a moment they would not ask to have this re-considered and laid on the table so that no amendment could be made. There is not one case in five hundred where a person is maliciously sued, and my experience is it is very little trouble to obtain a proper change of venue. If we consider the matter candidly, and coolly and seriously, and look at all the serious objections there are to this section, which were fully stated by Mr. MILLER, I don't believe the gentlemen of the Convention will insist on leaving this in this

way, but will at least leave it so that we may have the matter changed by the Legislature if it is deemed necessary.

Mr. LAUDER. I have just as high a regard for the legal ability of the gentlemen on the other side as my friend from Barnes has, but I think the gentlemen who are advocating this change have too much sense to feel that there is any reflection on their ability or on them personally, when the Convention does not agree with the views they put forth on this or any other question. Now, there might be some force in the remarks of the gentleman from Barnes were it not for the fact that this question was argued for more than two hours, when it was considered on its second reading. I don't wish to gag anybody, and I don't wish to hurry over this question without due consideration, but it does seem to me that all of these disputed questions that were fought over before ought not to be brought up now and fought over again. If there is any part of this Constitution that this Convention should be prepared to adopt without further consideration, it is the section here that we are now considering, because we have given to it as much consideration as any other part of this Constitution, and I now move the previous question.

Mr. BARTLETT of Griggs. I desire to say that if there was any indication that there was any harm being done, I would ask that the motion be taken from the table, but the very fact that they have voted down an amendment offered by the gentleman from Morton that remedied the trouble they complained of, tells me that they are not sincere in their objections.

Mr. PARSONS of Morton. I would like to second the words of the gentleman from Griggs. The motion I introduced was voted down deliberately, which answered the objections of the gentlemen on the other side. If that was voted down in a spirit of fairness, I would like to know what reason there was for doing it? It answered every objection that had been raised to the section, and I incorporated in it the very words of the gentleman from Cass—absence, sickness or disqualification. Now it seems to me that the other side were not sincere in the matter.

Mr. STEVENS. The previous question has been seconded.

Mr. MOER. Motion to reconsider was carried.

The motion to lay reconsideration on the table was lost.

Mr. FLEMINGTON. As there is such a difference of opinion on this subject I move that the further consideration of the section be postponed.

Mr. ROLFE. I apprehend we will know nothing more about this matter at 2 o'clock to-morrow than we do now, and I think the Convention has pretty well settled in its mind what it wants. I hope the motion will not prevail. As a substitute I move the adoption of the section as it now stands.

The motion was seconded.

Mr. PURCELL. This is a very serious matter, in my judgment. It seems to me it ought not to be hurried through with. If we give it a special order for to-morrow, in the meantime this matter can receive a great deal of discussion between the members. There is a good deal of opposition on both sides, and I hope the motion of the gentleman from Dickey to postpone till to-morrow will be carried, for it should not be hastily passed.

Mr. SPALDING. It was my misfortune, and that of several other members, to be occupied elsewhere when this discussion took place before, and this matter as it has come up is the first I have heard of it. So far as I am concerned I am inclined to think it would apply to each member of the Joint Commission. I should like to have a chance to examine this a little, and look into it before taking a final step to adopt or reject this section. It seems to me that it would be but fair that the matter which goes to the very root of the district court business of this State and to the very foundation of the rights of the people in the courts, should be amply discussed and considered, and it should be laid over till to-morrow.

Mr. MOER. All I would like to be shown is that the words "each within its territorial limits" does not limit the process of the court at all. I believe it does. If it does it is in my judgement a serious mistake. If it does not I will vote for it. I think it should go over till to-morrow and be made a special order.

Mr. FLEMINGTON. Undoubtedly a large majority of the members of this Convention are in favor of a substitute of that portion of this section which is under consideration here. It is a matter of some little importance, and this is why I am in favor of postponing its consideration till to-morrow. There can be no harm done by this.

Mr. ROLFE. There has not been an argument advanced here in opposition to this section that has not seemed to be in the interest of attorneys who live in judicial centers The matter has been fairly discussed, and I think we know what we want and I hope the motion to postpone will not prevail.

Mr. WILLIAMS. I have been voting with the majority on section 103, and I feel like supporting the section, but I think the request made by the minority is very fair, and as it is a very important question I can see no good reason for the Convention refusing to postpone the consideration of this matter till to-morrow. It is of such general interest and importance, and as there is such a stubborn minority, I think the majority should treat them with respect, so that there may be further discussion on the subject.

Mr. HARRIS. I have been voting with the majority, and I have not had reasons enough presented to my mind to change my vote. I am open to conviction, and I think it is fair and right that we should put this over till to-morrow. If any reason can be shown me why this section should be stricken out, I am willing to do what is for the best interest of the State of North Dakota. For that reason I would like to see it go over.

Mr. ROLFE. Since I made the motion I did, it has been suggested to me that it might make it impossible for a process of the district court to run over into another district in case of emergencies where it might be very necessary that they should run over. While I am in favor of the section as it stands, still I think it should be modified a little with an amendment. I am in favor of so limiting the jurisdiction of the district courts that every man shall have a right to be sued in his own county, and his case to be tried there, but for the reason I have stated I would withdraw my substitute.

The motion of Mr. FLEMINGTON to postpone the subject was carried.

COUNTY COURTS.

Section 111 with the recommendations of the committee were read as follows:

SEC. 111. The county court shall have jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians, the sale of lands by executors, administrators and guardians, and such other probate jurisdiction as may be conferred by law. *Provided*, That whenever the voters of any county having a population of 2,000 or over, shall decide by a majority vote that they desire the jurisdiction of said court increased above that limited by this Constitution, then said county courts shall have concurrent jurisdiction with the district courts in all civil actions where the amount in controversy does not exceed $1,000, and in all criminal actions below the grade of felony, and in case it is decided by the voters of any county to so increase the

jurisdiction of said county court, then the justices of the peace of such county shall have no exclusive jurisdiction, and the jurisdiction in cases of misdemeanors arising under State laws which may have been conferred upon police magistrates, shall cease. The qualifications of the judge of the county court in counties where the jurisdiction of said court shall have been increased shall be the same as those of the district judge, except he shall be a resident of the county at the time of his election, and said county judge shall receive such salary for his services as may be provided by law. In case the voters of any county decide to increase the jurisdiction of said county courts, then such jurisdiction as thus increased shall remain until otherwise provided by law.

[Committee recommend that all after the words "county court" in the proviso, commencing with the words "then the justices etc.," down to the words "the jurisdiction in cases etc.," be stricken out.

Mr. ROLFE. I move that in the first line of the section, before the word "jurisdiction" the word "exclusive" be inserted.

Mr. SPALDING. I move that the recommendation of the committee be adopted.

Mr. SCOTT. I want to understand the changes. I want to know whether in case the recommendation of the committee is adopted, whether the justice of the peace will have the same criminal and civil jurisdiction as he would have if no county court was established? Is that the intent of the committee in striking this out?

Mr. BARTLETT of Griggs. The words struck out refer to the exclusive jurisdiction of the justices of the peace, because the justices will have no such jurisdiction.

The section was adopted as recommended by the committee.

The amendment of Mr. ROLFE was amended by including also the word "original," and as so amended was adopted.

Mr. SELBY. I move to adjourn.

The motion prevailed, and the Convention adjourned.

FORTY-THIRD DAY.

BISMARCK, *Thursday, August 15, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. SPALDING. I move that the resolution on page seven of the Journal of Wednesday, July 17th, as amended on page five of the Journal of July 18th, with the exception that the word "eight" be substituted for the word "six," on page eighteen, in the fourth line from the bottom, be adopted. The object of my motion is this. As will be remembered this resolution passed and was then reconsidered, and it has been left there all this time. I think the motion to reconsider has served its purpose, and as it now stands there is no authority to have any debates of this Convention printed or preserved, and the stenographer knows nothing about how much of the debates or whether any of them, shall be transcribed. It being near adjournment there is no more proper time than now that we should settle this matter definitely, and I therefore make this motion.

Mr. STEVENS. As I understand it there has already been a motion passed that a thousand copies should be printed. This is mainly a question of distribution. The members of the Convention are all in favor of printing these debates, and the question is as to whether each member should have six copies or eight.

Mr. BARTLETT of Griggs. My recollection of this was that this matter was voted down. If this Convention has heretofore given authority and that authority has not been repealed—to print the debates, let us go ahead, but as I understand it they re-considered the matter and voted down the proposition to publish the debates.

Mr. STEVENS. There was no question as to the publishing of the debates. The only question is as to the number we shall have.

Mr. PARSONS of Morton. The matter was reconsidered, and an amendment offered to the resolution of the gentleman from Burleigh, excluding from the debates all proceedings in Committee of the Whole, and the matter was left without any vote whatever. There is nothing before the House in regard to the matter now. There was a vote taken on an amendment offered to the resolution of the gentleman from Burleigh, but the original motion as amended was never put to the House. I don't wish to take the floor but once in this matter, but I wish to state this fact--that of the proceedings in the Committee of the Whole the only record we have are the stenographers' records. We have a brief synopsis or report of the Committee of the Whole as it appears in the minutes, but the only positive record we have is the stenographer's report. It seems to me to be the height of folly to pay a man to take down these speeches—for that is the principal part of what he has been doing—unless we are going to make use of them. The records of the other proceedings the secretary keeps closely. A thousand and one questions will arise as to this course and that course taken by different members here. That is the only true record, and I don't know of a constitutional convention ever held in the United States where these proceedings were not preserved and printed. I have taken particular pains to speak to the public printer in regard to this matter, and he informs me that the proceedings thus far had would not make a book of more than 400 pages.

The motion of Mr. SPALDING was lost by a vote of 21 to 45.

WOMEN VOTING ON SCHOOL MATTERS.

Mr. ROWE. I move to amend section 128 by striking out all after the word "territory" the following words: "May vote for all school officers and upon all questions pertaining solely to school matters and be eligible to any school office."

The section was read as follows:

SEC. 128. Any woman having the qualifications enumerated in section one of this article as to age, residence and citizenship, and including those now qualified by the law of this Territory, may vote at any election held solely for school purposes.

Mr. BARTLETT of Dickey. I move to further amend the section by inserting after the word "any" in line one, the word "single."

Mr. STEVENS. I hope this motion will not prevail. I hope this Convention will not offer a premium on old maids. That is

what this motion means, and I am opposed to offering a premium on old maids. I haven't any use for them.

Mr. MOER. I would like to know what effect the motion of the gentleman from Dickey will have? I at one time said that I would vote for this amendment, but I apprehended then that it only covered officers of the county. The only question I desire to ask is whether it allows a woman to vote for State School Superintendent.

Mr. ROLFE. The question as I understand it is on the adoption of the section as amended. The amendment is a singular one. I don't object to the purpose of it, but the general effect. If there is anything that we hold sacred it is the secrecy of the ballot. How will the secrecy of the ballot of women offering to vote on school matters be preserved if this section is adopted? If a woman presents herself and offers to vote for school superintendent she must exhibit her vote before she will be permitted to cast her ballot. That is not only contrary to the genius of our elective franchise, but contrary to section 129 following this, that was passed unanimously, which provides that all elections shall be by secret ballot. If our elections for State School Superintendent and county school superintendent come at general elections as in all probability will be the case, any women offering to vote at that election cannot have reserved to her the privilege of a secret ballot, such as is guaranteed to men.

Mr. ROWE. I don't understand that it will be necessary for any woman who goes to the polls to exhibit her ballot. This amendment covers all school officers and all questions pertaining to school matters. In the case of an election of a State School Superintendent at the general election, it can be so arranged that the ladies would be allowed to vote on School Superintendent. There can be a separate ballot box for the women, and it will not be necessary for them to exhibit their ballots.

Mr. STEVENS. These men who have fought this thing from the first will still fight it. If a woman is entitled to vote for a county superintendent the same rule should apply to State Superintendent. The county superintendent under our present Territorial laws is not elected at the same time as other county officers, but there is no provision that he shall not be. The Legislature may prescribe methods by which the evils predicted by the gentleman from Benson will be avoided. Undoubtedly the details of the question will have to be settled by the Legislature. There

can be nothing done till the Legislature has prescribed rules. The question before us is this—shall the women be allowed to vote for school officers? I say it is absurd to say that women are entitled to vote for school directors and not for school superintendent and other school officers. If they are entitled to vote for school director as they are now allowed to do under our territorial laws, it is on the principle that they are entitled to have something to say in the government of our common schools. They are as much interested—and more in fact—as the men. Whatever little education I may have I owe to my mother, and not to my father. I say the women of this country are interested more in the subject of education than the men, and I say they should be entitled to vote on this question, and if they vote on any branch of it, they should vote on all of it. It is a queer state of things to say that a man shall be entitled to enlist as a private and stand up as a target, but that he shall never aspire to be a general or captain of a company. That is what you say when you say that women can go and vote for a school director and county superintendent, but not for the State Superintendent. He is the general of the army, and to say that the women can have no right to help select that general is inconsistent with the first proposition. Either they are not entitled to vote on educational subjects at all or they are entitled to vote on all educational subjects. I hope no man on this floor that is in favor of women voting on any branch of education, will vote against this amendment.

Mr. MOER. The gentleman from Ransom is very popular with the ladies now, and it would seem to have been wholly unnecessary for him to have made this speech in view of the fact that the question has been passed. The objection raised by the gentleman from Benson was not, in my opinion, a captious one. I propose to vote for this section. I have opposed one form of woman suffrage. But, at the same time, it seems to me that when an objection is raised that may be a valid one, it should be met in some other manner than by such a speech as has been made by the gentleman from Ransom. I believe the objection of the gentleman from Benson has something in it. I don't see how a woman is to vote unless there is a special provision made by the Legislature, and we don't know whether the Legislature will make it or not.

Mr. BARTLETT of Griggs. Again I shake hands with the gentleman from Ransom. He expresses my sentiments exactly.

One or two gentlemen are considerably worried over the matter of the secrecy of the ballot. That section regarding the secrecy of the ballot was put in there before we decided that women should vote on school matters. Probably that would not have been put in, because it is pretty well known that women have no secrets. I rise to move the previous question.

Section 128 was adopted as amended.

Section 129 was also adopted.

AUSTRALIAN BALLOT SYSTEM.

Mr. PARSONS of Morton. I move that what is know as Council Bill No. 60 be added to section 129.

Mr. SPALDING. This matter has been voted upon several times, and there is but a small minority in favor of having this done. To save time, I move that the motion be laid upon the table.

Mr. MOER. I am in favor of the Australian bill system, but I don't believe the Constitution is any place for it. I have consistently opposed any proposition that would put this bill in here. A great many other things have, in my judgment, gone into the Constitution that had no business there.

Mr. WALLACE. I am in favor of the Australian ballot system, but I don't think it would be wise to put it with all its complexity in the Constitution, and I vote no.

The motion of Mr. PARSONS was laid on the table.

Mr. WILLIAMS. I desire to offer the following substitute for section 129:

"The secrecy of the ballot shall be preserved inviolate; and the Legislative Assembly shall pass suitable laws to secure the same. All ballots shall be printed, distributed and delivered at the polls to electors for voting at public expense and under public supervision, and at each polling place there shall be provided a sufficient number of booths or compartments in which the electors shall singly prepare their ballots in secret."

Mr. LAUDER. If we are going into this thing we may as well do it thoroughly. But this substitute is legislation pure and simple, and should be left to the Legislature.

Mr. MILLER. This substitute simply announces the fundamental principle. It is a just and proper provision. It gives the Legislature power to go on and make a complete election law and should be adopted by this Convention.

Mr. LAUDER. If that is not the Australian system what is

the use of incurring all this expense? If that is not legislation I don't know what legislation is.

Mr. MOER. I believe the substitute should be adopted. The gentleman from Richland talks about legislation, and he has been advocating legislation in this Constitution from the day we came here. I say that this substitute goes to the purity of the ballot, and there is no farmer on the floor of this House that should not advocate this system. The purity of the ballot is what will prevent corruption in the Legislature and we should take a step towards purifying our ballot system. This provides that the State shall provide ballots to be printed and they shall be secret. What objection can the gentleman from Richland have to this? Let us do something in expressing our approval of the principle of the secret ballot.

Mr. CAMP. I am in favor of having something in the election laws which will secure the secrecy of the ballot. During the last month or so I have been looking into a system which does away with ballots entirely and provides an entirely new method, which is absolutely secret and does away with all solicitation at the polls, and it seems to me is an almost perfect voting system and an improvement on the Australian system. The Legislature, in order to carry out the provisions of this substitute would be obliged to pass something like the Australian bill. While I am in favor of the Australian system, I don't want to fix it so that the Legislature cannot adopt an improvement on it if there is one found.

Mr. PARSONS of Morton. The system the gentleman refers to is very well in theory. It is a machine, and if the least thing gets out of order with it the whole thing would be thrown out and you would have to have a new election.

Mr. SCOTT. I think, as the gentleman from Richland says, if we are going into providing a half Australian bill we had better provide the whole thing. Section 129 provides that we shall have a secret ballot system, and it leaves the Legislature free to adopt a system. I don't think we want to put this in the Constitution.

AFTERNOON SESSION.

REGISTRATION OF VOTERS.

Mr. WILLIAMS. I desire to move the following as a substitute for section 129:

SEC. 129. The General Assembly shall immediately, and from time to time, provide for by law a complete and uniform registration by election districts of the names of qualified electors in this State; which registration shall be evidence of the qualification of all registered electors to vote at any election thereafter held; but no person shall be excluded from voting at any election, on account of not being registered, until the General Assembly shall have passed an Act of Registration which shall have gone into effect. No person shall vote, except as provided in this Constitution, unless his name shall have been registered as required by law at least ten days before the day of election. A new registration shall be made within sixty days next preceding the tenth day prior to every election; and after it shall have been made no person shall establish his right to vote by the fact that his name appears on any previous register. All laws for the registration of electors shall be uniform throughout the State.

Mr. WILLIAMS. I think every member of this Convention is in favor of honest and fair elections, and this provision will, I think, insure it. It requires the Legislature immediately to pass a registration law which will insure honest elections. That is what the future State will desire, and I think it is a measure that should find a place in our Constitution.

The substitute was laid on the table.

Mr. STEVENS. I move as a substitute the following:

"The Legislature shall provide by law for the registration of voters."

On motion the substitute was laid on the table.

Mr. BARTLETT of Griggs. I believe a majority are in favor of a registration law, but I believe the principal objection to this proposed section is that it goes into legislation, and provides what the Legislature shall do, therefore I move to strike out all after the word "held" in the fifth line of Mr. WILLIAMS' motion.

Mr. MILLER. That would exclude the provision beginning in the fifth line "but no person shall be excluded from voting, etc." If a man must be registered in order to vote, and there is no law providing how he shall be registered, I don't know who would be qualified voters.

The amendment of Mr. BARTLETT was adopted, and the section as amended was adopted.

DISTRICT COURT JURISDICTION.

Section 103 being a special order was considered with 116.

Section 103 reads as follows:

SEC. 103. The district court shall have original jurisdiction each within its territorial limits, except as otherwise provided in this Constitution, of all

causes both at law and equity, and such appellate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of *habeas corpus*, *quo warranto*, *certiorari*, injunction and other original and remedial writs, with authority to hear and determine the same.

Section 116 reads as follows:

SEC. 116. Judges of the district courts may hold court in other districts than their own under such regulations as shall be prescribed by law.

Mr. LAUDER. We have had a good deal of discussion over this section, and there seems to be some difference of opinion in regard to it, and there were those who believed if the section were adopted as it now stands it would prevent one judge from exercising any authority in another district. For that reason they desired that it should not be adopted in this form. As you remember, a large number of the delegates believed that to amend the section as sought to be amended here last evening, would leave us practically in the same position we are in now—that a man might be sued in any part of the State. I think I have an amendment which will obviate the difficulty and place this section in such shape that all delegates can support it. It is as follows: Strike out in the second line the words "each within its territorial limits" and add at the close of the section the following: "All proceedings had and taken in any action not commenced in the county in which the defendant or one of the defendants resides, shall be null and void; *Provided, however*, That this section shall not apply to non-residents of this State, or persons about to depart from the county of their residence."

You will see that it does not prevent a change of venue in proper cases, but it simply provides that in the first instance the suit shall be commenced in the county in which the defendant resides, or one of the defendants. Then if the cause of justice will be promoted by a change of venue an application can be made, but in the first instance the action must be commenced in the county in which the defendant resides. That is all there is of it, and I think that is what we want. It does not prevent a provisional remedy from operating in another county. Action may be commenced in the county where the man resides, and it secures to every man that when he is sued he shall be sued in the county in which he lives, and if he is sued in any other county he will pay no attention to it, knowing that proceedings taken in the suit will be null and void. It does not restrict the process of the court, but it does

secure to every citizen of the State the right of being sued if he is sued at all, in the county in which he lives, and then if for any reason the suit should be tried elsewhere, application can be made to the court and a change of venue granted.

Mr. ROLFE. I believe the amendment has not been seconded. I would second the amendment believing that it covers all objections made and secures the principle we would like to incorporate in this section. Our laws heretofore have been framed in such a way that action might be commenced wherever the plaintiff choose to bring it, throwing on the defendant the burden of procuring a change. We give to the defendant the right to have his case tried in his own county, but the plaintiff may institute the suit in some other county. Since we recognize the right of a defendant to have his case tried in his own county, why not have it instituted in the same county? Then if there is a reason for a change of place of trial, let the expense and the trouble of securing the change fall on the plaintiff rather than on the defendant. The amendment offered by the gentleman from Richland secures the defendant the right to have his case instituted in the county where he lives. The process of the district court will be valid throughout the limits of the States and the objection will be done away with that was raised that the process of the court would be only valid within the territorial limits. That was a point we had not considered.

Mr. SPALDING. I call for a division of the question.

Mr. CARLAND. What became of my motion to strike out the words "each within its territorial limits."

Mr. SCOTT. We are entitled to a division of the question. I am in favor of striking out these words, but not in favor of adding the amendment, because there are a good many exceptions which perhaps the gentleman from Richland does not think of, and I don't think it is a proper place now and here for us to say under what circumstances and where a man may be sued. That question is properly left to the Legislatue if any question is to be left to them. Though I am in favor of striking out the words as indicated in the motion of the gentleman from Burleigh, I am not in favor of adding the clause introduced by the gentleman from Richland. I believe the plaintiffs have rights in courts as as well as the defendants, and the convenience of both parties should be consulted and the matter would be very properly left to the Legislature to attend to. It is not our province and jurisdiction now to go into the matter.

Mr. LAUDER. The objection was made to this section last evening that it restricted the process of the court Now this amendment proposes to remove that, and the only purpose of the section is to provide that a man can only be sued in his own county. It simply shows that the gentlemen were not acting in good faith when they urged that objection, but they seek not only to erase those words, but to leave it just as it is now so that a man in Rollette county, if caught in Fargo, may be sued there. It is a question whether this Convention desires such a provision in its Constitution.

Mr. ROWE. I would like to ask what effect this would have on a party living in a county that was attached to another for judicial purposes?

Mr. LAUDER. There will be no such county in this Constitution, for it provides that in every organized county there shall be held two terms of court a year.

Mr. SPALDING. I call for a division of the question. I want it divided so that the part which pertains to the striking out can be voted on first and then a proper amendment may be added. I don't believe the amendment offered is a proper amendment. But I do want to have an amendment prepared that will voice the sentiments of the minority here and at the same time leave the thing in proper shape, and that is why I call for a division of the question.

Mr. BARTLETT of Griggs. I hope this motion to strike out will be voted down. It is evident that some of these gentlemen are not sincere. They do not want a man to have the privilege of being sued in the county where he resides. Last night it was postponed till this afternoon so that they could investigate it. Now they say this is not a proper amendment. Have they a proper amendment to offer? If they have they have not presented it. They want these first words stricken out, and then they propose to vote down the amendment. I say let us keep these words in the section and until the amendment is adopted.

The motion to strike out the words was lost by a vote of 29 to 34.

Mr. WILLIAMS. I think a majority of the members of this Convention are in favor of allowing a man to be sued only in his own county. I think the Convention should agree and I will move that this section be re-committed to the Committee on Judiciary.

I believe they will report a section which will be satisfactory to a majority of this Convention.

The motion of Mr. WILLIAMS was seconded and carried.

Mr. BARTLET of Griggs. I move that the Committee on Judiciary be instructed to prepare a section which will provide that a man may be sued only in his own county. If we don't pass some such motion as this it will simply come back to us as it did before, and be discussed all over again.

Mr. SCOTT. I would like to inquire who is to be the judge as to where the residence of the defendant is? The question of residence is a question of fact, pure and simple, and a man may be in Burleigh county to-day, or for three, or four, or six months, and his actual residence, in the eye of the law, is not in any county—not in any county at all. I say, who is going to be the judge as to where the defendant resides? Suppose a man came here and did business, and got into debt and another resident desired to sue him, and he proved that his residence was in Eddy county or some other county? Then all the proceedings would be void. It seems to me that we should not instruct the committee to put such a provision in the section as that. The question of residence is a question of fact, and very frequently the law determines that the residence of a man is determined according to his intentions —where he claims his residence, and not where he actually resides.

Mr. MOER. I am heartily in sympathy with the movement to get a defendant sued in the county where he resides, if it can be done without any danger to our court system. But when you tie up the hands of the judiciary in this way you don't let them exercise any judgment at all. I move that the motion of the gentleman from Griggs be laid on the table.

The motion was seconded and carried.

Section 116 was adopted.

THE REGISTRATION QUESTION.

Mr. SPALDING moved that the vote by which article five was adopted be reconsidered.

Mr. SPALDING. I don't believe we want to provide, or make any provision, so that the simple fact that a man has registered shall prevent anybody else from challenging his vote at the polls. I don't believe such a provision is safe. It is easy to get registered and still not be a voter, and the tendency will be to put the

responsibility of illegal voting on the registration, and parties who are not present at the time the registration is going on will have no power to challenge those who may be improperly registered.

Mr. PARSONS of Morton. I move that the motion of the gentleman from Cass be laid on the table.

The motion was lost and the motion to reconsider prevailed.

Mr. MILLER. As a matter of fact I don't believe the matter can be taken from before this Convention until it finally adjourns. This Convention has control of it till it finally adjourns. I want to ask this Convention before this motion to reconsider is finally voted upon, in what position we were in if we do not reconsider? There is a system providing for a registration law—providing that when a man has registered, the fact that he has registered shall be evidence of his qualifications to vote at any election held thereafter. No subsequent registration is necessary—no qualifications required. Any man can go and register, and the fact that he has registered is evidence of his right to vote. That is the position we are in. This section taken altogether as introduced would make a complete law. But this little fragment makes an absurdity. I am in favor of a registration law, but I am not in favor of something that is an absurdity on its face.

Mr. BARTLETT of Dickey. I am not in favor of the registration law. In cities it is fine, but in the country you won't get men to register, and it is a trick for political tricksters to come around and get their friends who will vote for them, to register, and when they come around to look, good honest men are not allowed to vote. It is a trick to run men into office who are not worthy. A great many of our voters have to come ten, fifteen or twenty miles to vote, and you can't get them to leave their work. They say they won't go twice. Such a law will defeat the honest sentiment oftener than otherwise.

Mr. MILLER. I move the adoption of section 129. I believe it covers every want. It gives all elections by the people by secret ballot, subject to such regulations as shall be prescribed by law. The Legislature may provide a registration law for both cities and counties or for the cities alone, which will probably be done.

Mr. WALLACE. I agree with the gentleman from Cass in the objection he made to section 129 as it stood, and I think with him that the provision which has been made which reads "which regis-

tration shall be evidence of the qualification of all registered electors to vote at any election thereafter held," is absurd. I move to amend the amendment of the gentleman from Burleigh so as to strike out all after the word "State" in the third line.

Mr. SELBY. It would seem that as we have the original proposition before us and two amendments, that we are now in the position that there is first the main motion, the motion to amend and then the amendment to the amendment.

Mr. WILLIAMS. I would like to see this Convention go on record for honest elections. I don't agree with the remarks of the gentleman from Dickey. He finds the registration law works injustice, and the local voter is deprived of his vote. I believe it is better for a legal voter to lose his vote, than for ten or fifteen illegal voters to vote for him.

Mr. LAUDER. I heartily agree with everything said by the gentleman from Burleigh. I am in favor of a strict registration law, and in throwing all the safeguards possibe around the ballot box. I am in favor of the Australian system of voting, but that was voted down because it was legislation. If that was legislation I would like to know what this is. Let us have the Australian system as it was introduced here, or let us leave the whole matter to the Legislature. I therefore move that the amendment be laid on the table.

All amendments to section 129 were laid on the table.

Mr. WILLIAMS then moved again his original motion as a substitute. The motion was ruled out of order, and article five was adopted.

Sections 130 to 143 inclusive were adopted with the recommendations of the committee.

RAILROAD RATES.

Section 144 was read with the recommendation of the committee as follows:

SEC. 144. Railways heretofore constructed or that may hereafter be constructed in this State are hereby declared public highways, and all railroad, sleeping car, telegraph, telephone and transportation companies of passengers, intelligence and freight, are declared to be common carriers and subject to legislative control; and the Legislative Assembly shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers and freight, as such common carriers from one point to another in this State.

[Committee recommended that the word "intelligence" be inserted after the word "passengers" in the next to the last line.]

Mr. PURCELL. This is in substance what is embraced in section nine of File No. 135. As it stands now it will leave the corporations in no position to take an appeal from the rates that might be unjust or unreasonable. This question has received some attention from the Supreme Court of the State of Minnesota, covering a position similar to this. All we ask is that the railroad company have the right to go into the same tribunal where every other person goes to have his rights adjudicated, and have it determined there whether or not the rates are just and reasonable. Judge Brewer in Minnesota, when deciding this question, enjoined the Railroad Commissioners in Minnesota from enforcing certain rates they had fixed. They then changed their rates and fixed another rate. There was an injunction obtained forbidding them from enforcing their rates. But when deciding the constitutional question raised in Minnesota the judge held that it did not appear that the rates were unreasonable. But where the Railroad Commissioners may fix rates that are unreasonable without a constitutional provision allowing the companies to appeal to some tribunal, they have no remedy. An amendment I shall move simply gives the courts the power to decide whether the rates are reasonable. It does not seem to me that there is any advantage to the company or against the company in a provision of this sort. I move to amend the section by adding the following:

Provided, That the common carriers above named, or any party interested, shall have the right to appeal to the courts from the rate so fixed by the Legislative Assembly whenever said rates as fixed appear to be unreasonable or unjust.

Provided, further, That pending the determination of appeal, the court shall fix and determine what rates shall be in force.

Mr. LAUDER. This is perhaps one of the most important questions that has ever been before this Convention. It seems to me that when this section is acted upon it should be acted upon before a full Convention. I move the call of the House.

After the call of the House proceedings had been disposed of Mr. JOHNSON said: I understand the question before the House is the amendment of the gentleman from Richland. I don't wish to go over the same ground that has been gone over before. I recognize in the amendment of the gentleman from Richland at least an old acquaintance, if not an old friend. It is essentially the same question that we went over a week ago Saturday night, and I shall endeavor as far as possible to make my remarks brief

unless we should have some new arguments or some new positions for us to consider. Our present predicament is very much like that of the colored brother who went fishing. He caught a very large catfish. He did not want to carry it all day with him, so he put a string in the fish's gills and tied the other end of the string to a sapling. Pretty soon a little colored brother came along who had caught a little catfish. He determined that a fair exchange would be no robbery, so he untied the string from the gills of the big catfish and tied them into the gills of the little catfish. Toward evening the large colored brother came along to get his fish. To his astonishment, his fish had shrunk up wonderfully. He said "This is the same place—same sapling, same string and it must be the same catfish, but Lor, how he has shrunk up." We have here the same section, the same amendment and the same argument, and I hope the majority we tied in the section by the gills has not shrunk up—that there has been no little darkey around making an exchange. The position that we would be in if the amendment carries is one that would not relieve the company or the patrons of the road. It is essentially this—to provide a means to go into court and determine what is reasonable. You who were here when this question was argued before know very well that it is utterly impossible to fix rates a year or six months in advance. They will fluctuate with the rain and the storm—good crops and poor crops. Hence, the enlightened states have all placed their railroad systems under railroad commissioners, and these commissioners have fixed rates and changed them from time to time, as is necessary. Suppose this amendment were adopted, authorizing these men to disregard the rates fixed by the Railroad Commissioners till a decision of the court could be reached. That would take, probably, several years, and when finished it would simply determine what was right and reasonable at the time it was started. There is no way to reach this question except through Railroad Commissioners that can fix rates and change them from time to time—an appeal to public sentiment—an appeal to the elections—an appeal that can be felt promptly. If injustice should be done to anybody or to any community, letters and telegrams would pour in on these Commissioners, and anything that was fair, and just and reasonable they would listen to.

Mr. STEVENS. I am not a catfish, and I have not been tied to any sapling. I am not in any pool, but yet, according to the

gentleman's theory, I have shrunk up. I have shrunk up for this reason—the amendment as it now appears is just and fair. The greatest stay to a republican form of government is the courts of justice. If we cannot depend upon our courts of justice, upon what can we depend? Railroad Commissioners might possibly be biased. But these judges are sworn officers, and they are the best judges of what should be done—of what the law should be. I understand under the amendment, as it has been offered, that the judges of the courts shall have the right to determine what seall be the rate, pending litigation. That is what I have been in favor of from the first. I have fought for this idea—that an appeal should not be taken and the question hung up until the appeal had been determined. Now if the courts decide what those rates shall be, it is eminently fair, and right and proper. The courts have finally to decide this question, and upon a showing if they say that the rate is reasonable that rate should be established pending this litigation. I say that is right. The United States court, under our present laws in similar cases—and in fact in almost every case that may come before them, have a right to issue an order which shall control and govern the property in litigation pending a decision. Our territorial court should have the same right. We ought not to go further in the Constitution of the State of North Dakota than the United States Constitution has seen fit to go. We are subject to that Constitution—we are subject to its provisions—we have adopted it, and that Constitution allows the United States courts by laws enacted by Congress to tie up your property and my property, and the property of corporations subject to the decision of that court. They may issue an order, which order will remain in force and will control until such time as they may have rendered their final decision in the case. So, too, in my opinion should the courts of this territory have a right when the question before them has been appealed from, to issue an order which will control until a final decision in the case is rendered. Nobody can complain at that. No farmer, no business man, no citizen, would have a right to complain at an order which whould be made by the court to which he submitted his grievances. The court has the question before it, and temporarily it will decide what is just and right between the parties until such time as they have rendered their final decision. I am opposed to monopolies and oppression. I am opposed to putting anything in this Constitution

that will give a railroad company any influence—any benefit—any right that every citizen does not enjoy. I am opposed to putting anything in this Constitution, any provision which will allow a railroad company or any other corporation by any rule that may be established, to take advantage of their position and thereby oppress anybody. But when the question is to be submitted to the courts—when the question comes in the form that it would between two citizens, then I say if I fought against that provision I fought to say I am afraid the corporations will control the judiciary of the State. If you say that, what advantage will you have by the temporary advantage you gain by this section? If the courts have the right to finally determine this, and you are bound by that determination, why have not they also the right to determine it, pending that decision. I told the gentleman from Richland that if he would put in that amendment a provision which would allow the courts to determine what the rates should be pending the litigation, I would be in favor of it. Without I would be opposed to it. When it is proposed that the courts shall establish the rate pending the trial of the case, I would not be loyal to our courts if I did not say that I was in favor of it.

Mr. PARSONS of Morton. I am not in favor of this because I do not favor any method of procedure by which the Legislature or the people may be wronged out of their rights. For instance, in the present amendment before the House if the rate were fixed by a board of Railroad Commissioners, appeals could be had from that decision and the court would fix the rate. My objection is that no court could fix a rate intelligently until it had heard the question. An appeal would be had from court to court and it might be three years before any remedy could be found or any decision arrived at. It seems to be the object of some of the gentlemen here to defeat the very thing that we are asking for in this measure. If that is possible—if this amendment should carry—it would defeat the very thing we have struggled for for years in other states, and is our right in this State. There was a measure offered before this House allowing an appeal from the decision of the board of Railroad Commissioners, but the provision that their decision should be in force pending the decision of the court. Now it seems to me if we deviate from that in the least particle we will be giving away and forfeiting all we have struggled for in

the last fifteen or twenty-five years in the other states. We wish to profit by the mistakes and the battles in the other states. My amendment was defeated on the second reading. It was offered—it was part of the report of the committee and from an oversight of the clerk of that committee it was not printed. I hope the amendment will not prevail, for one reason that it sacrifices our interests. But I do not wish to go on record as supporting a proposition which leaves any three men under heaven to fix rates from which rates a railroad corporation cannot appeal. The time has not come when the people should be afraid to trust their interests in the hands of a court and a jury of twelve men. I am in favor of leaving it in such a way that whatever the decision of the Board of Railroad Commissioners is, if any party feels aggrieved he may appeal to the courts of the State. But the decision of that board should be in force until the courts have decided. If this is carried out, then the right to appeal cannot be used as a means of evading what is right and just in the matter of rates, by the railroad company. Therefore I move as a substitute a clause which, remember, was accepted as the report of the committee once, and which I hope will pass:

"*Provided*, That appeal may be had to the courts of this State, from the rates so fixed, but the rates fixed by the Legislative Assembly or Board of Railroad Commissioners shall be in force pending the decision of the courts."

Mr. PURCELL. There was some question as to whether or not a railroad company had the right to appeal under a section of a constitution similar to ours. Under section 144 as we now have it, we provide that the railroad companies and others known as common carriers shall be subject to legislative control, but the Legislative Assembly shall have power to enact laws regulating and controlling rates. The purpose of offering my amendment is that in the Constitution we may provide that if the rates fixed by the Legislature or a body to whom the Legislature may delegate its power, shall be unjust or unreasonable, the company may have the right to an appeal to the courts. A great many of the members are under the impression that they have that power already—that it does not require a constitutional provision to give the company the right to an appeal to the courts. That is untrue, for in Minnesota under a similar clause the Supreme Court of that State in the case of the State vs. the Chicago, Milwaukee & St. Paul railroad company, (found

in volume 37 of the Northwestern Reporter,) the Supreme Court holds that they have no right to appeal. They hold that the power vested in the Board of Railroad Commissioners is conclusive, and that no right to appeal lies from their decision to the courts of that state. Now in one instance the Railroad Commissioners of the State of Minnesota have fixed rates which in the judgment of many railroads are unreasonable. For instance, as was stated by the gentleman from Cass, they fixed on $1 a car which should be charged for switching cars, when it was found that the cost of switching cars was $2.12, so that to-day under the rates fixed by the Railroad Commissioners of Minnesota, they are compelled to do the work at a loss of $1.12 per car. If they had a right to appeal to the courts, they might take into consideration the reasonableness or the unreasonableness of the rates so fixed. That is all we ask. Simply that whenever a question arises between a company and the Board of Railroad Commissioners or any party in interest, they shall have the right to go into the courts and say what is reasonable and right. It has been admitted by the substitute of the gentleman from Morton that the rates fixed by the Commissioners remain in force pending the trial. Now a little instance occurs to me of this kind. The Board of Railroad Commissioners not only have the power to fix rates for the transportation of freight, but they can control the running of trains. In one instance the Commissioners required the Northern Pacific to make connections with trains at Glyndon, running north on the Manitoba. At the same time they required that same railroad company to make connections at Casselton, and as was stated by one man it was beyond all the power of human possibility to make connections such as were insisted on at Glyndon and Casselton. So that the gentlemen of this Convention will easily see that where it is left in the hands of three men they will at times put railroad companies in a position that no corporation should be put in, if there is no appeal from their decision.

There is no man here but will say that when railroad companies have invested their money they should be entitled to a fair profit. Where they are compelled to carry passengers and freight at a loss, it is reasonable that they should have the same rights as individuals in appealing to the courts. In our Bill of Rights we give every man the right to go into the courts and have his wrongs remedied, and all we ask is that we give the corporations the same rights. If this substitute prevails the rates fixed by the Board of

Commissioners remains in force. Now the appeal taken in the case I have mentioned was taken on the 20th April, 1880. An appeal was taken from the Supreme Court of the State of Minnesota to the Supreme Court of the United States, and that case is undecided yet, and the companies to-day are switching cars in Minneapolis at a loss of $1.12 a car. We ask, is that reasonable and right? On the other hand is not the amendment I have offered here reasonable and just, and such as every man on this floor would be willing to have in this Constitution if he represented either the railroads or the people? If the rate appealed from by the company is unjust, that rate should not exist one minute. If it is unjust to the individual it should not exist. But whether it is reasonable or just will be determined by the court, temporarily. He will for the time being fix a reasonable rate on freight and transportation. That rate as fixed by the court will remain in force till the question is determined in the courts. If there is anything unreasonable in this proposition I should like to know what it is. There is no man who can justify the statement of the gentleman from Morton that a rate should remain in force as fixed by the Commissioners until it is changed by the court's final decision. The only question is this—do we, as members of this Convention, have sufficient faith in our judiciary to say that with them shall rest the power of fixing what is reasonable and just after a fair hearing, or are we going to be carried away by prejudice and say that the action of the board, whether it is right or wrong, shall operate against a corporation because it is a corporation? Every man should be willing to treat a corporation as he would be treated himself.

Mr. PARSONS of Morton. The amendment I have offered I have offered more in a spirit of compromise than anything else. I reiterate—it is in substance the report of the committee, and I am well satisfied that it is in accordance with the temper of this House. I introduce this because I believe this Convention will be willing to leave a question of fact to be determined by a jury of twelve men. I don't think it is right to leave a loop-hole whereby the people will suffer, because under the present ruling the case might be evaded from year to year and then be unsettled. I will acknowledge that under my proposed substitute, if the Railroad Commissioners should fix an unjust rate the corporations would suffer until they got it reversed by the courts. But then every effort would be made on their part as well as ours, to arrive at a

decision as soon as possible. It seems to me we must consider the greatest good to the greatest number, and if it does work a hardship it is only in a few cases and it is a rare case in the history of the people and only an exception to the rule, that any decision of the Railroad Commissioners is reversed.

Mr. BARTLETT of Griggs. When this matter was under discussion before, I voted with the Committee on Corporations. I don't know whether I made any remarks to the Convention at that time or not. I have been converted to the extent of the amendment of the gentleman from Morton. I believe they are entitled to that appeal, but pending that appeal the decision of the board should be and remain in force. This is going further than any other State has gone—further than the United States has gone, for if I understand it there is no appeal from the Board of United States Railroad Commissioners. Their decision is final. As a conciliatory measure, and to give them the rights which they can reasonably ask, I am willing to allow them the appeal provided the rate fixed by the Railroad Commissioners shall be enforced pending the appeal. I undertake to say that the men who will be elected Commissioners of Railroads in this State will be supposed to know more about what is reasonable than a court. They will have made it a study. That is what they will be elected for. They will view all the circumstances and all the combinations and they ought to know what a reasonable rate is. I do not vote on the assumption that these Railroad Commissioners are going to be elected for the purpose of oppressing the railroads. They are as much the representatives and arbitrators of the roads as of the people, and I say they are more likely to know what is reasonable and right than a court after a few hours of investigation. Therefore I will vote for the substitute of the gentleman from Morton.

Mr. LAUDER. When this question was before the Convention I believe I voted against a proposition somewhat similar to the one now introduced by the gentleman from Morton. I have not been converted at all. My mind is not changed on that question, though I shall vote for the proposition of the gentleman from Morton. The gentleman from Richland has spoken of a decision of the Supreme Court of the State of Minnesota. It seems to me that in all fairness the gentleman should have read us from other decisions bearing on this same question. I believe that there is but one proper solution of this question. In all cases of this kind a railroad corporation has a right to appeal, or in other words they

have a right to a decision of the court to protect their property from confiscation. That is the decision of Judge Brewer of the United States Supreme Court. I believe that a company has a right to an appeal to a court, and this amendment makes no difference, because this gives to them all they have already. For that reason I shall vote for it. In the arguments made on the other side of this question, particularly of the gentleman from Richland, they proceed on the theory that the Railroad Commissioners are going to be elected for the purpose of oppressing the railroads. Now I would call the attention of members of this Convention to this fact—that fixing the rate for passengers and freight is not a question of law at all. Because a man happens to sit on a bench as a member of the Supreme or the District Court, it does not qualify him any better to decide this matter of fact, than any one of twenty members of this Convention. What are reasonable rates? There is no law in it. The question of law comes up when the fact has been found that the rates are unreasonable—then the question comes up whether the Commissioners have a right to fix rates that will be a practical confiscation of the property of the road. The fixing of the rate is a question of fact, in the fixing of which any good business man is just as competent as a judge upon the bench. For that reason, why are the railroad companies any better off in having the rate fixed by a judge? He is simply a sworn officer—sworn to do his duty. Railroad commissioners are sworn to do their duty. They have to fix rates that are reasonable—to do equal justice between the people and the railroad companies. They do not represent the people as against the railroad companies, but they have specific duties to perform, and I undertake to say the people of this State will elect men to fill those positions who are just as well qualified to perform that duty as will be the men whom they elect as members of the Supreme Court or the District Court.

It has also been tried to create the impression that the railroad companies are in danger from these commissioners. I would call attention to the fact—that so far as I know the railroads, during all the time railroads have been built in North Dakota or that part of the Territory which will soon be the State of South Dakota, during all the time the office of Railroad Commissioner has been in existence, there has not been a single effort to place the least restriction on railroads. I don't believe—as far as my information goes—as far as I have been able to learn—the right of the Rail-

road Commissioners to fix rates has never been exercised in a single instance. What right have we to believe that these men are all at once going to jump on the railroads with both feet and drum the life out of them? It is a false alarm for the purpose of getting something into this Constitution which should not be there. There is no ground for this apprehension. I think it should be left as provided in the resolution of the gentleman from Morton, for this reason—that if the rates as fixed by the commissioners should at any time be oppressive or unjust, if those rates were allowed to remain, certainly a final determination of the question would be had much quicker than if they were not allowed to remain. If the rates were oppressive on the people, they would be interested in having it determined. If they were oppressive on the companies they should be interested in a speedy, final determination. It would be an unwieldly arrangement if you had to run to the court every time you want to change a schedule. It seems to me that would be cumbersome. By leaving it just in the way suggested by the gentleman from Morton, the railroad company will be interested in having the case finally determined. The gentleman has cited a case from the Supreme Court of Minnesota. This question, as I understand it would not go to the Supreme Court. I cannot see—perhaps I don't look at it right—I cannot see how any federal question could arise on an appeal from the rates as fixed by the commission. The commission has a right to fix the rates, and the court has the right to decide on a question of fact. I cannot conceive how any question of a federal character can come in there. I cannot see how any question that the Supreme Court of the United States would have any jurisdiction to determing would arise, because all these cases would have to be brought in our territorial court. We have our Supreme Court, and unless some federal question arises I don't see how it could get into the Supreme Court of the United States at all, when we become a State. For these reasons I hope the substitute of the gentleman from Morton will prevail.

Mr. PURCELL. The gentleman from Richland, my colleague, asks me to cite other decisions. It is strange if the decisions I have cited are not in accordance with the law that he does not cite some cases that will contradict them. He has stood on the floor of this Convention from the time it opened till to-day and has had his hands and feet going on every question that has come up, and there is no man who ever dared to sit here and question a

single statement of law he has propounded. He is so large and big that he does not require books to substantiate the statements he makes, but when the Supreme Court of Minnesota makes a decision, he comes in here with all his magnitude and says—"It ain't so. The Supreme Court of Minnesota is wrong and I am right." There is some consistency in all men, and I would ask that at least before this Convention he show it. I have made no statement, and I have made no proposition of law wherein I have tried to deceive any man. The gentleman has stated that the decision of the Supreme Court of the State of Minnesota is not the law. But the Supreme Court of that state says that the railroad companies have no right of appeal under a similar constitutional clause to that which we have here. The gentleman says here that Judge Brewer of the Supreme Court of the United States has decided so and so. I say Judge Brewer is not a member of the Supreme Court of the Unitid States. He is simply a federal circuit judge, and I defy him to produce his authority showing Judge Brewer's decision. I have argued this question simply as it is presented. When he sets himself up here as a bigger man than the Judges of the Supreme Court of the State of Minnesota I desire to call the attention of this Convention to him. He says that there is no question of law involved in this case. He says that it is entirely a question of fact. I ask where does a man go to determine what is just and reasonable but into court, and what constitutes a court but a judge, and if the question of fact is involved, a jury? We don't create a new court. We say they shall go into our courts as they are now established and constituted, and those courts consist of a judge and jury if a question of fact is involved. See the bugaboo he raises that when you appeal you take the case to one man. But you don't. If it is a question of fact, you take it to a judge and a jury.

There is no man, so far as I know, that charged that any man who will be elected a Railroad Commissioner intends to deprive any man of his rights, but there are men who will be elected who will honestly make mistakes, and if they do make mistakes it might militate against the company. We ask that the company shall have the right to appeal. The railroad companies do not charge that there is a conspiracy existing between those who may be commissioners to deprive them of a single right. But we know we are all liable to err, and in case we do err these parties have a right to appeal. The gentleman speaks about the Legislature

being able to meet and rectify the mistakes they may make. They will only meet once in two years, and here is a wrong they will have to endure till the Legislature meets, and they will not have the right to go to any tribunal such as are open to other people, but must go to the Legislature. He says there is no federal question involved. I ask if there is an appeal taken by the Northern Pacific if there is not a federal question involved, the company being a foreign corporation? I would ask if there is not a federal question involved if there is an appeal taken by the Manitoba company? When there is a difference between two citizens of different States, they have a right to go to the Supreme Court of the United States.

Mr. LAUDER. I hardly think it is necessary for me to answer that portion of the gentleman's harangue which was directed towards me personally. He tells me about my jumping up on the floor every few minutes and swinging my arms, and so forth. I hardly think that part of his speech is worthy of notice. It certainly is a very strong argument in favor of his proposition. It is an old saying among attorneys that when you have got a case that is absolutely without merit, about the only thing for you to do is to abuse the other fellow's attorney. Evidently he has heard of that old saw and is taking advantage of it. The members of this convention are as well acquainted with the number of times I have been on the floor as the gentleman is. What I have said here I have said probably with as much sincerity as the gentleman from Richland has displayed, and I hardly think it was necessary for him to shoot off his mouth the way he did. Certainly it displays a case of want of confidence in the real merits of his case, or he would not get up here and indulge in personal abuse in order to prejudice the minds of this Convention. I have not said that the Supreme Court of the State of Minnesota has not decided the case as cited. I know about that as well as he does. I knew it perhaps as soon as he did. What I did say was this: that Judge Brewer, not of the Supreme Court of the United States—another misstatement, I never said he was; I know him personally, and I know a great deal better than that—I said that Judge Brewer, a United States judge, has held that a railroad corporation or any other corporation or person is entitled to the interposition of the courts of this country when his property was being confiscated, or when a schedule of rates had been fixed at such a figure as would amount practically to confiscation—

that he was entitled to the interposition of the courts. The gentleman from Richland knows about that decision. I state further that the decision of Judge Ryan in sustaining the right of the Legislature to fix rates intimated the same thing. I have not the books here. There is not a lawyer who does not know it. I say this question has not been tested squarely by the Supreme Court of the United States. I know these things from reading them. I have conversed on these things with one of the most eminent lawyers in Dakota—none more eminent or able—and he agrees with me entirely on this question. I say the matter of fixing rates is not a question of law, and I appeal to every lawyer to bear me out. It is purely and simply a question of fact, and if this question was brought into court it would be so decided to be. He undertakes to slide out by saying it should have a jury. He never intended to have a jury pass on this question. The argument was all predicated on the theory that it was the court, clothed in his judicial robes—that is the man who shall determine the question whether it was a reasonable rate or not, and with a contemptible quibble he comes in and says he will have a jury. Who had contemplated that a jury would be called in? It is nothing but a contemptible quibble and every lawyer knows it is so. He speaks of this being a federal question—says there may be a gentleman here from Minnesota or a corporation engaged in litigation. If he sues in the United States Court he can take an appeal to the United States Supreme Court, but if the action is brought in our territorial courts the Supreme Court of the Territory is the end of the rope, and there is not a lawyer here but that knows that.

Mr. CAMP. I do not know the cause of the civil war in Richland county. The gentleman who has just left the floor has been arguing against the proposition which he tells us he is going to support by his vote. I hope his argument will not induce any gentleman who favors that motion to vote against it, and vote against the gentleman who makes the argument. In all cases actions speak louder than words. This is especially true of the gentleman who has just left the floor.

Mr. SCOTT. As I understand it there is a substitute made by the gentleman from Morton. The only difference between the original and the substitute is this—the substitute provides that pending an appeal both persons can appeal to the courts, and in the motion of the gentleman from Richland the rate pending that

appeal is fixed by the court, and in the motion of the gentleman from Morton the rate fixed by the Railroad Commissioners or the Legislative Assembly is the one that stands until the appeal is decided. I think the substitute of the gentleman from Morton is the correct and the proper one. I believe that pending the appeal the Railroad Commissioners are supposed to know more about rates than any court, and I think with the gentleman from Richland that it is not contemplated that a jury should be called in in order to decide on the reasonableness of the rates. It is contemplated by the original motion that the court itself should decide those rates, and I believe the people would be better satisfied to abide by the decision of the Railroad Commissioners whom they elected than the decision of the court, no matter how just or honest the court might be. Again, if these matters are going to be appealed to the court, it is certainly for the interest of the State that the rates as fixed by the Railroad Commissioners should be the rates by which they are bound until an appeal is finally determined. It would be safer than leaving it to the court.

Mr. STEVENS. I am glad to know that I am not the only one that has shrunk—got smaller—that with me is the gentleman from Richland, the gentleman from Griggs, the gentleman from Barnes and the gentleman from Nelson. The gentleman from Griggs has been honest enough to get up and say so; the gentleman from Richland says it is wrong yet. He says so in this way—he says a resolution similar to this was introduced and he voted against it, and he has not been converted to this proposition. I desire to say that I introduced that resolution nearly verbatim, and the records will show it; and the records will show that every one of these gentlemen, with the exception of the gentleman from Nelson, voted against it. If it was wrong then it is wrong now. If it is right now it was right then, and I am glad to know that I was right then, and I am glad that though the gentleman from Richland is not willing to admit it, yet by his actions he says I was right and he was wrong.

Mr. SCOTT. I desire to correct a statement made by the gentleman from Ransom. I did not vote one way or the other because I was not present when this was discussed, and I have not voted or had a chance of expressing my convictions on the matter.

Mr. JOHNSON. As Chairman of the Committee on Corporations other than Municipal it is no more than just to the gentleman from Morton that I should state what he has stated twice,

now and in the discussion a week ago, that the pending substitute was approved by the committee and would have been so reported but for a clerical error on the part of the clerk. When the question came up a week ago Saturday night I had some doubts and we were deciding matters very rapidly, and I thought the conservative course would be to vote against it. I have had opportunity to study the question since, and talk it over with those on the floor, and I have come to the conclusion to vote as the gentleman from Ransom has stated I would. I apprehend there will not be much difference of opinion on this question. The speech from the gentleman from Richland, Mr. LAUDER, may have been misconstrued slightly, and there may have been some warmth of feeling, but I dare say they will vote alike on this question, and there is not so much occasion for anxiety as it would appear from the language. I have come to the conclusion that the substitute offered by the gentleman from Morton is fair and safe—safe for those interests for which I have stood throughout this Convention, and I shall vote for it, principally for the reason that it provides that the decisions of the commissioners shall stand until reversed by the courts. I consider the rights of the farming community and the producing classes would be amply protected by the substitute of the gentleman from Morton.

Mr. SPALDING. Some time ago we had under discussion an article introduced by the gentleman from Burleigh requiring the judges of the Supreme Court to give their opinions on any matters referred to them by State officers, without discussion on either side or without suit. I was opposed to that proposition and I fail to see wherein the proposition submitted to us now by the gentleman from Richland (Mr. PURCELL) is not open to the same objection. It seems to me it is open to the same objection, and would require the judges to deliver opinions before the matter was finally adjudicated in court. I vote aye on this motion.

The substitute of Mr. PARSONS was adopted by a vote of 59 to 13.

THE WORLD'S FAIR.

Mr. STEVENS, by request of Mr. GRIGGS, introduced the following resolution:

Resolved, That this Convention heartily endorses the proposition to hold the World's Fair in the City of Chicago, thus bringing this great exposition nearer the homes of the people of the west, nearer the center of the continent and nearer the center of the population which goes to make up the American union.

Mr. STEVENS. It is desired that an expression be obtained from each State and Territory on this question, and it is supposed that we represent the new State of North Dakota. The cities of New York, Washington, Chicago, St. Louis, Boston and Philadelphia are working for the location of this fair. I believe every citizen of the State of North Dakota is interested in having this fair as near to us as we can get it. When we assist in getting this exposition at Chicago, we assist not only in building up her resources but in building up our own, and by bringing nearer to our homes one of the grandest sights that has ever yet been seen by man.

The resolution was carried.

EVENING SESSION.

Section 145 was adopted.

PRIVATE PROPERTY FOR PUBLIC USES.

Section 146 was read, with the recommendation of the committee as follows:

SEC. 146. Municipal and corporations and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction. The Legislative Assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals, made by viewers or otherwise; and the amount of such damage in all cases of appeal shall, on demand of either party, be determined by a jury as in other civil cases.

[Committee recommend that section be stricken out as the ground is covered by section fourteen of the Bill of Rights.]

Mr. MILLER. I move that the section be adopted.

Mr. CAMP. On behalf of the committee I would ask the gentleman from Cass what particular point is not covered.

Mr. MILLER. I think the phraseology is better and more complete. The phrase "injure and destroy" makes a more important reservation for property injured. By this section the Legislative Assembly is prohibited from depriving any person of an appeal from any preliminary assessment of damages. That is not in the other section. I think the two sections together will make it more satisfactory.

Mr. STEVENS. When I turn over to page twenty-one I see "Corporations other than Municipal." When I turn to section 146 I see "Municipal and other Corporations." There is an inconsistency. If this is to be in the articles headed "Corporations other than Municipal," and it prescribes the powers of Municipal Corporations, it is undoubtedly wrong. So far as it refers to Municipal Corporations it should be stricken out. The reference to roads particularly should be stricken out. A county is a *quasi* municipal corporation, and they may see fit to run out roads throughout the counties. Under this section a county could not do this till the damages had been appraised and the money deposited. It should not be required in this State. The Legislature should have a right to prescribe that any person who may feel aggrieved will have the right to object to a road being laid out, but we have so many non-residents in this State that it would do the Territory an injustice to those who live here to leave this section as it is. I don't think it could ever have been intended to apply to municipal corporations. I don't think the Committee on Corporations other than Municipal had any right to place it here.

Mr. SPALDING. It just occurred to me that we had only adopted one section of article six and have stricken out one article and this leaves one other section to be acted upon. In view of the word "municipal" being used here and perhaps in other places and the small amount of matter that is likely to be in article six, it seems to me it would be better to incorporate the sections of article six in article seven. I move that the sections such as have been or may be adopted under the head of article six be transferred to article seven, and change the heading to read "Municipal and other Corporations."

Mr. MOER. It seems to me that section 146 is covered absolutely by section fourteen. This is a general provision in the Bill of Rights that private property shall not be taken for public uses without compensation. It is covered so far as the objection of the gentleman from Cass is concerned. So far as the latter part of the section is concerned, it provides in section 146 that the amount of such damage in all cases of appeal shall, on demand of either party, be determined by a jury as in other civil cases. In section fourteen it is provided that the compensation shall be ascertained by a jury, unless a jury be waived as in other cases of a court of record, as shall be prescribed by law. I don't see why this does not fully cover it. The Bill of Rights covers all corporations of

all kinds, *quasi* or otherwise. It does not make any difference what kind of a corporation it is. I cannot see why it does not cover it; therefore I move that the recommendation of the committee be concurred in.

The motion of Mr. MOER was adopted.

Sections 147 and 148 were read and adopted.

AGAINST TRUSTS.

Section 149 was read as follows:

SEC. 149. Any combination between individuals, corporations, associations, or either having for its object or effect the controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange, is prohibited and hereby declared unlawful and against public policy; and that any and all franchises heretofore granted or extended in this State, whenever the owner or owners thereof violate this article, shall be deemed annulled and become void, and their property within the State escheated.

Mr. SPALDING. I move to strike out all after the word "void." It seems to me that this is too harsh a penalty. It not only makes a corporation forfeit all its franchise and rights, but it makes their property go the State. It is harsher than is necessary or just.

The amendment of Mr. SPALDING was carried.

The section was adopted as amended.

Mr. SCOTT. There is only one article in section six, and I think it would be better to put articles six and seven in one article under the head of Municipal and Other Corporations.

Mr. SPALDING. I was of the same opinion, but on looking along further and especially in section 147 I am not certain but that if the section in six were incorporated in article seven, it would require further amendments to prevent a conflict. Therefore I did not renew my motion. I would not feel safe in doing so.

Mr. BENNETT. As Chairman of the Committee on Municipal Corporations I object to having our work completely wiped out and transferred to some other part of the Constitution. Your Committee on Municipal Corporations devoted some little time and attention to getting up the part of the Constitution entrusted to them, and we got it up, according to my idea, in good shape till it was amended by the gentleman from Cass. However, I think the recommendations of the Committee on Revision just, and are correct, and should be adopted by this Convention.

Mr. McHUGH. I heartily coincide in the remarks of the gentleman from Grand Forks. After the long nights of labor and weary days we put in over that article I don't think it should be wiped out as proposed.

The motion of Mr. SCOTT was lost.

Section 149 was adopted. Section 150 was read and adopted.

PUBLIC SCHOOLS.

Section 151 was read as follows:

SEC. 150. The Legislative Assembly shall provide at their first session after the adoption of this Constitution, for a uniform system of free public schools throughout the State, beginnnig with the primary and extending through all grades up to and including the normal and collegiate course.

Mr. McHUGH moved to amend the section by striking out all after the word "State" in line three and insert the following:

"And each county of the State shall be divided into a convenient number of independent school districts. But no school district shall be formed containing less than twenty-five inhabitants."

Mr. CLAPP. This matter of the school district system came before the committee and it was their idea, and the idea of the Convention that while the school district system might be the best, at some other time there might be some better method, and we thought the better plan would be to adopt a uniform system and if so the Legislature will make it uniform. I hope it will stand as it is here.

The motion of Mr. McHUGH was laid on the table and the section was adopted as recommended by the committee.

Sections 154, 155, 156, 157 and 158 were adopted.

PUBLIC LANDS.

Section 159 was read as follows:

SEC. 159. After one year from the assembling of the First Legislative Assemby, the lands granted to the State from the United States for the support of the common schools, may be sold upon the following conditions and no other: No more than one-fourth of such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one-half of the remainder within ten years after the same becomes saleable as aforesaid. The residue may be sold as soon as the same becomes saleable. The Legislative Assembly shall provide for the sale of all school lands subject to the provisions of this article.

Mr. WILLIAMS. I move to amend this section by adding at the end thereof the following words:

"The coal lands of the State shall never be sold, but the Legislative Assembly may by general laws provide for leasing the same."

At the present time these coal lands are regarded as not possessing any great value, but it is a fact that they are being bought up by syndicates, and as a matter of looking to the future I think it would be well to reserve these lands from sale in order to protect the fuel supply, and allow the State of the future to lease them. It seems to me under such rules and regulations as the Legislature may prescribe, it would be wise to protect these lands and allow the title to remain in the State.

Mr. WILLIAMS' amendment was adopted, and the section as amended was adopted.

Sections 160 and 161 were adopted.

SELLING THE LANDS.

Section 162 was read as follows:

SEC. 162. No land shall be sold for less than the appraised value, and in no case for less than ten dollars per acre. The purchaser shall pay one-fifth of the price in cash, and the remaining four-fifths as follows: One-fifth in five years, one-fifth in ten years, one-fifth in fifteen years and one-fifth in twenty years, with interest at the rate of not less than six per centum payable annually in advance. All sales shall be held at the county seat of the county in which the land to be sold is situate and shall be at public auction and to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of one-quarter section, and those so subdivided in the smallest subdivisions. All lands designated for sale and not sold within two years after appraisal shall be reappraised before they are sold. No grant or patent for any such lands shall issue until payment is made for the same. *Provided*, That the lands contracted to be sold by the State, shall be subject to taxation from the date of such contract. In case the taxes assessed against said lands for any year remain unpaid until the first day of October of the following year, then and thereupon the contract of sale for such lands shall become null and void.

Mr. ROLFE. I move that the section be amended by inserting after the word "advance" in line seven the following words: "*Provided*, That any purchaser may at his option complete his final payment at the expiration of ten years from date of purchase." Last week I went home and quite a number of interested parties spoke to me on this point, and were very much disappointed to find that they could not make final payment for the land they might buy before twenty years after they took it. We

sat down to figure what a quarter section would cost a man at the minimum of $10 an acre in twenty years, and we found it to be $2,545 or thereabouts. A piece of land the face value of which would be $1,600 would be finally turned over after a payment of $2,545 for it. It appeared that this would be rather unjust to the farmer, who wanted to purchase a piece of school land adjoining his own farm. Therefore I offer this amendment which makes it optional that he complete his payment at the end of ten years.

Mr. STEVENS. I desire to second that motion, for I made the same motion myself, and the gentleman from Benson was one of its chief opponents. I am glad to know that he has been converted.

Mr. ROLFE. I did not remember that I had opened my mouth on school lands while it was under discussion.

Mr. BARTLETT of Dickey. Is there any gentleman who believes for one moment that the simple fact of not having the privilege to pay for the land in ten years would hinder one sale? If not, surely after they had made ten annual payments the balance would be well secured. It is as good security as there is. Our object is to put it out on long time that the rising generation can have the benefit. Only think the amount that the people of Dakota would miss in the next ten years' interest, and there would not be one single dollar. There would be as much land sold on twenty years' time as on ten. It is a chance to give the speculators to come in and take advantage of this section. It gives the man with money a chance to come in and keep us out of this money.

Mr. BEAN. There is one other objection. It was talked over in committee. The principle objection is that in case payment is allowed in ten years, this Committee on School and Public Lands will not be able to figure in advance how much cash they would have on hand at any part of the year. As it is only the interest they can use, they can figure about how much money they would have on hand; what disposition they would make of it; in what amounts to loan it and where to place it; whereas if this motion prevails they can at no time know how much money is coming in.

Mr. SPALDING. I move to amend the amendment by providing that the purchaser may at any time pay the full purchase price by paying a year's interest in advance. This would give the State ample time to reinvest the funds—probably more than would

be necessary, and leave some discretion with the purchaser, so that it would not prevent a sale.

The motion was seconded.

Mr. BARTLETT of Dickey. I am surprised at men coming in here and professing to be the friends of the poor man and making such a motion as this. He means all right; I know he is a friend of the poor man, but the idea of making a motion that will let capitalists in and take the land that we can just as well save for the benefit of the poor. We know that the farmer who wants to get land has a good opportunity under this law to get a home. It is for the benefit of the poor. This committee has figured on that thing very carefully, and I am sure that it will be a very beneficial thing for the poor, and I hope the members will get up and insist on it.

Mr. HARRIS. I have sat here about three weeks listening to the gentlemen of this Convention talking on the question of school lands and trying to make a provision for an immigration bureau. My idea of the disposition of school lands is that we want to dispose of them in a manner that will bring the most money for the school fund. This question is not a question of speculators or a question of poor men or farmers, but a question as to which way we can get the most money for the school fund. That is important in my judgment. This is not for the support of an immigration bureau at all, but for the support of the public schools, and I believe that anything that will enable us to get more money out of these school lands for the purpose of supporting the public schools is just the method we want.

Mr. STEVENS. Either the gentleman from Dickey has been wool gathering or I have. I understand that this is simply optional. The land can be sold to a poor man to be paid for in annual installments for twenty years, but it is not necessary for a man to stay on it for that length of time. I don't think we are working for the poor man in this question, but we are working for the poor man's children. They are the ones that are going to school, and the more money we can get out of the lands and the quicker we can get it the better. The poor man has grown up. It is the children that we want to take care of. This is the poor man's children's fund and not a poor man's fund.

Mr. MOER. I disagree with the gentleman from Ransom. This is a school fund, and not a poor man's or a poor man's children's fund. The object sought for is to get the most money pos-

sible for the schools, and this section as it stands will accomplish that, and it takes a long investment at six per cent.

Mr. STEVENS. What is the public school for if not for the poor man's children?

Mr. LAUDER. I move that the amendments of the gentleman from Cass and the gentleman from Benson be laid on the table.

Both amendments were then laid upon the table.

Mr. SPALDING. I have sat here and listened to gas and buncomb and demagoguery on all sides, on what was supposed to be in behalf of the poor man. But I would like to know what this fund is for? What are we getting up a constitution for? Are we working for the poor man, or in this special section for the school fund and for the people of Dakota as a whole without regard to class, station or condition? Look at the absurdity of the thing as it stands here. A man may buy a piece of land at ten dollars an acre, and pay one-fifth down, and he pays interest at six per cent. In five years he has paid about 88 cents an acre for the use of that land. He may then refuse to make the next payment of interest and the land reverts to the State. They have received on lands in the Red River Valley a smaller sum than these lands will rent for, and if he still continues to pay, they have disposed of a fifth of the title for less than they would have rented them for. What policy or principle can be involved in any section providing for that disposition of the lands? Is there a business man here who would do business on his own hook in that way? Not one. You nor I, nor any other man of common sense would sell our property on installments for five years on such terms that at the end of five years we had got less for it than we could have rented it for. Our neighbors would designate us as fools and idiots. I believe the business of the Commonwealth should be conducted on the same principle that the best business men would conduct their own business on. I don't believe this is the principle that any business man would do business on. I don't believe we are here to provide for the sale of these lands to such parties as may want to get the use of them for less than they would pay for their rental. I don't believe that is the kind of a school fund we want to provide for, and I don't believe it is common sense to do it nor justice to the school fund we are working for, nor for the interests of the school children of the future State of North Dakota.

Mr. LAUDER. I have listened to the arguments. I cannot see anything in the arguments that have been adduced here in

favor of the section that should be designated as gas or tomfoolery. I believe it is good, practical, common sense, and this question has been argued and re-argued. The same motions the gentlemen make now were made before and voted down, and this section was agreed upon and I believe it contained the judgment of the Convention.

Mr. SPALDING. When this was up before there was no provision for the investment of the funds besides in government bonds, school bonds and state bonds. Since then they have provided for the loaning of the funds on first mortgages on real estate, which makes the field of investment under and at a much larger rate of interest, so the same arguments that were used then do not apply now.

Mr. BARTLETT of Dickey. The gentleman is a lawyer, speaks as a lawyer, but when he thinks there is not a business man who is not a lawyer that does not understand business, he is mistaken. He says any man would be a fool, using his language, if he would do his own business in this way. I ask any gentleman here if $660 in five years is not good security, and it is over $660 that they will get on each 160 acres of land? Is not that good security? He says any man who would lend money that way would be a fool.

Mr. SPALDING. I did not use any such language.

Mr. BARTLETT of Dickey. Six hundred and sixty dollars in five years makes it very safe and good security. Any gentleman here who knows anything about business would look at it that way. I hope his motion will not carry, because we will have good security the way we have got it, and I say let us get the most we can out of the land.

The motion to lay Mr. SPALDING'S motion on the table was carried.

The section was then adopted.

Sections 163 and 164 were read and adopted.

LEASING LANDS.

Section 165 was read as follows, with the recommendation of the committee:

SEC. 165. The Legislative Assembly shall have authority to provide by law for the leasing of lands granted to the State for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years. Said land shall only be leased for pasturage and meadow purposes, and at public auction after notice as heretofore provided in

case of sale; *Provided*, That all of said school lands now under cultivation may be leased for other than pasturage and meadow purposes. All rents shall be paid in advance.

[Committee recommend to add after the words "five years" the words "in quantities not exceeding one section to any one person or company."]

Mr. MILLER. This section would be a proper provision in case of the lands situated east of the Missouri river, and in sections of country where they could be cultivated or used in small quantities, but a large part of the lands that will become the property of the State when the Territory becomes a State will be selected west of the Missouri in grazing lands, and in order to lease them to advantage it would seem to be necsssary to lease them in much larger quantities than one section—perhaps a township or two or three townships together. It seems to me it would be perfectly safe to strike this out. I move that after the word "may" in the eighth line, the following be inserted:

"In the discretion and under the control of the Board of University and School Lands."

Mr. BARTLETT of Dickey. The committee would have fixed it that way but the Enabling Act would not allow them.

Mr. MILLER. Read section eleven of the Enabling Act. As to lands granted for charitable purposes it might be otherwise.

Mr. STEVENS. That argument does not apply in this case. If Congress has provided that we cannot lease several townships to one party, it is already provided and it is not necessary to put it in the Constitution. It is not necessary because Congress has used certain language that we should use the same language. Congress may see fit to change this. They do not know that a great amount of the land we are to get will be fit for nothing else but grazing, and when this is explained they will modify it, but if we tie it up in our Constitution we cannot modify it ourselves—we cannot pass an act as Congress can, and by a single bill do away with that part of the Constitution and allow our Legislature to lease these lands in larger quantities. If Congress sees fit not to change this it is not necessary to put it in our Constitution. But if they do see fit to change it we don't want to tie ourselves up. It is impossible to rent this land west of the Missouri river in quantities of a section. It would take two or three sections to keep one cow, and it would be ridiculous. I believe it would be well to have an amendment which would provide that the land west of the Missouri river could be leased in quantities of less than a section. That would be

right. I am in favor of having the recommendation of the committee stand to apply to that part of the State that can be used for agricultural purposes, but when we take land that cannot be used for agriculture, let us not by our Constitution tie it up in this way.

Mr. HARRIS. As I understand section eleven of the Enabling Act it only applies to school lands. Every gentleman is aware that the lands to be selected for charitable purposes outside the school lands must be selected in the Devils Lake and Bismarck land districts. A great deal of this land is only good for pasturage. I don't see why we should tie ourselves up to leasing this land one section at a time. We cannot lease it at all unless we can lease it in large quantities, and if the Omnibus Bill should be so construed as to cover the lands granted for charitable purposes, which in my judgment it does not do, then it would only be necessary to have an Act of Congress to bring this matter to their attion, and have an Act of Congress in order that it might be changed and have these lands leased. But if we tie ourselves down by this Constitution it would require an amendment to the Constitution in order that these lands might be made profitable to the State. For that reason I am in favor of a re-consideration of this, and strike out this amendment.

A motion to lay Mr. MILLER'S amendment on the table was lost.

Mr. BARTLETT of Dickey. I am satisfied we are right and this section should be amended. I did not think so at the time, but the land will be practically valueless, and if we reconsider it and leave it open, all we will have to do will be to get an Act of Congress.

The amendment of Mr. MILLER was adopted, and the recommendation of the committee was not concurred in.

Sections 166, 167, 168, 169 and 170 were adopted.

COUNTY ORGANIZATION.

Section 171 was read as follows:

SEC. 171. The Legislative Assembly shall provide by general law for organizing new counties, locating the county seats thereof temporarily, and changing county lines; but no new county shall be organized nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than 1,000 *bona fide* inhabitants. And in the organization of new counties and in changing the lines of organized counties and boundaries of congressional townships the natural boundaries shall be observed as nearly as may be.

Mr. APPLETON. I move to amend this section by striking out the words: "As to include an area of less than twenty-four congressional townships." My reasons for moving this are that I find quite a number of gentlemen here who think the requirements of 1,000 population is sufficient, and sometimes the thickly populated counties might wish to divide up, and this might work a hardship. I hope the amendment will carry.

Mr. ROLFE. I am surprised that the chairman of the Committee of County and Township Organization should make a motion of this sort, considering the full discussion there was on this subject in the committee, and also the part he took in that discussion. It was agreed with one exception in that committee that twenty-four was about the proper limit. The Convention thought so the other day, and I hope they will think so yet.

Mr. FLEMINGTON. We are reaching some very important sections in this article, and I see a great many vacant seats, and I move a call of the House.

The previous question was then moved, and Mr. APPLETON'S motion was lost.

Mr. CLAPP. I move that the word "four" in line five be stricken out.

The motion was lost.

Mr. APPLETON. I move to substitute the word "eighteen" for "twenty-four." I hope this will carry. The great argument against the supervisor system has been that some of the counties are too large. I hope this amendment will prevail.

The section was adopted as it came from the committee.

Sections 172 and 173 were read and adopted.

TOWNSHIP ORGANIZATION.

Section 174 was read as follows, with the recommendation of the committee:

SEC. 174. The Legislative Assembly shall provide by general law for township organization under which any county may organize whenever a majority of the legal voters of such county, voting at any election called for that purpose, shall so determine; and townships when organized shall be bounded as near as may be by congressional township lines and natural boundaries; and upon a petition signed by not less than one-fourth of the legal voters, as shown by the preceding election, of any county organized into civil townships, asking that the question of the establishment of a county board, to be composed of the chairmen of the several boards of township supervisors, be submitted to the electors of the county, it shall be the duty of the county board

to submit the same at the next election thereafter, and if at such election a majority of such electors shall vote in favor of such proposition, then the county board of such county shall consist of such chairmen of the several boards of township supervisors, and of such others as may by law be provided for any incorporated city or village within such county.

[Committee recommend that the whole section be stricken out, for the reason that it is ambiguous and confusing.]

Mr. STEVENS. I move that the recommendation of the committee be not concurred in.

Mr. MILLER. I don't see why the motion should be made by as clear a headed gentleman as the gentleman from Ransom. This section was made up from various amendments, and is a conglomerated mass of inconsistencies, and would be a disgrace to the Constitution. No man can take that section and tell what it means. There are no two men who would reach the same conclusion as to what it did mean, and it would be a very unwise thing and not reflect credit on any member of this Convention to make it part of the Constitution. I am willing to support the idea that is intended by this section if the section will be drawn up to describe the idea distinctly and concisely, so that it won't be a disgrace to us.

Mr. BARTLETT of Griggs. I desire to say that the Committee on Revision were not opposed to the idea supposed to be conveyed by this section, as the gentleman from Ransom intimated some time ago. There is a long section of twenty or thirty lines that embraces four or five different subjects. It is all one sentence. We could not find a place to put a period, and the only thing we could do with it was to recommend that it be stricken out.

Mr. STEVENS. If I move to adopt the recommendation of the committee, that strikes the section out and that is the end of it. If I move to adopt the section itself, that is bad. If it is the temper of this Convention that this recommendation should be concurred in, that is the end of it, and so that the section might remain open I move that the recommendation of the committee be not concurred in, and then such amendments as are suitable can be adopted. We want to settle the question as to whether or not this Convention is favorable to the idea which it is supposed the section contains.

Mr. MILLER. I move that the section be recommitted so that they may draw a section that may be satisfactory.

Mr. ROLFE. We had this section right—the Committee on County and Township Organization, as we thought, and we worked

over it a good deal in order to convey the idea that was intended, but the Convention did not think it was right, and they have made a bad matter worse. So far as that committee is concerned I don't believe it can do anything except to bring in the section that was contained in the original report. I should be very much obliged if the gentlemen who opposed the original section will hand us something on the subject.

Mr. PARSONS of Morton. After the time we spent on this section I think it is no time to recommit it. It may not be that the section is the most elegant in expression that could be found. It seems to me that there is a decided effort to get the idea conveyed in this section, out of the Constitution. If you want to fight this issue over again we wlll fight it if you want to take the time. I hope the motion will not prevail.

Sections 174 and 175 were referred back to the committee.

Mr. MILLER. I move to adjourn.

The motion prevailed, and the Convention adjourned.

FORTY-FOURTH DAY.

BISMARCK, *Friday, August 16, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

The Committee on County and Township Organization offered the following in place of section 174:

SEC. 174. The Legislative Assembly shall provide by general law for township organization, under which any county may organize whenever a majority of all the legal voters of such county, voting at a general election, shall so determine, and whenever any county shall adopt township organization, so much of this Constitution as provides for the management of the fiscal concerns of said county by the board of county commissioners may be dispensed with by a majority vote of the people voting at any general election, and the affairs of said county may be transacted by the chairmen of the several township boards of said county, and such others as may be provided by law for incorporated cities, towns or villages within such county.

SEC. 175. In any county that shall have adopted a system of government by the chairmen of the several township boards, the question of continuing the same may be submitted to the electors of such county at a general election in such manner as may be provided by law, and if a majority of all the votes cast upon such question shall be against said system of government, then such system shall cease in said county, and the affairs of said county shall then be transacted by a board of county commissioners as is now provided by the laws of the Territory of Dakota.

SEC. 176. Until the system of county government by the chairmen of the several township boards is adopted by any county, the fiscal affairs of said county shall be transacted by a board of county commissioners. Said board shall consist of not less than three and not more than five members, whose term of office shall be prescribed by law. Said board shall hold sessions for the transaction of county business as shall be prescribed by law.

Mr. SCOTT. I move that the report be adopted.

Mr. STEVENS. I move that the words "general" and "a" in the proposed substitute 174 be stricken out, and the words "as may be provided by law" be inserted therefor. It will then read —at an election as may be provided by law. My reason is this: the Legislature will convene this winter. They will pass this law, and there will be no general election at which it can be submitted till next fall. In the spring the township organizations vote for township officers. This question could then be submitted so that the counties could adopt it, and it might go into effect next spring. If the Legislature see fit to submit it only at a general election they will so state. This amendment I offer to obviate the necessity of waiting a whole year. I hope this amendment will prevail for this reason: that the counties that desire this system of government may be authorized to organize under it at the earliest possible time.

Mr. APPLETON. We prepared these sections in lieu of 174, and we should have recommended that section 175 be adopted.

The amendment of Mr. STEVENS was adopted, and the sections were adopted as amended.

Section 175 was adopted and 176 was stricken out.

LIMITING TERMS OF OFFICE.

Section 177 was read as follows:

SEC. 177. The sheriff and treasurer of any county shall not hold their respective offices for more than four years in succession.

Mr. MOER. I move to amend the section by placing at the beginning thereof the words: "Under this Constitution."

Mr. APPLETON. It seems to me that this amendment should

prevail. I think it should be definitely known as to whether the sheriff and treasurer holding their offices at the present time should be eligible for four years, or whether the time they have already held it should be counted in. I would like to see the amendment prevail.

The amendment was lost.

Mr. MOER. I move to amend the section by adding at the close the words: "Under the Constitution."

The motion was seconded and adopted.

Sections 177, 178 and 179 were adopted after being read.

GROSS EARNINGS.

Section 180 was read as follows:

SEC. 180. Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the State, county and municipal corporations, both real and personal, shall be exempt from taxation; and the Legislative Assembly shall by a general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes, and personal property to any amount not exceeding in value $200 for each individual liable to taxation.

Mr. SCOTT. I move to amend this section by adding thereto the following:

"*Provided, however*, That the Legislative Assembly may by law accept and provide for a tax based on gross earnings in lieu of all other taxes to be assessed against the road, roadbed, rolling stock, franchise and all other, and only such property as is owned by any railroad corporation, and used by it in the actual operation of its road."

Mr. COLTON. I move to lay the amendment on the table.

Mr. SCOTT. The object of the amendment was this: there was quite an extended discussion on this section the last time it came up, and it was stated that the real meaning of section 180 as passed was to prohibit the Legislative Assembly from passing a gross earnings law, so that all railroads would be taxed the same as any other property, and the Legislative Assembly could not, if they deemed proper and right, accept a tax on the gross earnings of a railroad. Mr. HARRIS stated that at the present time we were receiving on the basis of the gross earnings a larger amount of revenue than we would receive if we taxed them in the manner proposed in section 180. I think that there may be such circumstances arise that it would be well and wise for the Legislature to pass a gross earnings law so that they might pay taxes on these gross earnings in lieu of all taxes that would otherwise be assessed

on the franchises, road and roadbed, and all other property directly used by the railroad in the operation of its road. It is well known that the Northern Pacific has a large land grant and they own a great deal of land, and I see no reason why that land should also be included in the gross earnings tax, and I think that should be taxed as well as the land held by individuals, and if the Legislative Assembly decide that in lieu of taxes on railroad property proper, they will levy a gross earnings tax, we should give them an opportunity to do that.

Mr. HEGGE. I move as a substitute to amend the section by adding thereto the words, "until otherwise provided by law."

Mr. WALLACE. I move to lay the amendment on the table.

The motion was lost by a vote of 33 to 35.

Mr. WALLACE. The intention of this amendment of the gentleman from Traill is to leave this matter to the Legislature so that they may adopt a system of gross earnings for one branch of business and for another class of business another. He wants to tax one class of citizens in one way and another class in another way. That is the principle of the thing proposed. It is immaterial whether we get more out of the railroad by taxing it according to the gross earnings or taxing it the same as you and I are taxed. All property should be taxed alike and no exceptions should be made. The only reason why the railroad companies should be taxed according to the gross earnings system is because they expect to pay a smaller tax that way. The citizen is obliged to pay according to what property he has got. The point has been made that we may under certain circumstances get less than under the gross earnings system. That does not enter into the question. The question is whether every class of property and every citizen should be taxed alike, or whether exceptions should be made for the benefit of certain classes. I hope the amendment will not prevail.

Mr. HEGGE. I believe most of us would like to get the most taxes but don't know how to get them.

Mr. MOER. I am not exactly in favor of the amendment proposed by the gentleman from Traill, but I would like to suggest to the gentlemen who so violently oppose the gross earnings law, that under the charter of the Northern Pacific there is a clause that exempts them from taxation, and it is now a question whether or not it perpetually exempts them, or only while we were a Territory. The railroads claim that it is perpetual exemption, and

they say that the Supreme Court of the United States will so hold. That is a mooted question. I would suggest to the gentlemen who are against the railroads having anything to do with this, suppose on a test matter the Supreme Court of the United States holds that the Northern Pacific is exempt from taxation under its charter and we have prevented the Legislature from enacting a gross earnings law, where would we get our tax? Is there a possible way in the world that we could get any tax under such a condition of things?

Mr. COLTON. If it is a fact that the Northern Pacific is not entitled to pay a tax I say let them go. I don't believe in trying to impose a tax on people or corporations that are exempt. If we have a right to tax them, I say tax them as you would anybody else. This motion is to strike out the whole business; it leaves everything to the Legislature to fix just as they see fit. If you want to leave everything to the Legislature we might as well leave everything to them, and have no restrictions whatever. I believe the railroad company is entitled to be taxed, and they know it or they would never fight this section. They would not come up here and try to fight a thing that it is claimed would practically exempt them from taxation. If they would be exempt under this section, they would be exempt under a gross earnings law. I say let every man be equally taxed according to his valuation.

Mr. BARTLETT of Griggs. I desire to say in reply to the gentleman from La Moure that if the railroad company believes it is exempt from taxation under the provisions of their charter, they are the most magnanimous corporation I ever knew to step up to the Treasury of this State and pay $100,000 or $200,000. I never knew a soulless corporation before that was so generous. I don't believe that the railroad company do believe that they are exempt from taxation, for if they did they would not step up and give us this money. If they do that now they will do it after the Supreme Court has sustained their case.

Mr. MOER. I want to suggest that the argument used is as follows: The railroad pays on its gross earnings, which the Legislature has full power to control and tax. The United States did not exempt their earnings, but their roadbed and their franchises. Under the territorial condition the Legislature have had full power to tax the gross earnings in the Territory. If we have a constitutional provision prohibiting the Legislature from enacting any such law and the Supreme Court of the United States says

that the roadbed and rolling stock are exempt, we cannot get at them at all. The gentleman from Ward says that he does not want to tax them under the general law if they are exempt. But they are taxable on their earnings, but if we have this clause in the Constitution, and they should then be held to be exempt on their roadbed, we shall have cut ourselves off from getting anything out of them.

Mr. LAUDER. I will ask if it is not a fact that the Supreme Court of the United States has held that the gross earnings tax law was unconstitutional and could not be enforced? I would ask if it is not a fact that the only gross earnings law that can be enforced is on the earnings within the jurisdiction imposing the law? If we pass the gross earnings law, won't it rest entirely with the railroads whether they pay or not?

Mr. MOER. If we pass a gross earnings law the roads will pay under it.

Mr. CARLAND. I am in favor of leaving the matter to the Legislature. But I don't understand this would modify the section as it now stands, as it is claimed. There is a semicolon after the word "taxation," and "until otherwise provided by law" would not reach back of the semicolon.

Mr. PARSONS of Morton. This subject has been discussed a good deal, and I am opposed to the amendment of the gentleman from Traill, because it does not place the matter in proper form.

Mr. SCOTT. I don't think this amendment would sound very euphonious if it was passed as it is. I believe the Legislature should have the power to pass a gross earnings law something similar to the one which exists now, so that the railroads may come in under it and pay on their earnings. But I don't believe that it should be left within the power of the Legislature to include in that tax their lands. The lands should be taxed like other lands. As this amendment will give the Legislature the opportunity to include the lands in a gross earnings tax, I shall vote against it.

Mr. WILLIAMS. I shall vote aye because I think this should be left to the Legislature. I don't believe we should tie their hands in this matter. I don't think that we have any right to believe that the Legislature will be less honest than we are. I think they will be just as honest as this Convention. It should be left to them to do as they wish.

The amendment of Mr. HEGGE was lost by a vote of 51 to 17.

Mr. PARSONS of Morton. I move that the following words be added to the section:

"*Provided*, That the Legislature may provide a uniform rate for taxing all property used exclusively for railroad purposes."

Mr. STEVENS. I am in favor of the gross earnings system for railroads provided there is no other property to be taxed under the system except such as is actually used in the operation of the franchises of the road. I am opposed to a tax by a gross earnings system which will embrace the lands that lie aside from the right of way belonging to the railroad company.

The amendment of Mr. PARSONS was laid on the table.

Mr. MOER. I move to amend the section by adding thereto the following:

"But this section shall not be construed as prohibiting the Legislature from enacting a uniform gross earnings law upon property of railroad corporations used exclusively for railroad purposes."

AFTERNOON SESSION.

Mr. LOWELL. I move as a substitute for the original section (180) and the amendment the following:

"The rule of taxation shall be uniform, and taxes shall be levied on such property as the Legislative Assembly shall prescribe."

Mr. BELL. Without a doubt there has been an immense amount of education on this article 180. The gentlemen have claimed that it was unjust, but the real fact of the matter is that it is too just to suit a great many of the gentlemen who are on the other side of the question. What they don't like is a provision that taxes shall be uniform—that all property shall be taxed alike—without reference to whom it belongs. This section only provides that every individual, every corporation shall be taxed alike. The gentlemen on the other side of the question made such a cry for justice yesterday on the article on corporations—made such a cry for the railroads, that they should have power to appeal to the courts the same as individuals. But now they want the railroads on the question of taxation to have an undue advantage over every one else. They want the railroads to be taxed by a gross earnings system. If that is correct why not tax the farmer, the merchant and the manufacturer by the gross earnings system? But no, they don't want to do that. They want to give the Legislature

power to have favorites and pets to give certain privileges to. They want to tax one individual and one set of people one way and another set another way. If you give the Legislature this power that they can tax under any system they want to, it is feasible enough that the corporations will ask to be taxed under the gross earnings system. I would like to know if there is anything unjust in all of us being taxed alike? Are the railroads and corporations any better than the individuals of this State? Why should they have privileges that other people don't have? I hope any amendment to this section will not prevail.

Mr. PARSONS of Morton. I feel that the remarks of the gentleman from Walsh have been directed at me for one, as I have advocated an amendment to this section. I wish to say that I don't believe I have a constituent west of the Missouri river—a farmer or a laborer—or anyone else that would have me, or urge me in any way to vote for a measure that was unjust. Our forefathers had a little difference with the British government at one time over a matter of taxes. It was not the amount of taxes, but the principle of the thing that was at stake. The gentleman stands on this floor and says these things are for the interest of the dear people—we are to be all taxed alike, "provided that no railroad shall be taxed for less than $3,000 a mile." If the gentleman from Walsh wants a provision in the law that no farm shall be taxed for less than $10 an acre, then we are getting down to the same basis. But you have made a distinction here, and have stated by the very act before us that we do wish to make a distinction against the railroads. I stand here as one who is not afraid to declare his opinion on any subject under heaven. I don't care whether this is for or against a corporation. If it is necessary to stand by a corporation, I will stand there as quickly as on the other side. The gentleman objects to this amendment simply on the ground that it makes a distinction. I claim that we have already made a distinction which is an injustice and an outrage. I say the principle is wrong of placing $3,000 a mile on the railroads. I say place all in the same category. Let some uniform rule apply to all.

Mr. COLTON. The gentleman from Morton is getting ahead of the business. We have not come to that section which says $3,000 yet. The question before us is now—shall we have a uniform and equal taxation or shall we not. That is the question we have

before us. There is not a man of you that has ever got one vote from the farmer but wants to see just and equal taxation.

A vote was then taken on the substitute of Mr. LOWELL.

Mr. SPALDING explained his vote. I desire to explain my vote for the second and I trust the last time. I came to this Convention unpledged to any individual or corporation, with sympathies where they still are—in favor of that portion of the inhabitants of the State to be, on whose prosperity we all, to a greater or lesser extent depend, but desiring to see justice done to all, and no means favoring any class to the prejudice of any other class. Least of all did I desire to see a Constitution made giving special privileges to wealth and the corporations, or prejudical to the poor man or farmer. But this Convention had not long been in session Then it became evident to me that corporations were not the only class seeking to influence its members to adopt class measures, for I found many members pressing measures that if passed, would, in my judgment, prove unjust, unreasonable and oppressive, and a detriment to the welfare of the State and its inhabitants. So extreme and radical were many of these measures; so presistent and uncompromising, and so averse to adopting a middle and conservative course were their advocates, that in some instances in my efforts to avoid extreme measures and class legislation, I have been compelled to accept one horn of the dilemma and support that measure which, while not meeting my approval, was in my judgment the least objectionable. This is especially the case in the matter now before the House, viz., section 180, requiring among other things all property to be taxed according to its true value in cash, while section 181 and 183, for which the very same majority which is urging the passage of this section unamended voted, provide in substance that lands in certain conditions shall be taxed without regard to value, and fix an arbitrary minimum amount for the assessment of railroads, without regard to actual value, thus conflicting with section 180 and attempting to except certain parties from the operation of the principle which they claim to support, and discriminating against such. In some cases this state of affairs has caused me to vote with the minority and subjected me to the criticism of railroad influence, but I desire to say that neither before nor since the opening of this Convention has any person asked my vote for or against corporate measures, and when cast as in this case, apparently in their behalf, it has been for the

measures before stated, or because in my feeble judgment the proposed measure, even though advocated by corporations, was a proper and just one.

The amendment was lost by the following vote:

The roll being called, there were ayes, 35; nays, 36; viz.:

Those who voted in the affirmative were:

Messrs. Bartlett of Dickey, Bennett, Blewett, Brown, Budge, Carland, Chaffee, Clapp, Fay, Flemington, Gayton, Glick, Griggs, Harris, Hegge, Holmes, Hoyt, Leach, Lohnes, Lowell, Mathews, Meacham, McHugh, Miller, Moer, Parsons of Morton, Parsons of Rolette, Pollock, Purcell, Ray, Shuman, Spalding, Stevens, Whipple, Williams.

Those who voted in the negative were:

Messrs. Allin, Appleton, Bartlett of Griggs, Bean, Bell, Best, Camp, Carothers, Clark, Colton, Douglas, Elliott, Gray, Haugen, Johnson, Lauder, Linwell, Marrinan, McBride, McKenzie, Noble, Nomland, O'Brien, Peterson, Powers, Powles, Richardson, Robertson, Rowe, Sandager, Scott, Slotten, Turner, Wallace, Wellwood, Mr. President.

Absent and not voting:

Messrs. Almen, Paulson, Rolfe, Selby.

The amendment of Mr. MOER was then voted upon.

Mr. CAMP. I desire to explain my vote. I was not here when this amendment was offered, and reached my seat after the previous question was being put. I am in favor of a gross earnings system of taxation being applied to the property of railroads used exclusively for railroad purposes, but it does not seem to me that the amendment as now made is well worded to cŏnvey that idea, and I vote no.

The amendment of Mr. MOER was lost by a vote of 30 to 40.

Mr. MOER. I regard this as practically settling the question whether the Convention is in favor of allowing the Legislature to have the power, in case it becomes necessary in lieu of taxes on the roadbed and franchises, to take the taxes under a gross earnings system. In the event that the Supreme Court should hold that the roadbed, etc., were not taxable, we should be left without taxation of railroad property. I am opposed myself to the gross earnings system of taxation. I am in favor of a law which will allow the railroad lands to be taxed like other lands. I am opposed to a constitutional enactment which will preclude a Legis-'ature from taxing railroad property at all.

Section 180 was adopted.

Mr. MOER. I desire to give notice of motion to reconsider the vote by which section 180 was adopted.

Sections 181 and 182 were adopted.

TAXING RAILROADS.

Section 183 was read as follows, with the recommendation of the Revision Committee:

SEC. 183. All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, town, village or district in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in this State shall be assessed by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities, towns, townships and districts in which said roads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and districts; *Provided*, That for the purpose of assessment and taxation such railroad shall not be valued at less than $8,000 per mile.

[Committee recommend that the words "in which it is situated" be inserted after the word "district" where it first occurs in the section.

Mr. MILLER. I move to strike out the proviso, for the reason that I think it grants a monopoly to the two great railroad corporations now running through the Territory. A smaller railroad company, and one operating a road paying a less percentage of profit than these roads, could not stand it. It gives these two roads a virtual monopoly of all the railroad business of Dakota. It is unjust and unreasonable, because it fixes a price of something that we do not know anything about what the price should be.

Mr. LAUDER. I have desired to be consistent as nearly as I could in the consideration of these sections. I voted against the amendment to section 180, because I believed railroad companies should be taxed just the same as any other person or corporation in the State, and that they might be taxed in the same way and in no other way, that there might be no greater burden placed on them than is placed on any other person, but the same rule should apply to the taxation of their property that applies in the assessment and taxation of all other property. The removal of this proviso will leave this article on taxation in such a way that every person in the State, all corporations in the State, and all other property, will be affected in the same way, and will be made uniform. There will be no special privileges and no special burdens on any one.

Mr. BARTLETT of Griggs. I desire also to second the striking out of that proviso. I believe we have no legal, moral or any other right to prescribe the rate of assessment of any property.

Mr. TURNER. I also favor the striking out of this proviso. I think it is only just and fair, and as the representative of one of the classes represented here I believe that no community in this Territory desires to have any one unjustly taxed.

Mr. MOER. I am heartily glad that the gentleman from Richland has at last consented to strike these words out, and he now uses the same arguments that were used in the committee. I don't know what has changed his heart, but I am glad it is changed.

Mr. SPALDING. I am heartily in favor of striking out this proviso, for the same arguments that I urged to strike out 181 apply here. I never experienced instantaneous conversion that I recollect, and I have not seen it very often in others, but it seems to me that here is an example of it, and I am glad to see the gentlemen from Richland and Griggs and Bottineau experiencing a change of heart so suddenly.

Mr. COLTON. I don't think it is any very sudden change of heart. We have all had our minds made up to that amendment for several days—long before this came up, and it is no sudden change of heart as seems to be imagined. I don't think there will be any opposition to it.

Mr. BARTLETT of Dickey. As the two extremes have come together and there seems to be such splendid feeling I move that we take a recess while the gentlemen embrace.

The amendment of Mr. MILLER was adopted and the section was adopted as amended.

Sections 184 and 185 were read and adopted.

Articles twelve, thirteen and fourteen were adopted.

AMENDMENTS TO THE CONSTITUTION.

Article fifteen was read as follows:

"Any amendment or amendments to this Constitution may be proposed in either House of the Legislative Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment shall be entered on the Journal of the House with the yeas and nays taken thereon, and referred to the Legislative Assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the Legislative Assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each

House, then it shall be the duty of the Legislative Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the Legislative Assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislative Assembly voting thereon, such amendment or amendments shall become a part of the Constitution of this State. If two or more amendments shall be submitted at the same time they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately."

Mr. WILLIANS. I move to amend this article by striking out in line three the words "a majority" and inserting therefor the words "two-thirds."

Mr. PURCELL. I hope the amendment will not prevail, for the reason that in the case of an amendment to the Constitution being desired, it will require a majority of two successive Legislatures before it can be submitted to the people, and it seems to me that that is safeguard enough to be thrown around our Constitution. It may be difficult to get a two-thirds majority of each Legislature to agree to submit this question, and as this is a new State, the people should have the privilege of voting on an amendment if the majority of the members of two Legislatures vote for the submission.

Mr. LAUDER. I heartily agree with the remarks of my colleague from Richland, and I therefore move that the amendment be laid on the table.

The motion was carried.

The article was then adopted as reported.

Articles sixteen and seventeen were then adopted.

Mr. WILLIAMS. I move that the following be made an additional section to article seventeen:

"The real and personal property of any woman in this state, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property, and shall not be liable for the debts of her husband."

The motion was carried.

THE OATH OF OFFICE.

Mr. JOHNSON offered the following substitute for section 217:

"Members of the Legislative Assembly and the officers thereof, before they enter upon their official duties, shall take or subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of North Dakota, and will faithfully discharge the duties of (senator, representative or officer)

according to the best of my abilities, and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive directly or indirectly, any money, pass or other valuable thing from any corporation, company or person, for any vote or influence I may give or withhold on any bill or resolution, or appropriation, or for any official act."

Mr. JOHNSON. I don't wish to argue the question. When it was discussed before it was in the Committee of the Whole. It is one of the three things that were desired by the Farmers' Alliance, and they have a right to have it.

The substitute was lost.

Mr. CLAPP. I offer the following amendment to section 217: Add after the word "ability" the following: "(If an oath) So help me God. (If an affirmation) Under the pains and penalties of pejury." I recognize the fact that as it now stands, in case of an affirmation it might be inconsistent to have the words "so help me God," although some states of the Union have the form of oath like this. But I think this amendment, if adopted, will leave the matter in better shape.

The amendment was carried.

BLACK LISTS.

Mr. PARSONS of Morton. I move the adoption of the following as a section of article 217: "The exchange of black lists between corporations shall be prohibited."

Mr. SPALDING. I would like to know what a black list is?

Mr. PARSONS of Morton. It is a list of discharged employes, for no matter what cause, and circulated by agreement among corporations. It is supposed to be a list of employes that have been discharged for cause, and they are circulated from month to month by the corporations. A man may be discharged in Dakota, and it is known by the roads in Missouri. There are some roads with managers who have enough manhood about them to sit down on such a procedure. There is no way you can prevent it except by some such clause as this. The black list does not specify the cause, particularly, for the discharge. They may be obnoxious in one way or another; they have done some bad thing, but we all are liable to make mistakes. If a man makes a mistake, that is no reason why he should be persecuted. It is a persecution list, and it is exchanged around among the corporations. Each corporation can have its own black list.

Mr. MOER. I would suggest that possibly if we adopt this section they would call them blue lists.

Mr. BARTLETT of Dickey. It seems to me that some men came here to play and have some fun. This is one of the most foolish things. I have been figuring with black lists all my life. If this is adopted they will be able then to get up red lists and then blue lists. Men who want to can get around these things without any trouble. If a man is not good put "A" after his name, and if not so good as "A" put "B" there. I have bushels of black lists. There is not a power on earth that can prevent a company from keeping black lists if it wants to have them, and never will while the world stands.

The motion of Mr. PARSONS was adopted.

EVENING SESSION.

Mr. JOHNSON. I would like to have the report of the committee read appointed to examine the telegrams, letters and memorials regarding the location of the public buildings. I understand the report is ready, and if it is to be of any use to us it should be submitted now. Therefore I move that the report be now submitted.

Mr. MILLER. As Chairman of the committee I have partially, and perhaps fully, prepared a report that would be satisfactory to myself, but there are questions raised by the balance of the committee, and I am not prepared to make that report. But I will be ready to report to-morrow morning. I am not prepared to do it now.

Mr. JOHNSON. I have examined the report prepared by the Chairman and the majority of the committee, and am unable to concur in the conclusions, and I have prepared a minority report which I ask leave to submit.

Mr. SPALDING. I rise to a point of order. The gentleman cannot have a report of the special committee read now without a suspension of the rules, and the proper place for that is in the proceedings which come in the morning session.

Mr. BARTLETT of Griggs. I move that the rules be suspended for the purpose of receiving the minority report.

Mr. STEVENS. I think I am entitled to know something about what is going on in this committee, or I am entitled to be excused from the committee. I did not know that there had been

a meeting of that committee. I have seen no report. I have not heard the gentleman raise any objections to the report of the Chairman, and I don't know but that I may want to sign his minority report. But I would at least like to have an opportunity of looking at it.

The motion was laid on the table.

Article eighteen was adopted.

THE PUBLIC INSTITUTIONS.

Mr. BARTLETT of Griggs. I renew the motion I made before that the minority report of the Committee on Public Institutions be substituted for article nineteen.

This was laid upon the table.

Mr. BARTLETT of Griggs. I move to amend the article by inserting before the first sub-division the following:

"The following article shall be submitted as a separate article to be voted on separately."

Mr. MILLER. I move that the motion of the gentleman be laid upon the table.

Mr. WILLIAMS. I move the previous question on the question of the gentleman from Cass.

Mr. PURCELL. I move that the whole section be stricken out.

The previous question, and the main question were put and the section was adopted.

While the section was being voted upon, Mr. BEAN said: I wish to explain my vote as regards this article; in fact, all the votes we have taken this evening on this question. When I first came to this Convention I was opposed to the Convention locating the public institutions. When we took our vote last week I was also opposed to locating them. My two first votes showed that fact. When the third vote came I saw the question was going anyhow, and I voted in the affirmative, thus giving me a chance to reconsider my vote if I desired. After that one of the members of this Convention saw fit to have an indignation meeting held at the village of Lakota. There they not only condemned the action of the majority of this Convention, but saw fit to point out me personally, and shower their condemnation on me. Now, in voting for this article, I do not consider it alone as a question of locating these public institutions, but I consider it a question of my personal character. Since coming back here I have had reasons to change my mind in regard to this matter. Since coming back

here this second time I have seen more political trickery going on than I have ever seen before in all the political conventions that I have attended. I have seen the persons who were in the minority at the other vote, who went up and told of the jobs that were put up, and how the rings were formed and the cliques would gather, and how the boodle was used; I have seen these same gentlemen trying to form their own rings to beat the same majority that they charge with the same offenses. I consider that this is not alone a question of erecting these public buildings. I don't consider this is the only question, as to where we shall locate these public buildings. The question is not that; the question lying under the whole thing is whether the city of Bismarck shall have the Capital, or Grand Forks. Taking this fact into consideration, I have voted this evening, and I do so to sustain my private character in spite of what my colleagues may go home and report in Lakota.

Mr. BENNETT. He has just said one thing I know is false. I fling it back in his face right here or any other time, and that is that it is a question of locating the capital here or at Grand Forks. That is not so. When he comes up and makes such a statement as that he states a falsehood. When I came down here from Grand Forks as a delegate I did not come to work in the interest of Grand Forks as against any other part of the Teoritory. I was not three hours in Bismarck until I was approached on the question of locating the capital at Bismarck. I told them I was in favor of locating the temporary seat of government here, and then voting on the question. Now then, that was not what was sought. The question was to locate the permanent seat of government at Bismarck. I was asked to go into a combination. I stated that Grand Forks and Grand Forks people did not propose to go into any combination at the expense of any other part of the Territory. That is our statement of the position we maintained from the first till we finally saw this combination of forty-four, bound to locate the Capital here, and then I think we were justified in trying to break it up if possible. That is the course of the people from Grand Forks.

A voice in the gallery called out "rats."

Mr. PURCELL. It is simply a question whether a man can speak here and be heard, or whether some outsider can yell "rats." The case is just this. Of course this majority have the right to have their remarks heard, but the minority also have the right to

be heard, and while the gentleman from Grand Forks was speaking somebody yelled "rats." That is unbecoming and unmanly. The gentleman from Nelson stated that since he came back he has seen more chicanery and more scheming going on to defeat the will of the majority than he ever saw before. I am one of the minority and I was present at the meeting which the gentleman from Nelson attended to-day. And sir, I want it distinctly understood that that meeting was not called by any man who has voted with the minority, but in the interest of friends of those who have voted with the majority, and when I speak of them I speak of the men who represent Jamestown and their delegates on this floor. The minority have been willing to submit to the will of the majority if they could not defeat them fairly and squarely. In all of their meetings there has been no attempt at chicanery or underhand action to defeat the will of the majority. It was at the call of others who came here and organized this minority into a caucus, and because of the promised assistance of those who to-day have voted with the majority that these meetings were held, and not otherwise. It was a question with the minority whether they would sacrifice their votes for baits that were promised them in case they would vote for the compromise location, and what has been done in caucus has been done because they were called together by those outside who pretended to be able to bring to the assistance of the minority some of those who have voted with the majority. If the gentleman charges the minority with having done anything wrong, they have the right to stand up here and say why they were in caucus at the time they were in caucus.

Mr. CAMP. I desire to explain my vote. The gentleman who has just finished speaking has referred to caucuses that have been held, and in which the delegates from Stutsman took part. When I voted on this question a little more than a week ago, I took occasion to say to this body that I knew the vote which I cast would subject me to the most scathing criticism. I found my prophecy fulfilled speedily, and in a quarter where I least expected it. I was called home a week ago to-night to attend an indignation meeting, at which the delegates from Stutsman county were to be burned in effigy, and otherwise honored. However, we were not burned in effigy, or otherwise dishonored. It seems, however, that the citizens of Jamestown thought that there was still a possibility that their hopes might be attained, and our city might be made, at least temporarily, the capital of the State of North Da-

kota. Their delegates were instructed and urged—they were unnecessarily instructed and urged, for we should have done the same thing and had done the same thing anyway—to use every honorable effort to secure the location of the Capital of North Dakota temporarily at our city. One of the delegates from Grand Forks was present at Jamestown, and he made a statement that he could secure a certain number of gentlemen to vote for the seat of government temporarily at Jamestown if we could secure a sufficient number to make with them a majority. We undertook the task, and the delegation from Jamestown has been here working with that end in view. For that reason I went with the other delegates from Jamestown into caucus with the gentleman from Grand Forks and with the members of the minority here.

At the opening of the first meeting of that caucus I was very careful to state the object for which I myself was there, which was nothing but that if a majority was obtained for Jamestown, I would work with that majority. Otherwise, I would remain where I had placed myself before, believing then, as I do now, that this combination is the best for the County of Stutsman and the City of Jamestown, provided we could not get the Capital permanently or temporarily. That caucus held various sessions, and at its sessions this afternoon it was finally decided, and at least definitely fixed, that we could not command a majority for the proposition of locating the Capital temporarily at Jamestown. The minority then said, and to their honor be it said, that they had gone into this matter as a matter of principle, and that to go to locate any institution even temporarily would take from them the moral strength of their position. They took that position, and although some and most of the gentlemen were willing to vote the Capital temporarily at Jamestown, yet some of the gentlemen would not do this, and that proposition was left in a hopeless minority. When that was found to be unalterably fixed, I left the caucus; the caucus adjourned *sine die*, and it was understood that every delegate was free to vote upon this measure as he saw fit. Therefore, I vote with the consent and under the advice of the city I represent. I vote as I did before—aye.

Mr. JOHNSON. I wish to say a word, not exactly in explanation of my vote, but in correction of one of the statements made by my colleague. He states correctly the proceedings at Lakota, with one exception. It is unimportant, but he is in that respect laboring under a misapprehension when he states that I had an

indignation meeting called. He said a member of this Convention did it. I being the only member of this Convention there, was the one pointed out. If I had had an opportunity to join in the call, I should not have hesitated to do so. I should have considered it perfectly proper, but I had not the opportunity to do so. When I came to Lakota, on the way to my house I went into the printing office and had a chat with the editor, and while I was there, before I had said a word about a meeting, a gentleman came in and said an indignation meeting had been called. I went to the postoffice and saw the notice signed by a great many of the leading citizens. This is unimportant. I vote no.

Mr. LAUDER. Mr PRESIDENT, in view of the vote that I cast on this question when it was before this Convention something over a week ago, I feel it my duty to explain my vote on this occasion. I think all the members of this Convention with whom I have conversed will bear me out in the statement when I say that I have been against this proposition from the start as a matter of principle. But this combination was formed, and they saw fit in their generosity to establish or locate a public institution in the city in which I live, no doubt with the expectation that the delegation from that county would support the measure. Two of the gentlemen from my county, my colleagues, expressed in unmistakeable terms their dissent from this proceeding, and refused to support it, concurring with me that it was an unwise measure —wrong in principle. The alternative was presented to us, as it occurred to me at the time—I may have been mistaken—but as it was presented to me the alternative was to support this measure or the institution that was in contemplation would be taken away. I had but a short time to consider the matter. Of course I am loyal to the county from which I come and which I represent, and I was not at that time entirely certain that my people would justify me in voting against this measure, when if I did so they would lose the institution which was provided in the bill, knowing as I did that there was strength enough behind the combination to carry it through. For that reason, and not being entirely satisfied that my constituents would justify my vote, if I voted against it, I voted aye. Since casting that vote I have had occasion to visit my home and converse with my people, and I am very glad that I can come back here now and satisfy my judgment and conscience by voting on this question as I believe I ought from the standpoint of principle. There has been something said by the

gentleman from Nelson about combinations in opposition to this measure. I believe I have been in every meeting that has been held for the purpose of devising ways and means whereby this combination can be defeated. I have seen no such combinations as he speaks of. For my part I have not, except in the vote I cast here a week ago—I have never consented to any scheme or any combination by which any institution of this State should be permanently located in this Constitution. In this I can also include both of my colleagues from Richland county. Some of those who were in opposition to this combination were willing to go this far to defeat this combination—we were willing to locate the seat of government temporarily at Jamestown, or we would have been willing to locate it at Fargo or Grand Forks or anywhere else, if by so doing we could defeat this combination, but at no time have I or any of my colleagues from Richland county, or any gentlemen who have been opposed to this combination, so far as I know, advocated a measure permanently locating the seat of government of this State by this Constitution. I vote no.

Mr. PARSONS of Morton. I wish to say a word in explanation of my vote. Inasmuch as the question of purity of conscience has been brought up on this floor, I wish to make it clear and plain if possible, that no one can hurl the charge of bribery or undue influence against me. I wish to state that when I came to this Convention, I came for measures and not for the location of public institutions. But I was perhaps so verdant as to suppose that we would all consider this matter, and locate these institutions, fairly distributing them through the State, leaving it to the Legislature to make provision for them as the welfare of the State demanded. But I found a decided opposition to anything of the kind. I was satisfied—I may have been mistaken—that it was impossible to ever locate the Capital of the State by a vote, and get the wishes of the people, for it would be impossible to get a majority for any one place. In considering these things—considering that there is no body that will ever be elected by the people till another Constitutional Convention, better adapted to deal with this question, than the present body, as a common place, honest man I deemed it my right and privilege to take part in the location of these institutions. Because a minority of this body refused to take a hand in the proper location of them, and thus have a fair distribution, the only way left was for us to do what we did—to go in and locate them. I regret that it has been found necessary to

locate the educational institutions in the eastern part of the State in a body, but I wish to say that I am in no way responsible for that, and in the days to come when our children occupy the same places we do, they will find that it is the minority that has been the cause of this improper distribution of the institutions in the State. I have been ready to agree to a fair and equitable division of these things, and it is the tactics observed by the other side that has caused this state of affairs. If they charge bribery and corruption, I wish to say that overtures have been made to me by the minority which I will not describe here. I do not wish to cast any reflections on the gentlemen who have made overtures to me. I believe in the sight of God that there was no more consideration of justice and right on the side of the minority than there was on the side of the majority. If selfish motives actuated the one side, motives just as selfish actuated the other side. If any man wishes to charge that there has been bribery or corruption or undue influence used, I wish to say that I have been familiar with what has been going on, and I wish to say it is a base falsification, and I desire the world to know that this combination is as pure and honorable as any that has ever existed in any capital in the United States, and it is just as pure and honorable as the motives that govern the minority. I desire to cast my vote aye.

Mr. POLLOCK. On a former occasion I defined my position in this matter to this Convention, and I do not care now to repeat what I said then in substance or otherwise. But I wish to explain, and that briefly, that through the early days of this Convention I was interviewed by a few members of the Convention, and many people of this city, with reference to my position as to the matter of locating the capital of the State of North Dakota. I have expressed on every occasion, I think, my willingness by my vote here or at the polls, to locate the capital in this city, knowing as I do the history of the capital location here; knowing as I do what the people of this vicinity have passed through with reference to it, and knowing as I do how they have suffered in other ways. But I would like to vote on that question as an independent proposition. When the proposition comes up it is combined in such a way that it is impossible for me to vote for it. I simply make this explanation so that I may set myself right with the people of this city. I think it is absolutely necessary for me to vote as I do in order to perform the duty which I claim devolves upon me. Therefore I vote no.

Mr. STEVENS. I vote aye on this proposition so that the City of Bismarck may sit on her seven hills and be the most beautiful capital of the four new states.

Mr. TURNER. I feel called on to explain my vote on this question. I feel called on in the first place, because of the charges that have been made by the gentleman from Nelson against the minority, who have, it is true, held caucuses with respect to the question of locating the public institutions of this State. In the charges he has laid against the minority he has evidently tried to make the impression that there has been an effort made on the part of certain parties to form an improper combination in the minority on this question. I believe that I have attended every meeting of that minority, and I can testify that every expression of that minority in their caucuses has been that they would not combine to locate any of the institutions permanently. They were against the location of these institutions; they were against it because they did not believe it in the public interest, and they determined that they would not go into any combination of a character that would be buying and selling—giving something for what was to be received. The only effort made on the part of that minority was to endeavor to break the combination with respect to the public institutions which are not created. For myself, as the gentlemen know, I would, on a square issue, have voted for the temporary location or the permanent location of the Capital at Bismarck. But when the City of Bismarck went into a combination for the purpose of farming out the institutions of this State, for which the Government had appropriated a half million acres of land, and located these institutions so as to give them a majority vote on this question without reference to the question of right, which I think really they might have based their claims upon—when they did this, and located two Normal Schools, one at Mayville and one at Valley City, within sixty or seventy miles of each other, when we have a State 400 miles by 200—when they did this, I saw plainly that the interests of the State of North Dakota would be sold by the people of Bismarck for the purpose of establishing the Capital here. Hence, I would have gone into a convention to temporarily remove the Capital from Bismarck, if by so doing I could have broken up this combination. The position of things was such that I could not vote for the City of Bismarck without voting for the locatien of the other institutions

which I am opposed to so locating. For that reason I record my vote no.

Mr. WALLACE. I don't consider it necessary for me to take up much time. Neither do I think that what I may say will have any influence on individuals. I wish to say that when the delegates of this Constitutional Convention were elected this question was never mooted. It was not a question that the people were called upon to decide, nor did they vote upon it. We were not aware that a combination had been formed, or that the scheme had been formed that resulted in the combination which we have seen here, but in the light of recent events we can see that the inception and origination of this thing dated away back from the time this Convention came together. Various gentlemen here have been stating that they have voted in the interest of the people, and they have disclaimed the fact that they had been bribed, and yet they never could have been brought into it by any other means. Now, Mr. PRESIDENT, it is well for us to talk plain words. It does not take any very sharp eyes to see through this. The gentlemen may say that they have acted honorably and for the best interests of the people, but when they say they dare not submit this matter to a vote of the people, what does that say? Actions speak louder than words, and the history of this State will record the fact that the judgment of the people is not in accord with the majority here to-day. We very well know, as I have stated, that the results of this day's work have only been made possible by a combination which, in order to bring about that result, has parcelled off the landed heritage of this State to those various localities. If that is not corruption and bribery, it comes so close to it that it is not worth while to call it by any other name. It is not necessary for me to say anything more to explain my vote. I believe the people have a right to say where the capital of the State shall be located, but the question of the permanent location of the capital is not in my mind alongside of the right of the people to say where the capital shall be located. For that reason I have taken the position I have, that this Convention, not being elected on that issue—not having been empowered by the people with a right in this matter, have taken on themselves to do that which they had no authority to do, and they have taken on themselves to say that the people of this State shall not vote on this question—that they are afraid to go before the people and submit the result

of their labors to the people for their inspection. It is useless to try to cover this thing up; it sticks out too plain. I vote no.

The article was adopted by the following vote:

The roll being called, there were ayes 43, nays 22, viz.:

Those who voted in the affirmative were:

Messrs. Bartlett of Dickey, Bean, Blewett, Brown, Camp, Carland, Chaffee, Clapp, Clark, Elliott, Fay, Flemington, Gayton, Glick, Gray, Griggs, Harris, Hegge, Holmes, Hoyt, Leach, Lohnes, Lowell, Meacham, McHugh, McKenzie, Moer, Parsons of Morton, Parsons of Rolette, Paulson, Powles, Ray, Rolfe, Rowe, Sandager, Shuman, Spalding, Stevens, Wellwood, Whipple, Williams, Mr. President.

Those who voted in the negative were:

Messrs. Allin, Appleton. Bartlett of Griggs, Bell, Bennett, Best, Budge, Carothers, Colton, Douglas, Haugen, Johnson, Lauder, Linwell, Marriman, Mathews, McBride, Noble, Nomland, O'Brien, Powers, Purcell, Pollock, Richardson, Robertson, Slotten, Turner, Wallace.

Messrs Peterson and Selby absent and not voting.

Messrs. Almer and Scott being paired.

Messrs. Bean, Camp, Johnson, Lauder, O'Brien, Pollock, Stevens, Turner and Wallace explaining their vote.

Article nineteen was adopted.

ELECTING COUNTY OFFICERS.

Mr. SPALDING. I move to strike out all after the word "elected" in line twelve, section ten of the schedule. The section now reads as follows:

SEC. 10. All territorial, county and precinct officers, who may be in office at the time this Constitution takes effect, whether holding their offices under the authority of the United States or of the Territory, shall hold and exercise their respective offices, and perform the duties thereof as prescribed in this Constitution, until their successors shall be elected and qualified in accordance with the provisions of this Constitution, and official bonds of all such officers shall continue in full force and effect as though this Constitution had not been adopted; and such officers for their term of service, under this Constitution, shall receive the same salaries and compensation as is by this Constitution, or by the laws of the Territory, provided for like officers. *Provided*, That the county and precinct officers shall hold their offices for the term for which they were elected. Until the general election in A. D. 1890, the judges of the district courts shall have power to appoint a clerk of the court in each organized county, who shall hold his office until his successor shall be elected and qualified.

Mr. SPALDING. This provides that until 1890 the judges shall appoint clerks of the district court. There is a provision somewhere else that they shall be elected. I don't know any reason why this exception should be made. I see no reason why the judges elected this fall should have privileges over the judges elected heretofore.

Mr. LAUDER. As an addition to the motion of the gentleman from Cass I move that the following be inserted in the place of what he moves to strike out:

"There shall be elected in each organized county in this State at the election to be held for the ratification of this Constitution, a clerk of the district court who shall hold his office under said election until his successor is duly elected and qualified."

Mr. SPALDING accepted the amendment of Mr. LAUDER.

Mr. JOHNSON moved to amend Mr. LAUDER'S amendment by inserting the words "or rejected" after the word "ratification."

The amendment was carried.

Mr. HARRIS. Section 108 provides for the election of the clerk of each organized county.

Mr. CAMP. For several months I have considered the question of the power of this Convention to order an election for any officers except those mentioned in the Enabling Act. This Convention is called under the Enabling Act. Its powers are defined in that Act, and I don't apprehend that this Convention can exceed those powers and give legal effect to such exceptions. The Enabling Act provides that at the election certain State officers may be chosen. It does not provide that county officers may be chosen at that time. As I understand it, the clerk of the district court will be a county officer, because elected in each organized county; and it seems to me there is a serious question whether or not a clerk elected at such an election, simply by the authority of this election and without the authority of this Enabling Act; whether a clerk so elected would have any legal warrant to hold his office. I hope the question will be considered before this part of this section is stricken out. I rather think this part of this section was put in simply because the Revision Committee who were compelled to draw this up were unable to find a warrant for the election of county officers in the Enabling Act.

Mr. POLLOCK. It may be true that the construction placed on the Enabling Act by the gentleman from Stutsman is correct, but there is an argument that has been advanced recently with

reference to whether a certain majority in this Convention had the right to pass certain measures. The point is this: if we are exceeding our authority and the people ratify it, it will stand.

Mr. JOHNSON. How would the gentleman from Cass like to have it read: "The election held for the rejection of this Constitution"? Would that be acceptable to him? It would be to me. That is what the election means to me.

Mr. MOER. The gentleman from Nelson seems to be in favor of rejecting the Constitution. It strikes me that it is a little out of place for a delegate to get up here and talk about the rejection of the Constitution he has been making. I can see no sense in this unless it is to gratify the gentleman's feelings.

Mr. LAUDER. I cannot see the necessity of getting up a captious argument about this. Anyone will see that the proposition of the gentleman from Nelson is correct. The election will be held for the adoption or the rejection of the Constitution. There is no question about that. The people are to vote on it—for it or against it, and it does not follow as a matter of course that the Constitution is going to be adopted. If we were all of one mind and every one was in favor of this Constitution, and we were all going home to work for it and support it, it would be different.

Mr. HARRIS. I see no necessity for putting the word "rejection" in the amendment of the gentleman from Richland. Everyone knows that if this is rejected we are still living under the law of the Territory, and the Clerk who would be elected under this Constitution would not have any more force than the Governor would.

The amendment of Mr. JOHNSON was lost.

The amendment of Mr. SPALDING as amended by Mr. LAUDER was adopted.

Mr. CARLAND. I am reliably informed that there are certain organized counties in North Dakota that did not elect District Attorneys at the last election, and under the Constitution there will be courts held in each organized county, and there will be an interim between the taking effect of this Constitution and the next general election that the county will be without a District Attorney. I would move that the following be added to section ten as amended:

"The Judges of the District Court shall have power to appoint District Attorneys in any organized counties where no such attorneys have been elected, which appointment shall continue until the general election to be held in 1890, and until a successor is elected and qualified."

The motion was carried.

All the sections to section twenty-three were adopted.

DISTRICT COURT JURISDICTION.

Mr. CARLAND. Section 103 was recommitted to the Committee on Judiciary Department. The Convention has been in session, and I have been unable to obtain a meeting of the committee. I made a motion to strike out the words, "each within its territorial limits." This section should be disposed of in some way. If it is in order, I would renew my motion to strike out those words, "each within its territorial limits." I have tried to find some substitute in regard to the matter as to where a defendant should be sued, but I have been unable to frame any amendment which would meet the case.

Mr. MILLER. I second the motion, and desire to say a few words on the subject. I wish, however, that every member of this Convention would consider this matter by reasoning on it, and not by any prejudices they may have. What position are we in with these five words in this section? If a man commits a heinous crime in any district, and is indicted, and the judge issues a bench warrant for the arrest of that man, all the man has got to do is to step across the line into the next district and the judge would not be able to reach him, although he may be within twenty-five miles of the court house. It does not make any difference how great the crime, he is without the jurisdiction of that court and cannot be reached. In the next place, no judge shall have jurisdiction further than his territorial limits, according to this section. No man can be sued outside his own county. A man may live in Barnes County and in an hour's ride be in Fargo. He can transact business in a mercantile line and have $25,000 or $50,000 capital invested in Fargo, and yet he has got to be sued in his own county. His property is exempt from any process that the Fargo court may issue. He cannot be sued in Cass County, because that is not where he resides. He may be a millionaire. His property may be in Cass County, but you cannot sue him there because you cannot publish a summons against a man who resides in the State. This would be an outrage on every citizen. It would be in its effect so pernicious as to damage us beyond all account. I can see no earthly reason for this motion not prevailing to strike out these words. Then the law will be complete and perfect. You might as well abolish your district

court as to adopt this section. The Chairman of the Judicial Committee tells me that he has studied this question carefully and cannot think of a provision to put in. I have thought over the question carefully, and I don't know what provision can be drawn to fill the requirements of this Convention. I am satisfied that you have been led away without giving this matter careful attention, and there is not a man in the hearing of my voice but will have occasion to regret it if this section is adopted. A man may come from Medora, the western boundary of the State, and go to Wahpeton; get on a tear and shoot a horse or destroy some other property. The owner of the property may see it destroyed and ruined, but if he wants to recover damages for that property he has got to go to Medora to start the suit. The man may lie around in Richland county for months and cannot be sued because he does not live there. With this state of affairs there are a good many men who would have an uncertain residence. You would issue a writ against a man in Barnes county and he would say that he did not live there, but in Traill county. Residence is a matter of intention frequently. Think of this question before you vote upon it. If you desire your own best interests and the best interests of the people of North Dakota, vote to strike out these five words from this section.

Mr. LAUDER. I am not going to make a speech on this question. I have no objection to having those words stricken out. I believe I incorporated this amendment in the motion I made the other day, coupled with an addition to the section which I believe will obviate all difficulty. When the gentleman from Cass states that it is impossible to frame a section of this Constitution under which a man will have a right to be sued in his own county, I do not think his statement is made in good faith. There is no difficulty whatever in providing in our Constitution that the process of the court shall be co-extensive with the boundaries of the State, and at the same time provide that the suit shall originally be instituted in the county in which the defendant lives. All the difficulties that he points out were pointed out before. A part of it I grant, but I say now, as I said before, that the purpose and ultimate purpose is not to give to the process of the court power and effect in different parts of the State, but the ultimate purpose is to allow these gentlemen living in Fargo and Grand Forks the opportunity to sue any man they may catch in their counties whether he lives there or not. The gentleman cites the case of a man from

Medora going somewhere east and killing a horse. That is true, and perhaps it is within the circle of possibilities that something of that kind might in the course of a century happen. There is a law against carrying firearms, and yet sometimes it is a great hardship to a man that he does not have a revolver in his pocket. Are we going to repeal a salutary law because it sometimes works a hardship? That is the logic of the arguments of the gentleman from Cass. It is the same thing only in another form. I am willing that these words shall be stricken out if the gentleman will give us that provision which we ask for and which is just and right, and should be granted to every citizen of this State; and inasmuch as this section cannot all be disposed of, I move that the further consideration of this section be deferred till to-morrow morning, by which time a provision can be drafted. I know a provision can be drafted that will give effect to the process of the court in every part of the State and at the same time secure to every citizen the right to be sued in the county in which he lives. I ask that the members of this Convention be not stampeded by the fallacious arguments of the gentleman from Cass. I hope the members will stand by this.

Mr. PURCELL. We have had a statement of my colleague in regard to the effect of this section, and he has in a measure severely criticised the statements of the gentleman from Cass. But it has been stated on this floor time and time again that criticism and ridicule are not argument. My colleague has not stated a single instance where, if these words remain, the objections of the gentleman from Cass would be overcome. We have had the word of Judge CARLAND that he has considered this matter, and has been unable to devise anything to meet the requirements of the gentleman from Richland. We have had one side from Mr. MILLER, and in a general way, the other side from the gentleman from Richland. But this will work both ways, and as was said by the gentleman from Cass, it will work a greater hardship on suitors, if you leave it with these words in, than on debtors, if you strike them out. Take the corporations in the East who come into this State and do an insurance business. Take the Hartford Insurance Company of Connecticut, who have thousands of policies on buildings in this Territory. Our laws require that every one of these corporations must name a party on whom process can be served, and name a town in which their principal office and place of business will be maintained. Is it right and proper when they

have selected Mr. GRIGGS of Grand Forks, that a man who has sustained a loss in Richland county, must go to Grand Forks to bring suit? Take a hail or fire insurance company, and if the statement of the gentleman from Richland is true, every man who has sustained a loss under his policy is compelled to go to the place of the residence of that corporation to bring his suit. Take it in the case of a man charged in Montana, though living in Dakota, with a crime. The officers come with a requisition for the man. The judge of the district within whose district he resides is absent. The officer comes from Montana; the man can make a showing which will entitle him not to be extradited, but he is unable to go to another judge and there make a showing of his innocence. The gentleman from Cass has not stated one-tenth of the objections that can be urged against this section. If it remains here there will not be a man here who will not feel its bad effects. The first question you must ask when you have a note in your hands to bring suit upon is—where does the man live. If he lives in Richland county I must ask where his place of residence is? If he says in Cass county I must commence action in Cass county. The first inquiry is not whether he will pay the obligation, but where is his place of residence. If I take proceedings and serve process before ascertaining where he lives, all I do is invalid if he can come in and show that he lives elsewhere. Is it not fair that the creditors should have some rights on the floor of this Convention? Should the people who sign their names to obligations have everything in their favor? I say it is no hardship upon you or me when we are sued, no matter where it is, to come in and say after the process that we live in the county of Griggs or Richland and desire to have a change of venue. It is a great hardship to say to the creditor that the first thing they must do before bringing suit is to find out where the debtor lives. There is not a provision of this kind in any constitution in the United States to-day. It is something new, and the gentleman from Richland knows that the statements he has made are not founded on fact. There is not a constitution that any one has brought forward on this floor to show that such a paragraph appears anywhere else. The Legislature can protect the people in their rights but it is time somebody should stand here and say that the creditors are entitled to their rights.

Mr. MOER. The gentleman from Richland (Mr. LAUDER) has made four or five speeches on this question and has never stated a

reason for the adoption of these five words, that any man on this floor, and especially if he is a lawyer, could possibly listen to. I move the previous question.

The motion of Mr. CARLAND to strike out the words was carried.

The section as amended was adopted.

THE PASS QUESTION.

Mr. STEVENS. Among other provisions adopted in section seventeen, article seventeen, is this pass business. I believe it was passed not in a spirit of good intention, but simply to play horse. I move a reconsideration of that question. I voted against it but I do hope this article will not be passed in this way, for we will be subject to the ridicule of the country at large for this section. It goes too far. If you want to say members of the Legislature shall not have passes, all right, but this section goes farther than that.

The motion was seconded.

The section reads as follows:

"No railroad or other transportation company shall grant free passes, or tickets, or passes or tickets at a discount, to members of the Legislative Assembly, or to any state, county or municipal officer, and the acceptance of any such pass or ticket by a member of the Legislative Assembly, or any such officer, shall be a forfeiture of his office."

Mr. BARTLETT of Dickey. If people come in here to have fun let them have it out. We were anxious to do business—that question was put and voted upon, and I hope every member here will stick to it and hold them to the position they took.

The motion to reconsider was carried.

Mr. STEVENS. I move that the section be stricken out. I want to say that I don't believe there is a gentleman here who will say that it will affect the Legislative Assembly or the laws that may be passed, if the Mayor of Fargo gets a pass over the Northern Pacific road. I don't believe they will say if a municipal officer should be fortunate enough to be friendly with a railroad man and gets a pass for himself or family, it should forfeit his office. I believe every man who votes to sustain this section, does so in a spirit of spite, because of what has happened in relation to other sections.

Mr. MOER. I have this to say: It has been asserted that the system of issuing passes, and the way they do it, has been a source of a good deal of corruption, and I certainly believe if that is true, that we ought to vote to retain this section. I don't know whether we, as members of this Constitutional Convention, should

have been favored with passes any more than any other citizens. If they were given to us they were given to us for some object. A pass is issued to a member of the Legislature for some object. Take the temptation away from the members of the Legislature.

Mr. WALLACE. I have the honor of being the only member of this Convention who was foolish enough to send back his pass. Before I came here I received a pass from the Northern Pacific Railroad Company and some other parties. I consulted with some of my constituents about the matter, and they thought that it would be a bad thing to take the passes. What have I found? I find that every member has taken passes. I think it is tomfoolery to throw away a pass. I don't think any member of the Legislature should refuse to take a favor of that kind. My experience is that it does not make any difference. I vote aye.

Mr. PARSONS of Morton. I also sent back my pass that was sent me by the Northern Pacific Railroad Company. It was a "B" pass—good only in Dakota. As I have an "A" pass, good from St. Paul to Portland, I had no use for the "B" pass.

The section was stricken out by a vote of 43 to 21.

Mr. ALLIN. I move to adjourn.

The motion prevailed, and the Convention adjourned.

FORTY-FIFTH DAY.

BISMARCK, *Saturday, August 17, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. MOER. I desire to call up sectien 180, which was laid on the table.

Mr. JOHNSON. I rise to a point of order—that the regular business would be interfered with, and this cannot be done without a suspension of the rules.

Point of order declared well taken.

Mr. HARRIS. The report of the Committee on Accounts and Expenses has never been acted upon. This is a supplementary report and I move that it be adopted.

Mr. PURCELL. I desire to have added to the report the sum of $5 which I paid for type writing during the session.

Mr. BARTLETT of Griggs. If I recollect correctly, that report recommended the publication of 1,000 copies of the debates. If we adopt the report we shall adopt what we have just voted down in regard to the debates.

Mr. MEACHAM. The committee made only the recommendation.

Mr. WALLACE. I would like to ask if there is any reference to the publication of the debates of this body?

The motion of Mr. HARRIS was adopted.

THE INDIGNATION TELEGRAMS.

The majority and minority reports of the Committee on Petitions received in regard to the location of the public institutions were introduced.

Mr. MOER. I move that the reading of the reports of the committee be dispensed with.

Mr. JOHNSON. I hope this motion will not prevail. Hundreds and thousands of our fellow citizens have sent earnest petitions to us. They are entitled to respectful treatment. Their treatment even if this report is allowed to be read, will have been shabby. We sent the petitions to a committee, which was evidently intended to be a graveyard to bury them in. At this late hour the committee has reported and a majority has signed it. Surely a decent respect for the wishes of our fellow citizens would require that this report be read.

Mr. MOER. The subject matter has been acted upon, but if there is no objection I will withdraw my motion.

Mr. STEVENS renewed the motion. He said: I understand reading these reports prevents their being printed. I say let them be printed and have the widest circulation.

Mr. HARRIS. These petitions and telegrams have been printed in our Journal, and have had the widest circulation. I think it is unnecessary to take the time of this Convention to go over these reports.

Mr. PURCELL. As I understand it, it is a report of a committee. I think in all fairness we should listen to their report.

Mr. WILLIAMS. We have given these petitions the most respectful consideration. Everything has been published in the Journal, and these reports will be published in the Journal, and I see no necessity of taking the time of the Convention in reading them.

Mr. MILLER. There is no need to read these lengthy reports. They will be published anyhow.

Mr. MOER. The petitions that these reports deal with have been all disposed of, and the reading of these reports will consume much valuable time.

The motion to dispense with the reading was lost and the report was read, signed by the majority of the committee.

Mr. JOHNSON. I move that the report be adopted.

Mr. WILLIAMS. I would like to ask the gentleman if he wishes to suppress the other report? He said he wanted both of them read a few moments ago.

The other report was read, and then Mr. JOHNSON said: I move the adoption of the majority report.

Mr. WILLIAMS. The minority on this proposition have refrained from answering the majority for the reason that they have such confidence in the justice and propriety of this measure that they believe sober judgment will approve it, and in order that business may proceed, I move that both reports be laid upon the table.

Mr. BARTLETT of Griggs. I demand that that motion be divided. The question of tabling two separate reports is capable of division. If they want their report to go on the table they can have it.

Mr. STEVENS. I move that the motion of the gentleman from Nelson be laid on the table—to adopt the majority report. I think they might have had the decency to speak to me about it.

Mr. MILLER. I never heard of this majority report as they now call it. The committee was never together but once. I never saw the report till I saw it on the clerk's desk this morning.

The motion to table the majority report was adopted.

Mr. SPALDING. It seems to me that we are not through with the majority report, or so called majority report, yet, and I rise to the point of order that there is no majority report here. From the remarks that have been made here the report was not agreed upon in the meeting of the committee, and they cannot get up a report unless it is done in a committee meeting. The chairman or any other man cannot take around a report and have it

signed by Tom, Dick and Harry, and then call it a report of the committee, and as it appears from the remarks of the gentlemen of the committee, that is the way this report was gotten up, and I therefore think it should be returned to the gentlemen who filed it.

Mr. MILLER. I move the adoption of the report that the Clerk has seen fit to call the minority report.

The motion was carried by 41 to 28.

GROSS EARNINGS.

Mr. MOER. I move to call up section 108, article eleven.

Mr. COLTON. The gentleman has gone to work and made a motion to reconsider one section out of the whole article that has been referred to the Committee on Engrossing and Enrolling by a majority of 40 to 31. If we are going to fight over these things again and again after they have gone into the hands of the engrossing clerks, we can stay here a week longer and then be no nearer the end than we are now. We have fought every section in this Constitution twice—once in the Committee of the Whole, once on the third reading and now again. Is there no fairness in this Convention—that when a question has been fought out and decided they will not leave it? I hope the gentlemen will be fair and allow what has been sent to the enrolling and engrossing clerks to stay there. Therefore I move that the motion be laid upon the table.

A PRESENTATION.

A call of the House was then demanded, and during this, while delinquent members were being brought forward, Mr. STEVENS said:

Mr. PRESIDENT: It is to me a pleasant duty that I am now to perform. In behalf of Messrs. Leach, Chaffee, Gray, Turner, Richardson, McKenzie, Wallace, Bartlett of Dickey and Wallace, whose gray hairs and years of experience have lent dignity to this Convention; in behalf of brothers Carothers, Sandager, and Brown and Linwell and Glick, whose youth has lent fire to this Convention; in behalf of Messrs. Miller, Williams, Lauder, Purcell, Moer, Bartlett of Griggs, Johnson, Rolfe, Flemington, McHugh, Fay, Carland, Camp, Spalding, O'Brien, Noble, and Parsons of Morton, whose voices have been heard more times than those of all other members; in behalf of Messrs. Griggs, Marrinan and Budge, who have sat silent, but who have been industrious members; and in

behalf of each and every one, of not only members, but clerks and the faithful pages who have responded to the call when asked to perform their duty; in behalf of the eighty-one who have participated in this Convention, we present you with this token of our esteem and regard. [Here Mr. STEVENS presented the PRESIDENT with a large magnificently framed photographic group of the Convention, amid loud applause.]

President FANCHER responded as follows:

GENTLEMEN OF THE CONVENTION:—Like the pilgrim of the olden times, who having journeyed in many countries, gathering wisdom and knowledge by the way, ascends at last the summit of the east hill, and bending on his staff surveys afar the highest place of all —so have we, after a long, interesting and varied experience, reached the end of our labors and behold, gleaming into light, that Jerusalem of our souls—a completed Constitution. Gentlemen of the Convention, believing as I do, that this Constitution, which you have formed is the peer of any Constitution in the land; believing as I do, that the people of North Dakota will ratify it by a magnificent vote, [Applause.] I congratulate you on the completion of your labors. For this elegant token of your esteem, and for the uniform kindness, courtesy and patience, which all of you and each of you have extended to me as your presiding officer, there are no words in our language strong enough to express my thanks. The remembrance of your kindness, and the work of this Convention must ever be to me a green spot in memory's waste. And when we part to go out again to our various occupations, it is peculiarly gratifying to me to feel that should I ever meet you again there is not a man on the floor of the Convention to whom I cannot stretch out the good right hand of fellowship and sit down and talk to as a brother. Gentleman of the Convention, I am not able to make a speech, and I will close with just one word to one and all—God speed you, and good bye. [Applause.]

GROSS EARNINGS.

The Convention then proceeded to discuss again section 180.

Mr. COLTON. I would say this: I know that our work is not done, but if there is going to be fooling here, and trying to undo what we have done, I believe it is going to be best for us to close as quickly as possible.

Mr. BLEWETT. I move to add to section 180 the following:

"*Provided*, That the property of all railroad corporations may be taxed in such a manner as the Legislative Assembly may deem for the best interests of the State."

Mr. WALLACE. I move to amend by inserting the words:

"But no railroad property shall be assessed at more than one-half what the property of individuals is assessed."

Mr. MILLER. It can't be that the gentleman from Steele means to insert such an amendment as this.

Mr. CAMP. During the last few months I have read all the constitutions of the United States on the gross earnings tax, and on the taxation of railroads in general, and I have come to the conclusion that a man cannot understand the subject without five years' study at least. But as a venture I propose this as an addition to section 180:

"But the Legislative Assembly may by law provide for the payment of a per centum of gross earnings of railroad companies, to be paid in lieu of all State, county, township and school taxes on property exclusively used in and about the prosecution of the business of such companies, but no real estate of such corporations shall be exempted from taxation in the same manner and on the same basis as other real estate is taxed, except roadbed, right of way, shops and buildings, used exclusively in their business as common carriers, and whenever and so long as such law providing for the payment of a per centum on earnings shall be in force, that part of section 182 of this article relating to the assessment of railroad property shall cease to be in force."

Seconded by Mr. LAUDER.

Mr. BARTLETT of Dickey. I cannot vote on that intelligently. There are men who understand this who should get up and give us some information on it, so that we can vote intelligently.

Mr. WALLACE. I should like to see some reason advanced why we should take this course. It is a mystery to me why we should say one man's property should be taxed one way and make such an effort to tax another man's in another way. There may be some very good reason why my neighbor should be taxed one way and I should be taxed another. All these propositions to tax one class of property in a different way must have some foundation or they would not be worthy of attention. I know that is what the railroads want, and I know they want that because they will pay less taxes that way than they should pay. If they would not pay less than a uniform system of taxation why should they ask for it? This is an old subject, but at the same time I cannot see how any man that has his senses can for a moment entertain

any such proposition. I don't see why one man's property should be subjected to one system of taxation and another man's to another. Now, I feel strongly inclined to stand here and talk against time on this subject to try to show this Convention why there should be a uniform system of taxation. I don't know but I had better do it. Perhaps some of them will get tired by the time it is time to get up in the morning. If any gentleman can show me any reason for taxing one species of property in a different way from what you tax another, I am ready to join hands, but till I can be convinced that there is a good reason I shall oppose it. It does not make any difference whether you get $10 that way less than in another way—that is not the question at all. I must say that it is a very strange thing indeed that the railroads are coming here and petitioning us by their advocates on this floor to give them this system of taxation. I am surprised that men should come here to represent the agricultural interests of this State and they should be in favor of a system which says the farmer shall be assessed for all he has got, and when you come to another interest we will adopt another system of taxation. It says when you come to one class of property we will tax it for less than it is worth and turn the burden on our constituents. Mr. PRESIDENT, I speak in solemn earnestness when I say I am surprised that any gentleman who comes here should hesitate for a moment when he is asked whether or not his constituents should be taxed on their property at its value, and the railroads should be taxed in a different way. If there had ever been any reason for adopting such a system I should look with some favor upon it. But no gentleman here has been able to advance a reason why the farming community should be taxed differently from the railroads. This is an attempt to reduce the taxes of one class of property or to increase it. If it is an attempt to reduce it without reducing also the taxes of other classes of property, I don't see any reason why it should be done. I don't favor it. There are reasons against it and I shall oppose it. There has been an idea abroad in regard to taxation of property something like this—that in case of landed property that has a mortgage upon it, which is the situation with most farmers, that the mortgage——

Mr. BEAN. The gentleman is not talking on the question.

Mr. WALLACE. There is an idea which has been brought very forcibly to me of late, which is something like this—in case a piece of land is mortgaged, the incumbrance shall be treated as an

interest in the land. That is the gross earnings idea in a sort of way, and if the railroad is to be taxed in the same sort of way I don't see why we should not adopt that system. It says that if a man borrows $500 on his land that mortgage shall be taxed $500. But this proposed plan of taxing railroads is in my judgment a very unjust one.

Mr. PETERSON. The gentleman from Cass and the gentleman from Richland are smoking.

Mr. STEVENS. I think every member is entitled to a respectful hearing, and the gentleman should be given that privilege.

Mr. LEACH. I move that the gentleman have six hours to make a speech beginning at twelve o'clock to-night.

Mr. BARTLETT of Griggs. I move that we adjourn.

Mr. WALLACE. In Minnesota an extended experience has been had on this subject, and in other localities the subject of taxing one man in one way and another another, has been under consideration. When we adopted section 180 we supposed we had adopted it for good, and that was the end of it. We did not expect that there would be a railroad lobby here to defeat it. The resolution introduced by the gentleman from Stutsman provides that I should be taxed on every dollar I have in sight, but another man should be taxed in an entirely different way, and he should be favored by a system of taxation that does not require him to pay in accordance with the property he has got.

Mr. PURCELL. It seems to me that a man cannot keep us waiting here like this, and tying the hands of the Convention. I move that the gentleman keep to the question.

Mr. WALLACE. This gross earnings system, which has caused so much trouble in this body, and which was the source of so much bitter contest in the meetings of the Committee on Revenue and Taxation, has been turned over and considered from almost every point of view. I fail to see any reason why, after this Convention has deliberately taken the action it has in the adoption of File No. 180, it should now turn around and cast it off. I fail to see why any system should be adopted which would not subject the property of every class of citizens, and of all bodies to the operation of the same system. I fail to see why or where there is any sense or any reason or any justice in the claim that the property of three-quarters of the people in this State should be subjected to tax according to one system, which must inevitably bring every particle of their property under the taxing

power, while we turn around and say to another class of property holders that we will allow you to go with a tax that will amount to a great deal less. I move that we adjourn till 8 o'clock this evening.

The motion was lost.

Mr. WILLIAMS offered the following amendment to the section:

"The property of all corporations conducted for pecuniary profit may be taxed as other property, or upon its earnings. And the power to tax individuals or corporations or their property, shall not be surrendered or suspended by any contract or grant to which the State may be a party."

Mr. CAMP. I desire to submit an addition to the substitute which I offered. I intended to word that substitute so as to shut out a gross earnings tax on vacant lands twenty or thirty miles from the railroad. But I am afraid there will still be some question if land vacant and unoccupied will be taxable. So I desire to add to the substitute the following.

"But no real estate situated more than 200 feet from the center of the main line of the railroad company shall be exempted from taxation by the payment of a percentage on the road's earnings."

I don't propose to support the amendment of the gentleman from Burleigh for the reason that I believe the present taxation law of this Territory is wrong in principle. That law provides for the exemption of the lands of the railroads—unoccupied and wild lands situated ten, twenty, thirty, forty, fifty miles from the main line. Those lands which have no relation to the gross earnings of the road ought not to be exempted by virtue of the payment of the gross earnings of the road, and I say it is wrong. Chief Justice Tripp said in the case of Ferris vs. Vannier: "Great powers were given Legislatures under the earlier Constitutions of the States, and in some those powers are still retained. In many of the States all property is subject to taxation except such as is exempted in the Constitution itself. Laws which are uniform may unjustly discriminate, and the converse is equally true, that laws which do not unjustly discriminate may not be uniform." The Chief Justice went out of his way to make some remarks concerning the newer and the older Constitutions, and what had been done to restrict legislation in the matter of taxation. I believe, myself, in the system of taxing railroad property used for railroad purposes on its gross earnings. The matter of taxing railroads is

a very complicated question. It is very easy to tax it as other property is taxed, but it is an entirely different kind of property, and it is difficult to tax it right. I don't know a more equitable system than the gross earnings system. But I do say whatever section we introduce here should, in justice to ourselves and in justice to this State, provide that no property shall be taxed by gross earnings except the property that is used directly in producing those earnings, and not the vacant lands. The proposition of the gentleman from Burleigh contains that vice. It provides that all property of the railroad is to be taxed on the gross earnings of the road.

Mr. FLEMINGTON. I second the motion of the gentleman from Stutsman and move the previous question.

The substitute of Mr. CAMP was adopted.

Mr. PARSONS of Morton. I hope a motion to reconsider will prevail, for the measure as it now stands will forever kill any measure for gross earnings. The provisions are for 200 feet from the center of the right of way, and while I am willing to grant that, yet at the terminal points there should be a greater width for machine shops. I don't believe it is the intention of the gentleman from Stutsman to exclude them.

Mr. SPALDING. I offer the following amendment to the amendment just adopted, by substituting for that portion relating to taxation of real estate the following:

"But no real estate of such corporations shall be exempted from taxation in the same manner and on the same basis as other real estate is taxed, except roadbed, right-of-way, shops and buildings used exclusively in their business as common carriers."

Mr. TURNER. I think the railroads will be exceedingly gratified if the amendment of the gentleman from Cass prevails. I think in a very short time they might obtain possession of all the city property in North Dakota and then they would have a monopoly of the houses in this new State.

Mr. STEVENS. I think if they would strike out the provision offered by the gentleman from Stutsman and add the words "used in the operation of its corporate rights," it would be everything we want. We want to provide that the property they use in the operation of their franchise shall be exempt, whatever they may be, which is necessary and useful in the operation of their franchise. I think if all the other amendments were stricken out that would cover all we want.

Mr. PURCELL. In many instances their shops are situated more than two hundred feet from the main line.

Mr. COLTON. I think the amendment should be in. They are now taxed high, and taxes are burdensome for them to bear.

Mr. ROLFE. I was opposed to the gross earnings system, but the Convention has made it possible for the Legislature to pass a gross earnings law. This amendment, as I understand it, is for the purpose of making it possible to exempt from the gross earnings part of any law the lands now held by the companies. If we are to have a gross earnings system my opinion is that provision should be made by which these lands can be taxed.

While a vote was being taken on Mr. SPALDING'S amendment, Messrs. STEVENS and WILLIAMS explained their votes.

Mr. STEVENS. This section does not provide for a gross earnings system. It provides that the question shall be left open. I am not in favor of tying ourselves down to a system which may eventually prove wrong and without effect, and that we might desire to change. As the land outside of that used in the operation of the franchise is to be taxed under this amendment, and as it is fair and just to each and every railroad in the Territory, I vote aye.

Mr. WILLIAMS. I vote for this measure purely as a compromise measure. The proposition before us is not as to whether we are to tax the railroads on their gross earnings or not, but it is as to whether this question shall be left to the Legislature, and as this section leaves the question to the Legislature, I am in favor of it.

The amendment of Mr. SPALDING was adopted by the following vote:

The roll being called, there were ayes 43, nays 23, viz.:

Those who voted in the affirmative were:

Messrs. Bartlett of Dickey, Bean, Bennett, Blewett, Brown, Budge, Camp, Carland, Chaffee, Clapp, Clark, Fay, Flemington, Gayton, Glick, Gray, Griggs, Harris, Holmes, Hoyt, Leach, Lohnes, Lowell, Mathews, Meacham, McHugh, McKenzie, Moer, Parsons of Morton, Parsons of Rolette, Powles, Pollock, Ray, Rolfe, Rowe, Sandager, Selby, Shuman, Spalding, Stevens, Wellwood, Whipple, Williams.

Those who voted in the negative were:

Messrs. Allin, Appleton. Bartlett of Griggs, Best, Carothers, Colton, Douglas, Haugen, Johnson, Lauder, Linwell, Marriman,

Noble, Nomland, O'Brien, Peterson, Powers, Richardson, Robertson, Slotten, Turner, Wallace, Mr. President.

Those being paired were:

Messrs. Almer, Bell, Elliott, McBride, Miller, Purcell and Scott.

Messrs. Hegge, Paulson, absent and not voting.

Messrs. Stevens and Williams explaining their vote.

Mr. HARRIS. I move to adopt section 180 as amended

The motion was seconded.

Mr. TURNER. I move that the section be amended by adding thereto the following:

"The Legislature may exempt all buildings and personal property used exclusively in the direct operation and use of farmers in cultivating their lands."

The amendment was lost. Section 180 was adopted as amended.

EVENING SESSION.

Mr. BLEWETT. I move that the speeches be limited to three minutes.

The motion was seconded and adopted.

Mr. MILLER. Some days ago this Convention passed a resolution refusing to publish the debates of this Convention. I was one of those voting not to have these debates published. Since that time I have investigated the matter to some extent and find that these debates and proceedings would make a small volume, and I have conversed with several gentlemen and they seem to be very desirous that they should be published, and they think that it would give our Convention a rather cheap appearance if we don't have the debates published. I move to re-consider the vote by which we resolved not to publish the debates of this Convention.

The motion was seconded.

Mr. BARTLETT of Dickey. I feel about as the Irishman did, when they brought the hash on the table. He looked at it and said: "Be jabers, let the men eat it that chawed it." I feel that if they want the debates published, let them do it for my part.

The motion to reconsider was adopted by a vote of 28 to 10.

Mr. MILLER. I move that a thousand copies of the debates of this Convention be printed by the public printer.

This motion was seconded and adopted by a vote of 31 to 16.

Mr. PURCELL (addressing the Chief Clerk.) On behalf of

the members of this Convention, and particularly those assisttants who have been with you in the performance of your work, I am requested to say that in consideration of your efficient services, and the kind and considerate manner in which you have treated your associates and the members of this Convnation, I desire to present to you a beautiful picture as a token of the esteem of your fellow officers and the members of this Convention.

Major HAMILTON. Mr. PRESIDENT, AND GENTLEMEN OF THIS CONVENTION: It is a trite saying that it is the unexpected that happens. I don't think I was ever more surprised in my life than I am at the present time, and to say that I most thoroughly and heartily appreciate this beautiful present, but little expresses my feelings at the present time. I thank my associates in the work of keeping up the business of this Convention, and the members of this Convention for the uniform courtesy I have received from them. My duties have been difficult, but I have endeavored to discharge them faithfully, so that no man could go from this Convention and say that he had not been honestly recorded as he voted. I thank you gentlemen, sincerely.

Some formal motions were passed, and the Convention adjourned *sine die*.

JOURNAL

OF THE

PROCEEDINGS OF THE JOINT COMMISSION.

The Joint Commission, consisting of the following members of the North Dakota Constitutional Convention, to-wit: E. W. Camp, of Stutsman County, chairman; Alexander Griggs of Grand Forks, John W. Scott of Barnes, B. F. Spalding of Cass, W. E. Purcell of Richland, Andrew Sandager of Ransom, and Harvey Harris of Burleigh; and of the following members of the South Dakota Constitutional Convention, to-wit: A. G. Kellam of Brule County, chairman; V. T. McGillycuddy of Pennington, Henry Neill of Grant, E. W. Caldwell of Minnehaha, William Elliott of Turner, Charles H. Price of Hyde, and S. F. Brott of Brown, met in the Executive office in the Capitol building at Bismarck, at 4 o'clock, p. m., Tuesday, July 16th, 1889, all the members of said Joint Commission being present.

Mr. KELLAM. Gentlemen, we appear to be all here of each Commission, and at the suggestion of Mr. CAMP, the chairman of the North Dakota Commission, I will call the Joint Commission to order, and suggest that if any organization is necessary, different from what we have, that it is now in our hands.

Mr. CAMP. Mr. CHAIRMAN: I move that Major KELLAM act as Chairman of the Joint Commission for the day, or until otherwise ordered; and I will supplement that with a further motion, after the temporary organization of the Commission is effected.

Mr. GRIGGS. I will second the motion.

Mr. CAMP. Gentlemen, you have heard the motion that Major KELLAM act as temporary chairman of the Commission. All those in favor of that motion say aye; opposed no. The ayes have it

and the motion prevails. Major KELLAM is elected the temporary chairman of this Commission.

The Temporary CHAIRMAN. Gentleman, I suppose we are now in condition for further organization.

Mr. CALDWELL. Mr. CHAIRMAN: I would move you that the clerk or secretary of the respective Commissions be detailed to keep jointly the records of the proceedings.

Mr. PRICE. That is chief secretary of each Commission?

Mr. CALDWELL. Yes, if that will be satisfactory to the gentlemen of the Commission.

Mr. ELLIOTT. Mr. CHAIRMAN: I second the motion.

Mr. GRIGGS. I don't understand.

Mr. CALDWELL. At the time the Commission was appointed in South Dokata there was a clerk appointed, and I was suggesting that—I suppose your Commission also has a clerk—that those two gentlemen keep the records.

Mr. GRIGGS. Well, they will be pretty busy. Wouldn't it be better to make a secretary right out of our own body here.

Mr. CAMP. I notice that you gentlemen from South Dakota have a stenographer. We probably will have one also; and we thought perhaps the secretary would be one of our own number on each side.

Mr. CALDWELL. Then if you gentlemen have made any understanding——

Mr. CAMP. Mr. SANDAGER was our selection. One on each side has been our idea.

Mr. GRIGGS. I will make that as a motion.

The Temporary CHAIRMAN. Gentlemen, it has been moved that Mr. SANDAGER be elected one of the Secretaries of this Joint Commission. As many as would favor this motion will please say aye; those of the contrary opinion, say no. The motion prevails, and Mr. SANDAGER is declared elected as one of the Secretaries of the Commission.

Mr. CAMP. Mr. CHAIRMAN: As the second Secretary, or as the other Secretary of this Commission, I would nominate Dr. McGILLYCUDDY, of the South Dakota Commission.

Mr. BROTT. I second the motion.

Mr. McGILLYCUDDY. Before that goes to a vote, Mr. CHAIRMAN, I will suggest that I am not a very rapid writer, and you had better have a better writer.

The Temporary CHAIRMAN. Gentlemen, it has been moved

and seconded that Dr. McGILLICUDDY be elected one of the Secretaries of the Joint Commission. Those who would favor the motion say aye; those opposed, no. The motion prevails, and Dr. McGILLYCUDDY is declared elected one of the Secretaries of the Joint Commission.

Mr. SCOTT. Mr. CHAIRMAN: Agreeable to an understanding, as I understand it, I would move that the Chairmanship of the Joint Commission alternate from day to day between the Commission from North and from South Dakota. That is, between Mr. KELLAM, Chairman of the South Dakota Commission, and Mr. CAMP, Chairman of the North Dakota Commission.

Mr. PRICE. Mr. CHAIRMAN: I second the motion.

The Temporary CHAIRMAN. Gentlemen, it has been moved that the Chairmanship of the Joint Commission alternate from day to day between the respective Chairmen of the North and South Dakota Commission. As many as are of the opinion that this motion prevail will say aye; as many as are opposed say no.

The ayes have it. The motion prevails.

Mr. CALDWELL. Mr. CHAIRMAN: For the purpose of, as early as possible, arriving at an understanding regarding the method of procedure, I suppose it will be taken for granted that votes by the Joint Commission will be recorded as of each side separately. That is, that it will be necessary for there to be a majority of the respective portions of the Joint Commission——

Mr. GRIGGS. That is, that there must be two majorities?

Mr. CALDWELL. Yes, that there be two majorities. And I will move you, Mr. CHAIRMAN, that upon all votes by the Joint Commission, in order for any proposition to carry, that it will be necessary that it secure a majority in both constituents of the Commission—both a majority of North Dakota and a majority of South Dakota.

A DELEGATE. I second the motion.

Mr. SPALDING. It might be well to amend that so as to cover any disagreement.

Mr. PURCELL. Would it not be well, on all questions, to have a vote so as to show that it received the sanction of the Commission, recorded to show that a majority was had.

Mr. CALDWELL. The call then would be, the North Dakota constituency and the South Dakota constituency, and the record would be—then each wonld confer—each side would confer among themselves and announce the vote of each side to its Chairman.

Mr. GRIGGS. Wouldn't it be announced by roll call?

Mr. PURCELL. I would suggest that upon all questions passed upon by the Joint Commission, that the vote be taken by yeas and nays upon the record, and then the record will show whether or not each Commission has voted a majority in favor or a majority against.

Mr. CALDWELL. Yes, and then let the declaration be made that the memders from North Dakota, or a majority of the members from North Dakota, and a majority of the members from South Dakota, having voted in the affirmative that the motion is carried.

The Temporary CHAIRMAN. Wouldn't it be well to put that in writing?

Mr. SANDAGER. Yes, we would like that in writing, if you please.

Mr. CALDWELL reduced his motion to writing, and read it as follows:

Resolved, That upon the taking of a vote by the Joint Commission, the roll of the Commission shall be called by the clerks thereof; and if a majority of the members from North Dakota and a majority of the members from South Dakota, respectively, shall record themselves in the affirmative, the proposition thus voted upon shall be declared carried; otherwise, not.

The Temporary CHAIRMAN. Gentlemen, you have heard the motion, the adoption of which Mr. CALDWELL moves. Are you ready for the question? As many of you as are of the opinion that the motion prevail will say aye; those opposed say no.

The ayes have it, and the motion is carried.

Mr. PRICE. Mr. CHAIRMAN: I presume there is no division of opinion as to who shall be present at the meetings of the Joint Commission; but that there may no misunderstanding about the matter, I move you that no one shall be present at the meetings of the Joint Commission except the members from North and South Dakota, the clerks and stenographers, and such other persons as may be invited by a majority of both Commissions.

Mr. GRIGGS. I second that motion.

The Temporary CHAIRMAN. Gentlemen, you have heard the motion. Are you ready for the question?

Mr. SCOTT. Mr. CHAIRMAN: I am not so sure that motion should prevail. It may be necessary in our deliberations to call in some person as a witness in order to get information of facts or figures. Now, under this rule we could not do it unless a majority of both Commissions should concur.

Mr. PRICE. Mr. CHAIRMAN: I do not desire of course to make it so broad as that. If anything of that kind should be necessary——

Mr. SPALDING. Mr. CHAIRMAN: As far as I am concerned I do not claim to know all there is that should be taken into consideration in the proceedings of this Commission, and a good ways from it—very far from it; and I don't see how we are going to learn it without we do take testimony on the subject or procure evidence in some way, and you might desire evidence that we would not care anything about, and on that account you gentlemen might wish to get the testimony of witnesses that we care nothing about; and it seems to me hardly as though that rule would work well in such cases.

Mr. PRICE. Mr. CHAIRMAN: The object of this motion was not to cut off anybody's being here before this Commission whose presence was desirable or necessary, but it is based upon the fact that men perhaps can get along with work a great deal more rapidly and expeditiously if there are not too many people engaged in it. I don't want the gentleman to understand that this may exclude anybody who may be summoned by this Commission, or either branch of it—any person who can throw any light upon the subjects of inquiry; but merely so as not to throw the meeting open to promiscuous visitors.

Mr. HARRIS. Mr. CHAIRMAN: I would move to amend the motion, by "including such witnesses as either side may deem necessary to call before this Commission."

Mr. PRICE. I will accept that amendment.

Mr. CALDWELL. Mr. CHAIRMAN: With the understanding, of course, that after the information which it is desired to procure from the witness, that the witness would of course withdraw.

Mr. HARRIS. Certainly.

Mr. SCOTT. Mr. CHAIRMAN: It seems to me if we adopt this rule it will look something like a Star Chamber proceeding. This is a proceeding of great public importance, and the people of both North and South Dakota are looking with some interest to the action of this Commission. I believe that everything which is brought up for the consideration of this Commission should be public. I believe that the people of North Dakota, if they desire to attend the sessions of the Commission, or anybody from South Dakota that desire to attend, should have the privilege of attending; and I for one am not in favor of holding our meetings in that

way. I believe the public should have a right to attend if they desire so to do.

Mr. CAMP. Mr. CHAIRMAN: It seems to me that the motion will look a little bit wrong on the record, to absolutely exclude such persons except those whom both Commissions desire to have present. This is a public body, directly under an act of Congress; and it seems to me that it is in the nature of a court of inquiry and decision, and that its proceedings should be public. Of course, if in the course of the proceedings a great number of people—an inconvenient multitude—should crowd in upon us, we would still reserve the right at any time to close the doors, but it seems to me, until such an emergency arises, that it would hardly be advisable to put such a resolution upon our records.

Mr. McGILLYCUDDY. Mr. CHAIRMAN: I imagine from Mr. PRICE'S motion that it is his intention to prevent persons outside of the Commission from taking part or making suggestions or arguments before the Commission, as there may be a desire on the part of persons in North Dakota and in South Dakota, to take part, who are not members of the Commission. If that could be so arranged as to prevent persons attending the meetings from taking any part in the proceedings—or in other words, acting as attorney for either side, it would be desirable.

Mr. CAMP. Well, if the motion were limited to that purpose, why what I have said would not apply; but the motion as now made seems to be directed to the presence of any person in the room where we meet. Of course, no person would be allowed to come in here and make an argument or a statement except as a witness. No witness could come in here and make an argument before the Commission without the joint wish and vote of both constituent parts of this Commission. We have already, by an amendment which has been accepted, allowed either part of the Commission to introduce such evidence as it desires to, and I don't think either part would wish to employ an attorney or advocates to make any argument before the Commission without the concurrence of the other constituent part.

The Temporary CHAIRMAN. Gentlemen, the question is upon the motion of Mr. PRICE. You have heard the motion. Are you ready for the question? If so, as many as are of the opinion that the motion prevail will say aye;——

Mr. CALDWELL. This should be upon a call of the roll.

Mr. SANDAGER. Mr. CHAIRMAN: I would suggest that the motion be reduced to writing, before it is put.

The motion was reduced to writing by Mr. PRICE, and read as follows:

Resolved, That no person shall attend the meetings of the Joint Commission, except the members thereof, the clerk and stenographer, and such other persons as may be invited by a majority of either branch of the Commission.

Mr. PRICE. And I want to state again, my only object in introducing this resolution is this: this is merely a matter of business to us, and I think if we are left alone to do it, we can do this work expeditiously and avoid delay—that is the only object I have in the world.

The Temporary CHAIRMAN. Gentlemen, the question is upon the adoption of the resolution offered by Mr. PRICE. Are you ready for the question? The Clerk will call the roll.

Upon a call of the roll the members voted as follows:

Messrs. Camp, Harris, Purcell, Sandager, Scott and Spalding, voted nay. Messrs. Griggs, Kellam, McGillycuddy, Caldwell, Brott, Elliott, Price and Neill, voted yea.

The secretary announced that North Dakota voted six nays and one yea; that South Dakota voted seven yeas.

The Temporary CHAIRMAN. Gentleman, under the rules just adopted, the motion is lost.

Mr. CAMP. Mr. CHAIRMAN: I offer the following resolution:

Resolved, That no person, save members of the Commission, shall be permitted to make any statement, save as witness before this Commission, except by the request of a majority of both the committee from North Dakota and the committee from South Dakota.

Mr. CALDWELL. I second the motion.

The Temporary CHAIRMAN. Gentlemen, the question is upon the adoption of the resolution just read.

Mr. SPALDING. Mr. CHAIRMAN: I move to amend, so that it will read: "When objection is made by a majority of either Commission."

The Temporary CHAIRMAN. Gentlemen, is there a second to the amendment? If not, the question is upon the adoption of the original motion. Are you ready for the question?

DELEGATES: "Question; question!"

The Clerk will call the roll.

Upon a call of the roll the following members voted yea: Messrs. Camp, Griggs, Harris, Purcell, Sandager, Scott and Spald-

ing, of the North Dakota Commission; Messrs. Brott, Caldwell, Elliott, Kellam, McGillycuddy, Neill and Price, of the South Dakota Commission.

The Temporary CHAIRMAN. Under the rules, gentlemen, the resolution is adopted.

Mr. CALDWELL. Mr. CHAIRMAN: I suppose a very essential preliminary will be to arrive at what is the understanding of the Commission as to its powers under the act which has provided for its existence; and I suppose that it would be proper, and possibly the easier way, for an informal interchange of views which may have been arrived at by these various members after having read the act. If that may not be regarded as best, I will formulate a motion in regard to it.

Mr. SPALDING. I would like to hear Mr. CALDWELL'S views on it.

Mr. HARRIS. Mr. CHAIRMAN: It seems to me it would be proper for us, as we have plenty of legal ability on both sides of the committee, to appoint a joint committee to inform us what the "Omnibus Bill" provides with reference to our powers, in their legal view of the subject.

Mr. CALDWELL. Mr. PRESIDENT: I will say, as far as I am concerned, after having made a somewhat careful examination of the Enabling Act, that there are certain matters contained therein that seems to me to be somewhat blind; and it will be very important, as conditioning the action of this Commission, that there should be an understanding in its proceedings as to what its powers may be, and, while perhaps we might be able to determine the matter after submitting the same to the committee of which the gentleman speaks, it is probably the case that a full understanding of it would be had by all the members of the Commission if it were informally discussed in the meeting here. However, what determination may be arrived at will be entirely satisfactory, except that I should be very much pleased to have the views of the gentlemen, and to hear whether or not the one that is suggested to me has suggested itself to the rest.

Mr. SCOTT. Mr. CHAIRMAN: I think about as Mr. CALDWELL does in that matter, and I should like to hear from Mr. CALDWELL as to what his views are.

Mr. SPALDING. Mr. CHAIRMAN: I also concur with the views of Mr. CALDWELL, and from the positions that he has oc-

cupied in the Territory, and as they have rendered him specially competent, I would suggest that we have his ideas on it.

Mr. GRIGGS. You have got yourself into a "snap," Cal.

Mr. PRICE. They all like to hear Mr. CALDWELL talk very well, you know. He is an original gentleman, and he has a "broad-shouldered voice." It seems to me that the plan suggested by some of the gentlemen on the other side is a perfectly proper one—that this be submitted to a special committee, of, say two from North and two from South Dakota, and let them report some time to-morrow, and then we can discuss it. That would be my personal feeling about the matter.

Mr. CAMP. Mr. CHAIRMAN: I do not believe that the gentlemen of the Commission who are not legal gentlemen have sufficient faith in the supereminent abilities of the gentlemen of the Commission who are legal gentlemen, to accede blindly to any interpretation they might put upon this bill; and I believe, with Mr. CALDWELL, that we could get at an agreement as to our powers by an informal discussion here. For instance, the doubt about the question of power that has come into his mind upon an examination of the act. He might discuss that. It will form a very satisfactory basis for this discussion—as to the power of this Commission.

The Temporary CHAIRMAN. Mr. CALDWELL, you are called upon.

Mr. CALDWELL. Mr. CHAIRMAN: The chief thing that has engaged my attention in regard to the powers of this Commission —if some gentleman has a copy of the bill I wish he would let me have it—(A copy of the bill was here produced and handed to Mr. CALDWELL) is what seems to be the conflict between a certain provision of section five, and a certain provision of section six. I will read the particular parts referred to:

SEC. 5. * * But the archives, records and books of the Territory of Dakota shall remain at Bismarck, the Capital of North Dakota, until an agreement in reference thereto is reached by said States.

SEC. 6. * * Whose duty it shall be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota; the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the Territory, which shall be assumed and paid by each of the proposed States of North Dakota and South Dakota; and the agreement reached respecting the Territorial debts and liabilities shall be incorporated in the respective Constitutions, and each of said states shall obligate itself to pay its propor-

tion of such debts and liabilities the same as if they had been created by such states respectively.

Now, in section five there is (it seems to me a fair construction of the language warrants the statement) that which takes out of the hands of this Commission the disposition of the records, archives, books, etc., and confers the power of such disposition upon the State; while section six seems to confer upon this Commission the power of such disposition. And it was this seeming contradiction that has led me to suggest that the matter might be informally discussed here. I will say that the matter has been somewhat talked among the members of the Commission from South Dakota, and that there is not a unanimity of judgment in regard to it, and I had desired especially that if the matter—so far as I was personally concerned, having heard a discussion of the views upon it upon the part of the gentlemen from South Dakota—I had specially desired that there might be an expression of views by the gentlemen from North Dakota. It is a very important question, as it seems to me, for us to determine whether or not final action of ours determines this matter. I think there is no question, from the language of the statute, that our action in regard to division of debts and liabilities is final, and that the respective conventions must incorporate in their documents the recommendation made by this Joint Commission. In regard to the matter of archives, records and books, as I say, there seems to be an opportunity for a difference of opinion; and it is upon that difference I should like an expression given.

Mr. SPALDING. Well, we didn't hear what your expression of opinion was.

Mr. CALDWELL. Well, assuming to speak only for myself—and I suppose that that is all that is expected of me—I would say that it is my judgment that while this body may agree and recommend or advise the respective commonwealths as to what it would be proper to do with these archives, I do not believe that our conclusions in regard thereto would be final and binding. I think that we might recommend, but that in order for that recommendation to be given vitality, and to warrant the removal of any records, unquestionably there would have to be an understanding between the two states, and after they had become political entities actually. I believe, however, that this construction would involve a good many difficulties, but I also believe it possible to devise means for avoiding, in a measure, those difficulties; and it

is for the purpose of having this considered that I have made the suggestion.

Mr. PURCELL. This is the first time, Mr. CHAIRMAN, that my attention has been called to this. I am not, perhaps, as competent to speak on it as Mr. CALDWELL, who has given it some attention, but to read it hastily it strikes me that the best manner of procedure would be this: Section five says, after enumerating other matters:

"But the archives, records and books of the Territory of Dakota shall remain at Bismarck, the Capital of North Dakota, until an agreement in reference thereto is reached by said States."

Now, taking that clause alone, it simply says that the archives, books and records, of the Territory shall remain here at Bismarck until the two states agree upon a division or disposition. Section six says that we shall agree upon an equitable disposition of all the property belonging to the Territory, which, taken by itself, would seem to me, property other than the books and records; but the following line says, "the disposition of all public records."

Now, no matter what we do here, of course the records, archives and books shall remain in the Territory until the territorial government becomes extinct. In other words, if we should arrive at an agreement to-day, we could not say that the records pertaining to South Dakota, should go there, but that the same shall remain intact until the territorial form of government shall cease to exist. It seems to me that it is this—after we have agreed upon all property other than the books and records, that the books and records should be left for the two states to determine. Section six says simply "public records." Section five says, "the archives, records and books of the Territory."

Now, it seems to me, that would be a fair interpretation of the act, namely: That all books should remain at Bismarck until the Territory ceases to exist and there are two states made out of it; and that then it becomes the sole province of the two states to agree how the records shall be disposed of.

Mr. SCOTT. Mr. CHAIRMAN: I, for my part, was taking altogether another view of the case. The matter had not been called to my attention until Mr. CALDWELL referred to it. I was of the opinion, and am now, that we have full power to make an arrangement and come to an understanding and agreement among ourselves as to what disposition shall be made of these books; and I think if we do, that whatever action we do take, if it is

necessary subsequently to have that action ratified by the states, it will be ratified. I believe we should go into this matter—it is an important matter—to see what shall be done with these records and come to an understanding with reference to it. Shall they be retained in North Dakota, or shall they go to South Dakota? If they remain in North Dakota, what will South Dakota have to show in the way of records? If they go to South Dakota, what are we going to have in our records to show or keep track of the money, and show how it has been expended? Now, I believe that we have the power to do that, and under section six, we shall agree upon a division and how the records shall be disposed of:

SEC. 6. * * Whose duty it shall be to assemble at Bismarck and agree upon an equitable division of all property belonging to the Territory, and agree upon the disposition of all public records.

Now, what are public records? It seems to me there can be but one interpretation, and that is, any of the books, papers and records remaining and belonging to the Territory of Dakota in any of the offices of the Territory—in the Auditor's office, in the Treasurer's office, the Governor's office, in all the public offices. Now, I don't think there is in section five anything more meant. It means nothing more than the subsequent section, which says we shall agree upon a disposition of all public records, the public books, the papers, and everything pertaining to the records. They are the archives. It seems to me clear that where it says that this Commission shall assemble at Bismarck and divide the property and agree upon a disposition of the public records, that we are authorized to make some agreement respecting them. What that agreement is, of course remains to be seen.

Mr. PURCELL. Is it your understanding that the preceding section places no limitation upon the powers of the Commission?

Mr. SCOTT. It places this limitation: If we cannot come to an understanding, that the records shall remain here. Section six prescribes how an agreement shall be reached by the States——

Mr. PURCELL. Yes, but we are not a State.

Mr. SCOTT. I think the word "State" there refers to North Dakota. There is no such thing as the Capital of North Dakota. It merely refers to the Territory of North and South Dakota, and calls them States. Section six, as I understand it, shows to us how we may reach an agreement.

Mr. SPALDING. I should like to hear from somebody from the South who does not agree with Mr. CALDWELL.

Mr. CALDWELL. There are five of them, I think. I think Capt. ELLIOTT agrees with me.

Mr. PRICE. I would like to hear from the CHAIRMAN.

Mr. KELLAM. Well, gentlemen, it is difficult for me to read the two sections and come to a conclusion that is absolutely free from doubt. The difficulty has developed among ourselves since we came here. Some gentleman of the Commission yesterday suggested a question as to the power of this Commission with reference to the public records of the Territory, and it was a matter that was laid aside, and this afternoon was discussed a little among ourselves. I am not inclined to the same conclusion that Mr. CALDWELL is. I do not know exactly how to read these two sections and make them absolutely harmonious, but "the archives, records and books of the Territory of Dakota shall remain at Bismarck—until an agreement in reference thereto is reached by said states." Now, I am in doubt as to whether those words "by said states" were used with great deliberation or not; whether that provision means as it would mean if the word "proposed" were inserted between the words "said" and "states." In several places in this bill North Dakota and South Dakota are referred to as states. There would be perhaps less doubt as to the meaning of this if it read, "by said proposed states." The question with me is whether section six should be read as explanatory, as auxiliary, to section five.

"The State of South Dakota shall be admitted as a state in the Union under said Constitution as hereinafter provided; but the archives, records and books of the Territory of Dakota shall remain at Bismarck, the Capital of North Dakota, until an agreement in reference thereto is reached by said states."

Then the very next section provides how an agreement may be reached by said proposed States. If the view of Mr. CALDWELL is correct, there is very little force in the words used in section six, as it seems to me. This Commission is charged with the duty of agreeing upon an equitable division of all property belonging to the Territory of Dakota. That is one of its duties. Another is, it is charged with the duty of agreeing upon a disposition of all public records. Now, is this the agreement that is referred to in section five? An answer to the question in the affirmative, of course, would dispose of all doubt; and I am strongly inclined to that interpretation—to that construction.

How far does section five qualify the power of this Commission

as to a disposition of the public records, when it says that they "shall remain at Bismarck until an agreement in reference thereto is reached by said States"? I am inclined to the opinion that the agreement referred to in section five is the agreement provided for in section six. I would be very well satisfied to come to a different conclusion, because it would, of course, consequently, relieve us of a part of the work that would devolve upon us by the view I take. I do not think that any of us have given the matter as much thought as, perhaps, the subject demands. It was the subject of discussion among ourselves for perhaps half an hour this afternoon. There was a diversity of opinion developed, and we said "when our friends from North Dakota come in, we will ask their views upon this question"; that is as far as we have gotten. My own judgment is that it becomes a part of our duty to dispose of the public records of the Territory of Dakota, but that they shall remain at Bismarck until such conclusion is reached, and such conclusion is made operative by the organization of the two state governments.

Mr. NEILL. Mr. CHAIRMAN: In studying those two provisions, it seemed to me, while the first was explanatory to a certain extent, and placed a limitation with regard to the time of removal of those records, that the second provision paved the way by which that agreement should be arrived at and the proper division of the records made. There is this peculiarity about the "Omnibus Bill" and the authority under which we are to make an agreement, as compared with other acts of the same kind. The very passage of this act in itself almost created two states. It was not one of those acts that provided in a provisional way for statehood, that have so often been granted to territories, but the fact that it never again returns to Congress, but that each becomes a state by proclamation of the President, shows that we are treated more as organic states from the moment this act of Congress was promulgated than territories in former cases have been. So that the use of this word "state" in this first section becomes a matter of easy use, and so it has that lighter sense that our Chairman has just alluded to. It seems to me that the intention of the bill is that we should come to an agreement in regard to all property, with regard to all liabilities, and with regard to records and everything else pertaining to these two states before we take that final vote of ratification; and that this is only a part of the work of this Commission to see that this work is arranged for, and that Con-

gress had it in mind that unless it was fully complied with, and that we agree upon how everything should be divided, that we could not enter the Union. They sort of hold this over us as a check, to arrange all these matters preliminary to statehood; and that upon a final vote upon our Constitution the work is completed. To me it seems very plain and very urgent that this Commission prepare for the disposition of those records so that it will be a final settlement. Suppose we do nothing in regard to them, and it afterwards comes up between the two states, and the State of North Dakota does not see fit to agree, how can the State of South Dakota compel her to?

Mr. PURCELL. Suppose North Dakota does not become a State, would this Commission, acting on the part of South Dakota have any right to bind them by this agreement? Any agreement that we might arrive at now would be contingent upon the two Constitutions being ratified.

Mr. NEILL. Certainly.

Mr. CALDWELL. Yes, sir.

Mr. ELLIOTT. That is it, exactly.

Mr. PURCELL. My argument was upon this theory: That in case the Constitution of North Dakota should not be ratified, then section five would apply—that it was intended to prevent this Commission now from taking any action in regard to the disposition of that property until both Constitutions had been ratified, and then it be done by the States. If either of these Constitutions should fail to be ratified, no one would claim that the action of this Commission would bind the Territory at all.

Mr. CAMP. And yet, for all that, the duty devolves upon this Commission, plainly, of making an agreement—arriving at some agreement for the disposition of these records. My idea, briefly, is this, upon that subject: We are to go on as a Joint Commission and agree, if possible, as to the disposition to be made of the records. For instance, we may agree that all records which pertain exclusively to South Dakota shall be removed to the Capital of South Dakota when established; that all records which pertain exclusively to North Dakota shall remain at the Capital of North Dakota; that all records which pertain partly to the North and partly to the South—for instance, the Treasurer's books, I suppose—shall remain, we will say, at the Capital of North Dakota, but that their contents shall be copied and cetified and exemplified; and that the copying of them shall be paid for

in such manner as we shall agree upon, and the copies shall be taken to South Dakota. Now that will be our report to the two separate Conventions. That report, so far as the matter of the records is concerned, those two Conventions are at liberty to adopt or not. If those two Conventions severally adopt our report as to the records and make it a part of the Ordinance of the two proposed states, and the Ordinance of the Constitution of the two states is ratified by the people of the two states, and the President thereupon issues his proclamation, then our agreement has become the agreement of the two states; and then section five comes into play and the records may be removed and transferred accordingly. But I do not understand that any agreement which we may make with regard to the records is binding until so ratified by the people. At the same time we are under an obligation, by our appointment, to make an agreement with regard to those records.

Mr. CALDWELL. Mr. CHAIRMAN. The last speaker has almost stated my judgment in regard to the matter. My principal point is this: That while we may make a *quasi* agreement here—an agreement which is merely a provisional one—an agreement which is contingent upon subsequent action in regard to these books, archives, etc., that that agreement which we make in regard to the debts and liabilities is positive and final. We may here go to work and propose or suggest that a certain disposition shall be made of these records; but if either state should see fit to, by its Legislature, take different action, our suggestion or agreement would not be binding upon the Legislature. I think that is a matter which is reviewable by the legislatures of the respective states. I think, however, that it would not be only proper, but our duty to consider the matter and to suggest to our respective commonwealths what ought to be done—that is, simply come to an agreement which does not bind either party like the agreement which we make with reference to the debts and liabilities, and which is subject to review by the Legislature of the State when organization is complete; otherwise if we had power to make an agreement which is final, the moment we make it these records are liable to removal, whether North Dakota should adopt her Constitution and thus become a state, or whether she should reject this Constitution and the one hereafter that is contingently provided for and remain a territory; and I doubt if any action that we could take would be in any sense binding upon

North Dakota in the event of her remaining a territory. She would remain a territory and would be entitled to these records; and whatever South Dakota as a state had of them she would have to have as copies of them. And, as I stated this afternoon, in the casual discussion of the matter, it seems to me that there is inherent evidence in the construction of the act as to the method by which these two provisions were introduced. It seems to me that section six is, as it was originally prepared by the author, and that section five, after having been prepared by the author, was modified by the insertion of the clause beginning with, "but the archives, records, etc., shall remain at Bismarck." I think that that was injected after its completion by the author; and that the purpose of its injection was that it should controvert the declaration of section twenty-eight of the Ordinance and Schedule of the Sioux Falls Constitution of 1885. Section twenty-eight declares:

SEC. 28. All the existing archives, records and books belonging to the Territory of Dakota shall belong to and be a part of the public records of the State of Dakota, and be deposited at the seat of government of the said State with the Secretary of State.

And it seems to me that the purpose of that section was to prevent any possible question arising in the event of this section twenty-eight being readopted by South Dakota; so that it was an actual, positive insertion of the provision with a definite and actual purpose, which purpose was, as it says, to prevent its removal until there should be an equitable arrangement arrived at by both of the independent commonwealths after they had been established as States, and that being the case, it seems to me, that our powers in regard to the books, records and archives are merely advisory; that there is not anything which we can do that positively binds either the State of North Dakota or the State of South Dakota, and certainly nothing that could bind the Territory of North Dakota and the State of South Dakota.

Mr. MCGILLYCUDDY. Mr. CHAIRMAN: I would suggest that it is not a question of what we may do in regard to the recommendation as to the disposition of these records, but article six clearly states that it shall be the duty of this Joint Commission to divide these records. Now, of course, the ultimate result of what we shall determine on here is contingent on the coming in as a State of South Dakota. All the various public buildings and the bonded debt are now divided practically by their location; but the present location of the records is at Bismarck, and it seems to

me the object of this section five was to prevent this Commission taking up these records, and particularly for the reason that in South Dakota to-day there is no officer authorized by law to receive and care for those records. Supposing they were divided and taken to South Dakota, and in the event of this failing and the President not bringing the State in by proclamation, whoever wrote that bill could easily foresee the danger of these records being scattered and lost, and the Territory losing the benefit of them. But it seems to me that we have a clear duty to make a recommendation for the future State to act upon.

Mr. BROTT. Mr. CHAIRMAN: It does not say we shall "divide" the records, but make some "disposition."

Mr. HARRIS. Mr. CHAIRMAN: Perhaps the history of this Omnibus Bill might throw some light on the subject. This bill was a matter, of what we might call, bargain and sale between two parties—the democratic party contending for one thing and the republican party another; and the agreement was reached by which we have this bill. The republican party were contending for the admission of South Dakota under the Sioux Falls Constitution, immediately after the vote in May, and they expected to have that nserted in this bill—they expected to have South Dakota admitted after she had voted in May, under the Sioux Falls Constitution, and it was found that the agreement could not be reached bringing them in at that time; that it would be necessary in order to pass this bill at all, that the whole question should be voted upon again in October, at the same time that the other constitutions by the other states were submitted to the people—that it must be submitted again with the separate questions. Now, I agree with Major KELLAM that the use of the word "state" there may not have had just that interpretation or that intended meaning, and that it may not have been just the interpretation we are putting upon it, and that might have been reached by "said proposed states" as he suggests. This agreement was reached hurriedly in regard to this bill—reached after an all night's session of the men in charge of it, and it had to go in at the next morning's session, and there may have been part of this bill that intended that South Dakota should have been admitted sooner, and this provision put in here in order to prevent any records and archives being removed from North Dakota and taken to South Dakota in that case; and the bill may not have been drawn to cover this whole thing. I am inclined to the opinion that the language in section

five and the language in section six, as interpreted together, and as interpreted with all of section five, intended that this Commission should agree as to the disposition of these records, and that it should be submitted to a vote of the people, although it does not say so in express language, and upon their ratification that that disposition should be made of these records. Of course if either party to this agreement should fail to ratify their Constitution this would not be binding, and some other disposition would have to be made, but it says plainly in section six that this Commission shall make disposition of the records.

Mr. CAMP. Mr. CHAIRMAN: In order that the matter may be brought before the Commission I introduce the following motion:

Resolved, That any agreement hereafter arrived at by this Commission relative to the records of the Territory of Dakota shall be reported by the committee from North and South Dakota to their respective conventions, with the recommendation that the same be made a part of the Schedule or Ordinance to be submitted with the proposed Constitution for ratification by the people of North and South Dakota respectively.

A VOICE. I second the motion.

Mr. PRICE. Mr. CHAIRMAN: I move you, sir, that the consideration of this motion be postponed until the next session of this Joint Commission, to-morrow.

Mr. PURCELL. Mr. CHAIRMAN: I second Mr. PRICE'S motion.

The CHAIRMAN of the Joint Commission: Mr. PRICE moves that this motion of Mr. CAMP be made a special order for the next meeting, at the opening of the session. As many as are in favor of the motion will say aye; contrary, no.

The motion prevails, and the resolution introduced by Mr. CAMP is a special order at the opening of the next session of this Joint Commission.

Mr. SPALDING. Mr. CHAIRMAN: It seems to me quite clear what was intended by this act; and it seems to me that section five was intended to be read in connection with section six, and that the intention was that it should mean the same as though it read like this:

"But the archives, records and books of the Territory of Dakota shall remain at Bismarck, the Capital of North Dakota, until an agreement in reference thereto is reached by said states; and it shall be the duty of the Constitutional Conventions of North Dakota and South Dakota to appoint a Joint Commission to make such agreement."

And that the two should be read together. It seems to me that those words are synonymous there. It does not mean the books in the Territorial Library, it means the books of record—the same class which is referred to previously there—the archives, records and books; all books of record. Then in section six instead of referring to them separately, it refers to them all together under the words "public records," and it would seem from the way this reads, to me, that it was not intended as essential that we should incorporate the agreement which we may arrive at regarding the books of record, in the Constitution, but that we should only incorporate so much of our agreement as relates to our debts and liabilities and matters of that nature in the Constitution; that if we make an agreement that is final and binding it is only subject to our becoming states, and that these records and books cannot any of them be removed unless we do each of us become states—so that our office is to agree upon a division, not only on the debts and liabilities, but also of the records; and that part of the agreement respecting the liabilities shall be incorporated in the Constitution, and not necessarily the other part of it.

Mr. SCOTT. Mr. CHAIRMAN: I think it would be proper for us to agree upon a time to which we adjourn, and have a regular hour of meeting each day.

Mr. PURCELL. Mr. CHAIRMAN: I suggest that we meet at 10 o'clock in the morning.

Mr. SCOTT. Well, we have considerable work in committee to do, and I would suggest that if we can meet here right after the adjournment of the Convention it would give us all the work we will agree to do. Now, we to-day have had a two-hours' session, and I think that is quite enough.

Mr. PURCELL. I accept the amendment that we meet here immediately after the adjournment of the Convention, and so make the hour at 4 o'clock, or 3:30.

Mr. SPALDING. I would suggest that we meet in the Attorney General's room instead of here. This may discommode the Governor.

Mr. CALDWELL. He has given us permission to meet here, and he is away.

Mr. PURCELL. Mr. CHAIRMAN: I make a motion that we meet here at 3:30 o'clock every day.

Mr. GRIGGS. I think it ought to be earlier than that.

Mr. CALDWELL. Yes. While we are disposed to do the utmost that could be reasonably expected, yet at the same time our Convention is simply drifting along, waiting for our return; and if it would be a possible thing for the gentlemen from North Dakota to meet earlier than that, it would be a very great convenience, not only to us, but also to the members of our Convention at home.

Mr. PURCELL. I think from the statement you make that we are disposed to accommodate you, and I would suggest that we meet at 3 o'clock.

Mr. BROTT. Why can't we have a two-hours' session in the morning?

Mr. KELLAM. It may be that your committee meetings are arranged for to-morrow so that you cannot avoid them; but if the gentlemen of this Commission can reasonably be excused from their committee meetings, it is important, of course, for us to facilitate our work here as rapidly as possible, on account of our Convention. They are practically through with their work at Sioux Falls, and must remain in session throughout our absence; and, while we do not feel like pressing the matter at all, yet we do feel like saying that all the time you can reasonably give us, it will accommodate us.

Mr. PURCELL. Well, to-morrow we will arrange to have our committee meetings at such time as will not interfere with the meetings of this Commission.

Mr. SPALDING. All the committees that I belong on meet in the morning.

Mr. NEILL. While you gentlemen are no doubt very much engaged in your committee work, it would be better for you to crowd as much of your work in this committee now, and give your work to the other committees later on.

Mr. CAMP. Are we going to profit by having long sessions of this Commission? Every form of work is not expedited by having long sessions, but sometimes by doing the work in committee and getting the material ready.

Mr. KELLAM. Well, gentleman, it will be satisfactory for us to-morrow to meet at 3 o'clock.

The CHAIRMAN of the Joint Commission: The question is now upon the adjournment until to-morrow afternoon at 3 o'clock

at this place. As many as are of the opinion that the motion prevail will say aye; contrary no.

The ayes have it; the motion prevails, and the meeting is adjourned until to-morrow at 3 o'clock p. m.

SECOND DAY.

BISMARCK, *Wednesday, July 17, 1889.*

The Commission met at 2:30 p. m., Mr. CAMP in the chair.

Mr. KELLAM moved that two assistant secretaries be selected to assist in the meetings during joint sessions.

Which motion was carried.

W. G. HAYDEN was nominated by the North Dakota Commission and L. M. MCCLAREN by the South Dakota Commission, and both were elected.

Under head of Unfinished Business, call was made for the resolution offered yesterday by Mr. CAMP. A vote was called for, and the resolution was lost by the following vote: South Dakota voted yeas, 2; nays, 5. North Dakota, yeas, 6: nays, 1.

The following resolution was offered by Mr. CALDWELL:

Resolved, That any agreement arrived at by the Joint Commission regarding disposition of the public records of the Territory shall be communicated by the Representatives of North Dakota and South Dakota to their respective Conventions, to be by them communicated to the Legislatures of the two States for action in regard to such disposition.

Upon motion of Mr. PURCELL, the resolution was laid on the table.

Mr. KELLAM. It seems to me that we should discuss in an informal way some plan for making the division of property. For myself I should be glad if we could relieve ourselves somewhat of this formality. It does not seem to me that we are near enough to each other; it is a little too cold-blooded. I would like to have a man say what he thinks in specific terms; if he has a thought, express it, but without so very much formality. I get through my business easier that way than any other, and my experience

satisfies me that we will get along faster than if we attempt to observe very much proper form in our deliberations. We have got to make a fairly intelligible record, but I still think that the less formality and the less coldness we can have about our consultations and discussions, the quicker we shall arrive at an understanding between ourselves. I have simply expressed in a general way the feeling of our people. We have not any plan. We came here so far as I know without any discussion whatever as to what would be the easiest or most expeditious or the fairest way to get at the result that we are after. Since we have been here we have talked in a general way of the possible methods that might be pursued, but we have no plan—no course marked out that we desire to pursue. We are all at sea as to what particular method and line to work on, and it is for this purpose that it is desirable for each gentleman here if he has an idea as to how we can most directly get at the division of this property and the division of these liabilities in the most business like way, to state his views.

Mr. SCOTT. Have you any suggestions as to methods?

Mr. KELLAM. Not any. There might be two or three methods, but I have no choice. Of course I desire that we shall reach a reasonably correct result—not a result that will be mathematically correct, for I don't suppose there is any gentleman here that expects a settlement by this Commission which will be mathematically correct. That will be without the range of possibility. Further than the general thought of taking each institution and putting upon it its proper indebtedness, and turning it over to the new State, I have no plan. I suppose that in discussing this matter each gentleman must speak for himself, for in speaking on this subject I don't presume to be speaking for our Commission.

Mr. SPALDING. I supposed when we entered into this informal talk we were to get down to some definite basis, but so far, with the exception of the remarks of Major KELLAM, the suggestions have been mere glittering generalities. It seems that if we are ever going to arrive at any conclusion, it is necessary that we establish a start on some principle on which we are going to work, and then "hew to the line, and let the chips fall where they may." I don't believe that there is a man in this Commission who has any desire or wish to accomplish any result here which shall not be as near as possible equitable and fair to both parts of this Territory and both of the incoming states. I don't believe that anyone of us was sent here for any such purpose, and it does not take

any talking to convince me that we were sent here to arrive at a fair and equitable result. I don't believe that we can split dimes or nickels, and the only result we can expect to arrive at will be such as under all the circumstances will be equitable, and follow the lines of equity. The first thing, it seems to me, will be to arrive at some rule on which we are to proceed, and then we can commence with one institution or more, and figure out our basis or conclusions from our basis. That was the object, as I supposed, of this informal discussion, and I would like to hear from Major KELLAM or Mr. CALDWELL or Mr. PRICE as to what would be such an equitable rule to start on.

Mr. PRICE. It seems to me that we would like to hear from you on that matter.

Mr. SPALDING. I mention Mr. CALDWELL because there is no man on our Commission that has had any connection with public institutions or knows anything about them—what the public institutions are, or the system of bookkeeping under which they work, or anything connected with them. Mr. CALDWELL is the only gentleman on the South Dakota Commission who has been so connected with the public service. In my remarks I have mentioned him because he is better posted and better able to speak and advance the ideas that we want.

Mr. CALDWELL. Well, the Territory has a number of public institutions, and there are more in the South than in the North. It is a fact that the Territory has not paid anything on these; the bonds are out, and so far as the institutions are concerned, the commonwealth which takes the institutions and pays these bonds, pays for the institutions. It would seem to me that an entirely fair basis would be something like this—let South Dakota take what public institutions and public buildings may be located within her borders, and become responsible for the indebtedness which has been incurred, and let North Dakota take such public institutions as are included in her territory, including the Capitol, and let North Dakota pay the indebtedness on them. That is the matter in a nutshell, as it has been suggested to me by an examination of the matter. It seems to me to be a perfectly fair proposition for the reason that whatever one commonwealth gets, it gets something that it will have to pay for itself. These bonds are all out, and the new State will have to ultimately assume them and pay them.

Mr. SCOTT. I ask for information—is it a fact that all the

public institutions in the Territory have been bonded for the full payment of the institutions—for what they cost the Territory, or has the Territory from time to time made certain appropriations to certain public institutions which have been used in the construction fund?

Mr. CALDWELL. I would say that there has been paid by the Territory for the construction, or for matters pertaining to construction of public institutions, of South Dakota, otherwise than from the proceeds of bonds, about $70,000. For public institutions in North Dakota there has been paid, otherwise than by bonds, for matters pertaining to the construction or permanent accounts, or for something which becomes part of the property, $143,000. So that there has been paid out of the general funds of the Territory, as shown by the Auditor's reports, for a series of years, ever since the Territory has had an institution, about $143,000 for construction, or furnishing, or betterments or repairs for North Dakota, and $69,900 for South Dakota.

Mr. PURCELL. Have you the figures for each institution?

Mr. CALDWELL. I have the figures somewhere. I will read here a list of the institutions. The first established was the Yankton Insane Hospital in 1881, $40,000 worth of bonds; in 1883 $77,500, and in 1887, $92,500 worth of bonds. I will say without going into details that the bonded indebtedness of institutions in South Dakota is $666,700 up to 1888. That takes into account the institutions already in existence, and it does not take in the Soldiers' Home. For North Dakota institutions the bonded indebtedness is $433,600. That makes in round figures $233,000 more of bonded indebtedness for South Dakota than for North Dakota. But the query of Mr. SCOTT was as to how much had been matters of current appropriation that had not been realized from the sale of bonds, but paid out of the general funds of the territory. I would say again that the amount is $143,000 for North Dakota and $69,000 for South Dakota. A little less than half as much has been paid for North Dakota institutions out of the general funds, than for South Dakota. I would say on personal honor, that in making this proposition there is not the least design or intention, nor as I believe the least opportunity, for either section to have the advantage of the other, other than as is perfectly plain on the face of it. I have examined the figures, and as the gentleman said, I had charge of the accounts of the Territory for a couple of years, and have paid more or less attention to such matters since,

and with this knowledge of the condition of affairs, and with a disposition to be fair, I have made this suggestion. It seems to me to be perfectly fair and equitable as between the two commonwealths so far as the division of the public institutions and the indebtedness incurred in their construction, are concerned.

Mr. SCOTT. If we establish a general proposition as you suggest, then would it not be necessary to take up each institution by itself, see what the bonded indebtedness for that particular institution was, what the cost of construction was, and what means were appropriated to each particular institution out of the current funds that is not included in the bonded indebtedness?

Mr. CALDWELL. No, that is not necessary. The money you speak of that did not come from the sale of bonds, has been paid out of the current revenues of the Territory.

Mr. SCOTT. I don't think you catch my point. You say that we have had in North Dakota $143,000 for our institutions in addition to the amount realized from the sale of their bonds, while you in South Dakota have had only $69,000.

Mr. CALDWELL. I, as a South Dakota man, knowing that fact, and desiring to make this adjustment without any red tape, would not ask that we go into *minutia*. I am willing that South Dakota shall take the property in South Dakota on the basis I have suggested, and let the North have the benefit of the extra money that her institutions have had out of the general funds. This is to be borne in mind, that when the Commission shall go to work and fix some definite basis of division, there arises a new equity for each side in the case. While in general equity we may agree on a basis such as I have indicated, that is that each commonwealth shall take the institutions located within its borders and assume the indebtedness which has been incurred by the Territory in regard thereto—when we do that, in my judgment that will prove to be equitable if we agree to it. If on the other hand we determine that our basis shall be that we will figure and figure and figure, until we determine the precise value of all these institutions, then if there should be any item overlooked by this Commission, the result would be inequitable to that extent, and if we should go into the matter of determining all these details, we would, as I say, arrive at a conclusion that would be inequitable in so far as we deviated from the standpoint. To illustrate, this question came before the Auditor's office, not only when I was Auditor, but every year, as to the matter of equaliz-

ing the taxes between the various counties. There were two methods of going about this—for instance—the matter of equalizing for territorial purposes with reference to the lands of the Territory. There was one way by saying the average acre of land in every county shall be regarded as of the same value as the average acre in every other county. If that should be determined on as a basis, it was with entire equity that the average acre of land in Cass County should be regarded as of the exact value of the average acre in Burleigh or Stutsman or Potter or Minnehaha. Of course, it is a fact, that is known to every citizen, that this is not the case. But if you should attempt to take that fact into account and undertake to adjust with reference to what is the actual value of the average acre in these counties, necessarily no Territorial equalizing board could know anything about it; and if you establish that as a principle and equalize on that basis, in those cases in which you would charge one county a higher valuation than the real merits of the case demanded, so far you would do an injustice to that county, which you would not do if you took the general basis referred to. So in this matter we may make a general basis, as I have said, and then the details will be a matter of very small concern. If we go into all the details, we may figure and figure and figure, and when we get done we will not have included all that should be included on the basis which we have adopted, and in so far as we may have omitted, so far an injustice will have been done. I am not stickling on this matter, further than to say that, in my candid judgment, after such an investigation of the question as I have been able to give, the basis proposed would give us the quickest results, and at the same time give us results nearest to equity.

Mr. SPALDING. Your idea is to let North Dakota take the North Dakota institutions and assume the bonds, and South Dakota take the South Dakota institutions and assume the bonds, regardless of whatever cost there may have been attached to them. What would you do with regard to any other assets or liabilities?

Mr. CALDWELL. Whatever each gets it has to pay for. These institutions were built almost entirely with bonds.

Mr. PRICE. The law provides that each State shall assume the bonds for the institutions located within its borders.

Mr. SPALDING. You propose then, that North Dakota shall take North Dakota institutions and South Dakota take South Da-

kota institutions, and each State assume the indebtedness of the bonds, and then that we don't figure any difference?

Mr. CALDWELL. That is what I propose, so far as the institutions are concerned. There are other matters of indebtedness that will come up, but I have been speaking now about the institutions.

Mr. SCOTT. Do you know what the floating indebtedness of the Territory is now?

Mr. CALDWELL. There is none. There will be, however, shortly. I understand that the funds are now exhausted, and have been for some days, and there is no money with which to pay warrants. It will be necessary for the Governor and the Treasurer and the Auditor to make a temporary loan for the purpose of meeting the obligations of the Territory.

Mr. SCOTT. What do you propose to do with the delinquent taxes due from counties in North Dakota and South Dakota?

Mr. CALDWELL. In regard to that I would say let the delinquencies due from counties in North Dakota be made payable to North Dakota, and those from South Dakota let them be payable to the State of South Dakota.

Mr, SCOTT. In other words, North Dakota should, in your opinion, assume the delinquent taxes of North Dakota, and charge up that amount.

Mr. CALDWELL. There is no charge about the matter. The account of the county will be due to the State of North Dakota instead of to the Territory of Dakota.

Mr. SCOTT. That might be unjust. South Dakota may have nearly paid her taxes, while we may be largely in default. In our case we have had, let us say, the benefit of a large amount of your money; it has gone into our public institutions. There may be $30,000 due from North Dakota counties for delinquent taxes, and there may be $60,000 due from South Dakota. In case it is like that, and you get the $60,000 and we get the $30,000 what will we have in return for the difference between the $60,000 and the $30,000.

Mr. CALDWELL. Of course I am not empowered to speak for the Commission, and I have as an individual member made the suggestion I have with reference to the public institutions. It seems to me that it might be wise for us to attend to these questions one at a time. They cannot have any relation to each

other, and all I started out to do was to give my opinions as to the best way to adjust the matters of the public institutions.

Mr. NEILL. When you suggested the idea of each state assuming the bonded indebtedness of its public institutions, you meant to include in the value of that institution the money that had been appropriated out of the general fund?

Mr. CALDWELL. I suggested that each state take its public institutions with all its appurtenances—whatever money it may have had out of the general fund, let it go with it. I was personally willing to give to North Dakota the advantage of which I have spoken.

Mr. McGILLYCUDDY. It is your intention, then, that we should deal with the public institutions first, and finally dispose of them before we pass on to anything else?

Mr. CALDWELL. It seemed to me that that would be a wise thing to do.

Mr. PURCELL. How do your institutions in the South compare with those in the North? Are they equally good or better?

Mr. CALDWELL. I don't know about that. Your insane hospital is more of an institution than ours. I believe so, though it has been a long time since I have seen it. I simply know as to the bonds that were issued for the two.

Mr. PURCELL. The statements you made as to the bonds that have been issued, and the sums of money that have been paid for the institutions out of the general funds of the Territory, are all a matter of record? Your information was gained from the records?

Mr. CALDWELL. Yes; there is in the statements of the Auditor a summary of the expenditures for each institution.

Mr. PURCELL. Is there a record anywhere showing whether or not appropriations made for maintenance were used for construction?

Mr. CALDWELL. Nothing but the vouchers in the office of the Anditor.

Mr. PRICE. The acts of the Legislature show that money was appropriated for certain specific purposes.

Mr. PURCELL. I believe that it was the impression of some of the members that that there was a portion of the maintenance fund that had been used in construction.

Mr. CALDWELL. If there has been, I know nothing about

it. I have heard an intimation to that effect, but there could not have been enough of it to have amounted to any great figure. It would be well nigh impossible that anything of any dimensions could possibly be so diverted, for every item that comes to the Auditor's office has to specify the party to whom the payment is made, not only out of the maintenance fund, but out of the construction fund. Not only has the amount to be specified, but the precise article, and of course no Auditor would pass a voucher, which, for instance, should be drawn on fuel or lights fund, or clothing—draw his warrant on a voucher which showed that it was for digging a trench or erecting a wall.

Mr. SPALDING. Have any of the bonds issued for any of the institutions been paid?

Mr. CALDWELL. No sir. There have been $95,000 worth of bonds refunded, but the amount is the same.

Mr. CAMP. Has there been any amount covered back into the Treasury?

Mr. CALDWELL. No; there are some balances still unexpended, and that would be a matter likewise for adjustment. This would have to come in in the question of the adjustment of the public institutions, and it would have to be agreed upon that the title of the institution should pass to the State, and that the State should assume the indebtedness, and that it should likewise have the benefit of unexpended balances. That would be particularly the case with reference to the Insane Hospital at Yankton. There is some $30,000 to $40,000 of the proceeds of the bonds, still in the treasury. Of course this should go to South Dakota, as the State of South Dakota will have to pay the bonds from which this money was realized.

Mr. SCOTT. Where would the money go?

Mr. CALDWELL. It is now in the treasury. There are some balances which were in the treasury a short time ago which have been expended since, and on due vouchers, and in the regular way.

Mr. CAMP. That $143,000 includes the Capitol warrants?

Mr. CALDWELL. I don't know. I think it includes the $23,000 or $24,000 paid out of the general fund for furniture, carpets, plumbing, which have been paid for out of the general funds of the Territory.

Mr. HARRIS. Of course it does not include the Capitol warrants which were funded?

Mr. CALDWELL. No; the act creating them fixes the payment

on the State of North Dakota. It becomes a part of the contract of the purchaser, that he shall look to the State in which the institution is located, for payment of his bond.

Mr. SCOTT. I don't know how the other members of the Commission feel, but it looks to me somewhat as follows: South Dakota has the Yankton Asylum, the Reform School, the Penitentiary, the Soldiers' Home, the Agricultural College, the School of Mines, the University at Vermillion, the Normal Schools at Madison and Spearfish, and the institutions in the North are the Capitol at Bismarck, the Insane Asylum at Jamestown, the University at Grand Forks, and the Penitentiary at Bismarck. We have thus four institutions to about twice as many in South Dakota, and yet it would seem that we are bonded for $433,000 and South Dakota for $666,000. It occurs to me that we are getting the worst of the bargain, if we get these institutions and assume so much indebtedness.

Mr. CALDWELL. But you must remember that our institutions are many of them much smaller than yours. You have one with bonds a great deal larger than any one of ours—the Jamestown Asylum, with bonds of $266,000.

Mr. SCOTT. What is the other property belonging to the Territory which we have to divide?

Mr. CALDWELL. There is nothing but little driblets. There are the books for distribution to the counties in the Secretary's office, the Revised Laws, Session Laws, fittings and furnishings of the general offices, the Railroad Commission, the general offices of the Board of Health, the Adjutant General, the Superintendent of Public Schools, and the Territorial Library. Of course, the institutions are the big thing to be divided.

Mr. PURCELL. Your institutions, you say, are smaller?

Mr. CALDWELL. Yes; there is the Rapid City School of Mines, which is only $33,000; the Plankinton Reform School, only $30,000; the Spearfish Normal School, only $25,000; the Madison Normal School is $44,100.

Mr. SPALDING. The bonds cover all that have been paid for these institutions except the amounts referred to that have been paid out of the general fund?

Mr. CALDWELL. Yes.

Mr. SPALDING. And that amount out of the general fund in North Dakota has been $143,000 and in South Dakota $69,900?

Mr. SCOTT. The money for the Soldiers' Home was derived from the sale of bonds?

Mr. CALDWELL. Yes; and there has been nothing done with that institution yet.

Mr. SCOTT. Are there not other articles of property for us to divide—the Militia appurtenances?

Mr. CALDWELL. I believe that those don't belong to the Territory.

Mr. SCOTT. I presume that it will be necessary for us to agree on some general basis. We cannot go into details until we get some general understanding as to how we shall arrive at our results. It is 5 o'clock now, and I don't presume the members of either Commission are ready to vote on the matter.

Mr. CALDWELL. As I have been doing the chief part of the talking I should like to hear from the gentlemen on the other side as to how my suggestions strike them. Of course this is a merely informal talk.

Mr. PURCELL. Speaking for myself, your experience in these matters enables you to answer questions more rapidly and with greater accuracy than any other member of the Commission. I don't think that any member of the North Dakota Commission has given much attention to the affairs of the Territory, so far as its public institutions are concerned. Many of the matters you have stated here were entirely new to me. Before we take any vote or definite action on the matter I should like to be able to inform myself thoroughly as to the appropriations for the buildings, and probably that is what every member of the North Dakota Commission would like to do.

Mr. GRIGGS. As I understand it you propose to take up each institution by itself and dispose of it by itself.

Mr. CALDWELL. Agree on a general basis first as to what we will do.

Mr. GRIGGS. Take up Yankton asylum, for instance, and dispose of that and then take up another.

Mr. CALDWELL. It would dispose of all of them to make that general provision that I have suggested.

Mr. GRIGGS. Yes, but there is a certain amount of money that has been used out of the general fund of the Territory.

Mr. HARRIS. Yes, but they are willing to call that a stand-off.

Mr. CAMP. That proposition if it is accepted will settled a great many questions, and it is one of exceedingly large impor-

tance, and one that we should not pass on without being sure of our ground. I assume that it was hardly expected that we should decide it to-day.

Mr. CALDWELL. No, certainly not. While I have been speaking I wish it distinctly understood that I have been speaking merely for one member of the South Dakota Commission, expecting that every member would express himself in regard to it.

Mr. KELLAM. As the Chairman has indicated, if such a plan as has been suggested should be ultimately adopted it will dispose of one of the largest items we have to deal with. Still, I want to say for myself that these figures from Mr. CALDWELL are many of them entirely new to me, and I would not want it to be understood that this was a proposition we had discussed and agreed on. But this thought had occurred to some of us, as doubtless it had occurred to some of you, that as each institution had been entirely—with perhaps a very small payment out of the general fund—had been substantially built from the proceeds of bonds that are still unpaid, and as the Legislature in authorizing the issuance of the bonds, had in such cases, except one, provided that in case of division the bonds should be assumed by that part of the Territory within which the institution was located, a very simple way of disposing of this question and one that on the surface at least looks fair, would be for each part of the Territory north and south, to take the institutions within its borders and pay the bonds. By so doing they would be simply building their own institutions. It would be precisely as though South Dakota had built her institutions and North Dakota hers. Each would have just the institutions it had built and paid for. I did not know of these payments out of the general fund. It is new to me. With what light I had had on the subject and with what thought I had given it, it had seemed to me that the Legislature had contemplated that would be the simple effect—that North Dakota would take her institutions and pay for them and South Dakota would do the same with hers. If after an examination of this subject it should be found that this was a fair way to dispose of these institutions and the liabilities growing out of them, it will relieve us of a great deal of work that might come to us if we started out and adopted some other plan. I started out to say that this plan as outlined by Mr. CALDWELL had not been agreed on by us, and it might be that all of us would not agree with Mr. CALDWELL as to what was the best

way to get at this matter. Anyhow I think that it is a matter of sufficient importance for us to take a little time to think it over.

Mr. HARRIS. To my mind we will get through with our labors a good deal quicker if we take plenty of time to consider this basis, and when we are satisfied we can go ahead. For myself I have not had time to give this matter a great deal of thought. We have all been busy with Convention matters and committee work, and have had to give a great deal of time and attention to them, and I think we had better give plenty of time to the consideration of this question. When the basis is agreed on I think it will not take us long to settle the details.

Mr. CALDWELL. I would say that I have gone through the Auditor's report and just noted down the amount paid as shown by the reports for each biennial period from 1880 to 1888. The amount paid by Auditor's warrants for construction or improvements or repairs or furnishing of the several institutions, and the amount paid for maintenance—we just noted it in two columns, and then we just added up what the reports of the Auditor showed to have been the expenditures for this series of years, and then, knowing what had been the bonded indebtedness of these institutions, we subtracted the amount of the bonds from the amount that had been paid, and found these balances of which I have spoken—$143,000 more paid for North Dakota than is represented by bonds, and $69,000 paid more for South Dakota institutions by his warrants on the general fund or the bond fund. Of course it is possible, though I don't see how it is possible, that some other showing may be made, but where and how I don't see.

Mr. GRIGGS. You would not know of any other funds but the bond fund and the general fund?

Mr. CALDWELL. There could not have been any other paid by the Territory. There could not have been anything paid except on the Auditor's warrant, and the Auditor's warrants show these amounts as stated.

Mr. KELLAM. When we have decided upon our basis, we can go to work. If we decide to adopt this plan it removes a good deal of difficulty, and it makes our work a good deal shorter. For that reason I would not feel like shortening the time for deliberation over this question. Let this question be decided intelligently, and if it is decided that this is a fair plan for both sides, we will have comparatively little else to do. We should feel obliged if you feel that you could have a session to-morrow afternoon. We

are away from home. We want to stay as long as may be necessary to do this work carefully and deliberately, but at the same time we would like to have an hour set for meeting to-morrow afternoon.

Mr. HARRIS. If we can meet to-morrow afternoon we can decide this preliminary question, but if we can't decide it then, we can take more time. If we can possibly get at it then, it would be well for us to do so.

Mr. PURCELL. I move that we adjourn till to-morrow at 3:30 in the afternoon.

The motion was seconded and carried.

THIRD DAY.

BISMARCK, *Thursday, July 18, 1889.*

The Commission was called to order at 3:30 p. m.

A. G. KELLAM in the chair.

Mr. KELLAM. When we adjourned yesterday, I think we were informally discussing plans to see if we could agree upon some starting point, or basis from which to work, in the division of the property of the Territory, and particularly the institutions of the Territory and the debts incident to them; and I suppose unless some other course is indicated, perhaps it would be well enough to take them up and dispose of them in some way.

Mr. CALDWELL. Owing to an error, which I had no opportunity for knowing, there was a very large bull in the figuring I stated to the Commission yesterday. I stated here yesterday that there had been paid for South Dakota institutions, for instance, on account of bonds issued therefor, about $70,000, while there had been paid to North Dakota institutions in excess, or bonds which were issued, $143,000. The error arose from including in one of the columns a very large account which had no business there, and which arose in this manner: Looking over the figures we called out the amounts and the gentleman who assisted me copying two columns with reference to construction and with reference to

maintenance in the construction column, a considerable item, which thereby of course increased that amount. Further, there was included also in the figures which I reported an account which was subsequent to the date, the 30th of November, 1888. There were including in the figures I stated, some other items that came in after that time; and I would state that on a re-examination of the figures, very carefully, shows that instead of there being, as I stated yesterday some $73,000 difference between the excess of construction of value and the bond value, and between the two States, that the excess is only about $3,000. That is to say that up to the 30th day of November, 1888, the North Dakota institutions had had for construction purposes about $3,000 more than the South. The difference between the construction cost and the bonds issued is about $3,000 in favor of North Dakota. I make this as a personal statement. Of course the gentlemen will understand I have no purpose in misleading anybody. I had gone to work, compiled these figures, and at the time I made the statement I believed it to be correct.

Mr. PURCELL. Your investigation was made with reference to appropriations made to the different parts of the Territory, that would go to make up the permanent property of the institutions—permanent improvements?

Mr. CALDWELL. Yes, sir.

Mr. PURCELL. Is it your understanding that the direct appropriations made for permanent improvements to North Dakota, not counting the bonded indebtedness, in excess of those to South Dakota is $3,000?

Mr. CALDWELL. No, sir; I meant the excess of the amounts—that is, you will take and charge against North Dakota the total amount paid from any source whatever for public improvements; you will then subtract from that the total amount provided by bonds, and that subtraction or amount, the remainder, would indicate what had been paid out of the general fund. The same way, if you take the institutions of South Dakota; and these amounts paid upon these institutions out of the general fund for South Dakota and North Dakota, the total will be about $3,000 more for North Dakota than South Dakota.

Mr. HARRIS. There is a bond fund still there—that has not all been used?

Mr. CALDWELL. No, it was not all used the 30th of November, 1888.

Mr. HARRIS. There was, say, $100,000 bonds of real estate sold for the Insane Hospital at Yankton; there was only $75,000 worth of them used; there has been out of the general fund appropriated so many dollars to that institution—$25,000 say; there is a bond fund and a general fund, $125,000; now, if you subtract your $100,000 worth of bonds from that, it is not going to give——

Mr. CALDWELL. No; that is the statement I made yesterday, only to the 30th of November, 1888.

Mr. CAMP. Then, there is a good amount of premium on bonds.

Mr. KELLAM. If there is an unexpended balance of the Yankton Insane Asylum of $25,000 and South Dakota takes the asylum and assumes the indebtedness, of course, it would take the unexpended balance. So with the North Dakota institution; it would assume the indebtedness—assume the payment of the bonds that belonged to it; but if there was still an unexpended balance in the Treasury arising from the sale of any appropriation, of course, that institution would take and have the unexpended balance. That would be my idea.

Mr. HARRIS. If there had been $100,000 bonds sold for $100,000; $75,000 bond fund paid in that institution, and $25,000 of general fund paid would make $100,000 paid into that institution; if you take the amount of bonds from the whole amount paid there is a difference of $25,000 remaining to that institution that you propose to turn over to them.

Mr. PURCELL. Upon the basis suggested by Mr. CALDWELL, I have made some investigation and if you will permit me for a moment I will give you the benefit of my research. For instance, these are taken in many instances from the Session Laws. Take the Sioux Falls Penitentiary first; chapter twenty-three, Session Laws of 1881, makes an appropriation for office furniture, stoves, fuel, lights, incidental expenses of the prison including necessary traveling expenses, of $7,000. That shows on the Treasurer's books. It is difficult to separate that item or to show just what part of it was expended for furniture for the office, stoves, lights, etc. It is very difficult—it cannot be done from the Treasurer's books as I understand it. Session Laws of 1883, there was an appropriation made of $2,500 for farming implements, temporary stables for that institution; for temporary yard walls, $1,500; furnishing residence of warden, $1,000; making in all that year for

that institution, $12,000. For the hospital at Yankton 1879, to Governor Howard for money advanced by him in the erection of the hospital, $2,386.30. Chapter three of the laws of 1879 to complete buildings, $3,900. For erection of prison walls, $10,000; for repairs and improvements in 1881, $1,500; for improvements on farm, $2,500. Chapter five, Session Laws of 1883—appropriation for repairs and improvements, $2,500; improvements of farm, $3,000, improving grounds, $1,000. Chapter nine, Session Laws of 1885; for repairs and improvements for hospital, $2,500; for improvement of hospital farm, $3,000; for improving hospital grounds, $2,500; for completing and furnishing building, $3,250; for building ice houses, extension of barn, slaughter house, root and hen house, fitting basement for the amusement of patients, $4,000; for purchase of teams and conveyance of patients, $700; for improving sewerage, $1,500; by amount due contractors, $520, making in all $44,756.30 amount of appropriations made for direct improvements which are not represented by the bond—the bonded indebtedness of that institution $210,000.

Take the University of Vermillion: Appropriations made in the year 1883 for apparatus, $1,000; for improving grounds, $500; for the year 1885 appropriations as follows: Library, $1,000; for apparatus, $1,000; for dormitory and water works, $10,000; for the year 1887—apparatus, $3,000; for library, $1,000; for heating and furnishing east wing of University, $1,000; making in all $18,500 for the University of Vermillion besides the bonded indebtedness.

The Agricultural College, I presume, is at Brookings. In 1887 there was appropriated for apparatus and mathematical instruments, $400; for wells, cisterns, water tank and steam power pump, $1,800; for steam heating appliances for 1885 and 1886, $1,996; for material and labor furnished on the third story of the young ladies' dormitory, $1,059; making in all $5,255 of direct appropriations for the Agricultural College, besides the bonded indebtedness, $97,500. The Madison Normal School: In 1885 an appropriation for suitable buildings of $5,000; for library in 1887 of $500; making direct appropriations of $5,500 besides the bonded indebtedness of $49,400. The Normal School at Spearfish appropriation in 1883 for for suitable buildings, $5,000; in 1887, library apparatus, $800; in addition to the bonded indebtedness of $25,000. Take the School of Mines for fuel and light, apparatus and furniture, there was appropriated $2,500. For the year 1887 there was appropriated for water works, electricity, library, fuel, $3,000.

It is difficult, as I stated with reference to the items, to separate what part of this item was furniture; what part for water-works, and how much for library.

The Deaf and Dumb Asylum, during the year 1881, appropriation for the purpose of building $2,000, has a bonded indebtedness of $51,000. There was appropriated for the Reform School, in 1887, $12,000 for current and contingent expenses; and the law provided, at the time this appropriation was made, that this amount should be expended as the trustees of that institution saw fit. We are unable to find just what proportion of that fund was used for permanent improvements.

The whole amount of direct appropriations made, taking into consideration those items which we were unable to separate, South Dakota has received $99,311.30 of direct appropriations for her institutions other than that which is expressed by the bonds. I desire to say the $12,000 I spoke of is not included in this $99,311.30. The Reform School I did not include.

The North Dakota public institutions have received the following direct appropriations:

Insane Hospital, 1885, for repairs and improvements, $2,500; for improvement of Hospital farm, $3,000; for improving grounds, $1,000; for farm stock, horses, cows, hogs and fowl, $2,000; for farm implements, $1,000; purchasing team and conveyance for patients, $700. In 1887, received appropriation for repairs and improvements, $3,000; for musical instruments for amusement of patients, $2,500; finishing basement, $2,500; for pig pens, hennery, etc., $800; for elevators, $850; for storm windows, porches, etc., $1,500; for machinery and tools for shops, $800; making in all $23,150 of direct appropriations, besides the bonded indebtedness of $266,000.

The Bismarck Penitentiary, in 1885, received for team and tools, $1,214; it has a bonded indebtedness of $93,600.

The North Dakota University for 1883: appropriation for apparatus, $1,000; improving grounds, $400; in 1885 for laying water mains, $10,000; in 1887 for natural science, chemical and physical apparatus, $3,000; for museum, $2,000; for library, $2,000; making in all $18,400 that the North Dakota University received of direct appropriations. The whole amount which those three institutions have received of direct appropriations, is $42,764. In that I have not included the $2,224.40 which has been expended for furniture, etc., in this building here; if that was included it would amount

to $64,988.40, as against those received in South Dakota of $99,-311.30.

Mr. NEILL. Are those the actual amounts drawn out of the Treasury?

Mr. PURCELL. They are the amounts appropriated by the law and I think have been applied.

Mr. NEILL. May and may not.

Mr. PURCELL. Of course, in addition to these there should be due to the different instituitons any appropriations made last year not paid to them, up to the present time, or such a time as we agree upon. This investigation was made entirely upon the basis talked.

Mr. KELLAM. I understand there are several items you are unable to separate?

Mr. PURCELL. There are three; one of the Sioux Falls Penitentiary, for stoves, fuel, light, incidental expenses of the prison, pay of contractors and traveling expenses of $7,000; that is one. Then there are two others one of $2,500, and the $3,000 more appropriated to the School of Mines for electricity, water works, fuel, light, etc., which of course we are unable to separate at present. Then I desire to say that we are entitled to a reduction in North Dakota from the amount of the $7,000 coming back from the Penitentiary at Bismarck and the Asylum.

Mr. SPALDING. Is not there one item in the Insane Asylum at Jamestown which is in the same uncertain conditions as those mentioned in South Dakota, covering appropriations for the purchase of musical instruments for the amusement of patients? That is one of the items we have been unable to separate.

Mr. CALDWELL. I would say in reference to the figures which have been reported by me as correct, that it is at least to be supposed that the expenditures of the Territory for any purpose are to be found in the reports of the Auditor's office of the Territory. There is no other way by which money, even if it may have been appropriated by the Legislature, could get out of the Territorial Treasury. The only way it could be obtained is by the warrant of the Auditor, and I have here the reports of the Auditor of 1880, November 30, coming up to November 30, 1888. In each of these reports the officers give a summary of the expenditures for such purpose as he has drawn warrants; and accepting it as a fact that money for any of these purposes in construction or maintenance, or for any other purpose indicated, by any of

these institutions could only have been by the Auditor's warrant, I submit that these reports should show actually what has been expended.

Mr. HARRIS. Will that show——

Mr. CALDWELL. We will take the Auditor's report for the biennial period ending November 30, 1882. He says in here, "as provided by law and in compliance therewith, I have the honor to submit herewith report of transactions of this office from November 30, 1880, to November 30, 1882." Gives the total amount of warrants issued, so much and upon the following accounts. And then, furthermore, this volume contains the details of these expenditures, both the running account of the warrants drawn, arranged with reference to their sequence by number, and, also, account with each of the respective institutions, and the objects for which money could be drawn from the Treasury. And, I say, taking that statement there, and I have checked opposite each item the letter "C" to indicate that it went into the construction account, have taken up the report for the period ending November 30, 1882. Following that is the report given here, ending November 30, 1884, noting the amounts actually expended, and, of course, there could not have been any expended otherwise. Take the amounts reported by the Treasurer having been expended during the period between November 30, 1882, and November 30, 1884. Then, also, take up the Auditor's report for the period ending November 30, 1886, and I find here a summarized statement of the expenditures which were probably charged against the Territorial Treasury; and taking up then the report of the Auditor for the succeeding biennial period in November, 1888, which is the last report issued. Taking those various items it makes an expenditure of $464,199.44 on behalf of the construction of institutions in North Dakota; or improvements which might be properly charged as connected therewith—repairs and improvements. As I say, the amount for such items is $464,-199.44. That includes, as I say, the source from which the money was derived against which the Auditor should draw his warrant; could have been from bond or general fund, as there is nothing in his report to indicate the difference. He would head his books to each institution for such money as had been appropriated by the Legislature, regardless of where it came from. The Legislature not only was required to provide for the issue of bonds for a particular institution, but it was also required to appropriate the

proceeds thereof; and when the proceeds were appropriated they became, so far as the Auditor's office was concerned, the general fund of the Territory, and against the general fund the Auditor was to draw his warrant. He would, of course, indicate upon his warrant the fund to which it was to be charged by the Treasurer, but whether the money came as the proceeds of bonds or whether it came as the ordinary revenue of the Territory, his warrant would not indicate that fact. If his warrant would indicate, say that the Treasurer was to pay this amount, and the Treasurer could not pay any amount, he could not pay it in any other manner. I say all these various warrants of the Auditor for these various appropriations indicate that the construction of these several institutions, the total amount for North Dakota to be $464,199.44, and the total amount for South Dakota institutions, $694,812.39. If, now from this total expenditure by warrants of the Auditor, if from that there be subtracted the bonded indebtedness incurred by the Territory on behalf of the institutions of North Dakota, that bonded indebtedness, $433,600 up to the time that this account came down to, there would be left as having been appropriated on behalf of North Dakota institutions from the general funds of the Territory, $30,599.44; and if there be subtracted from the total expenditures for construction in South Dakota the amount of bonds issued for South Dakota institutions the remainder would be $27,612—a difference of about $3,000. As it would seem to me what has been paid out by this Territory is the record, and that officer of the Territory whose business it is to report exactly what his warrants have been drawn for and what the object has been, that the presumption is of course that they have been paid.

Mr. HARRIS. What would be done with unexpended balances?

Mr. CALDWELL. They would go with the institution.

Mr. HARRIS. Take the Insane Hospital at Yankton: I think there was a large unexpended balance the 30th of last November. If there were $100,000 of bonds sold for $100,000 in cash and that went into the Treasury, and when $75,000 had been paid out, and there also had been appropriated out of the general fund $25,000 it would only show on the Auditor's books $100,000; and when you subtract that $100,000 bonds from that there would be nothing left, while there would still be $25,000 in the Treasury owing to the Yankton Insane Asylum, which would be a discrepancy of $25,000.

Mr. CALDWELL. There are several balances. Here is $7,000 balance I believe direct appropriations for the Jamestown Asylum.

Mr. CAMP. We were merely testing the accuracy of your reports.

Mr. CALDWELL. I give the bonds accurately reported by the Auditor.

Mr. CAMP. Then we want the amount not represented by bonds. The result is $50,000 out of the way.

Mr. CALDWELL. I was going to say there was a considerable amount of bond balances in the Treasury for institutions.

Mr. CAMP. We were merely testing the accuracy of your figures.

Mr. PURCELL. In the South you have ten while in the North we have four. Now you will get ten institutions and we four. You will only assume about $200,000 more of debt than we are and you are getting these institutions for $200,000.

Mr. KELLAM. It must be their cost.

Mr. PURCELL. If you take the cost, it will reach nearly $400,000.

Mr. KELLAM. I think this is the very thing we are trying to get at.

Mr. HARRIS. If there is $100,000 sold for this institution, $25,000 taken out of the general fund, the $25,000 that remains in the treasury, if you will add that to the amount expended and then subtract the bonds, you will find it makes a difference of $75,000.

Mr. CALDWELL. My statement comes up to the last biennial statement issued by the Territorial officer.

Mr. HARRIS. That will not make a particle of difference in the argument.

Mr. SCOTT. What is the matter with our figures? If it is a fact, and I believe it is, that the Treasurer has charged up or credited the institution with the amount of each appropriation, and that the balance up to that time, to which Mr. CALDWELL refers, shows that all those appropriations have been paid, is it not a fact, nevertheless, then, that there has been paid out of the general fund the amount which we have shown by this statement? Is it not a fact, then, that there has been appropriated to the South Dakota institutions so much more than to the North out of the general fund; and, as Mr. HARRIS just suggested, if that money

has been spent, there is still a credit to the institution, and by the terms, to be turned over to the institution as unexpended balances.

Mr. SPALDING. It seems to me a very simple matter. Of course, such as are taken from the reports of the appropriations made by the Legislature are correct, which can be rightly ascertained. If there are any satisfactory to you and others are not, part of these funds left in the Treasury, it seems to me all there is to do is to examine the books and see whether this is true or not, and deduct it from the figures Mr. PURCELL has presented.

Mr. CALDWELL. Of course, if it be the desire to go into all those details which are indicated, and if that be fixed as the basis, so far as I am concerned I am perfectly willing with the exception that I should dislike to be detained here for a month or the time which it would involve. Now, for instance, just as a matter—with regard to the figures presented by Mr. PURCELL. He has charged against an institution in South Dakota, I believe it is the Sioux Falls Penitentiary, $10,000 which was never expended. And I maintain that the reports of the Auditor show what have been the expenditures, and it is the proper, readiest and most equitable method of determining the matter.

Mr. SCOTT. Would not the Treasurer's books show what became of that $10,000?

Mr. CALDWELL. There never was anything come of it.

Mr. SPALDING. Then the Treasurer's books would show that was still on hand.

Mr. CALDWELL. Yesterday, when I believed as firmly as I would believe anything that there was a difference of $73,000 in favor of North Dakota, and which conclusion I had arrived at by an error, I was still willing, so far as I was concerned, to make a settlement by a broad general basis. To go upon a basis of going into all these details is to go upon a basis which cannot be demonstrated how far any particular expense, and as I say, I maintain that the actual expenditures of the Territory are the proper and just and equitable basis upon which to determine how much of the public fund has gone into those institutions.

Mr. PURCELL. Yesterday when we were talking about a basis the Commission will recollect, we were taking into consideration appropriations made for permanent improvements, for repairs and for betterments connected with the institutions. When Mr. CALDWELL made his statement that the institutions of North

Dakota had received $73,000 more appropriations for permanent improvements than South Dakota, I was somewhat surprised, because the institutions of South Dakota were formed, managed and had been running two or three years and some five years prior to the location and erection of any institution in North Dakota. Now, the institutions in North Dakota have been running, some since 1883, some since 1885, one, 1887, so the institutions in North Dakota have not existed as long as the institutions in South Dakota. And therefore, when that statement was made, I commenced, with others, to investigate that statement, and found it was incorrect. And the basis he stated this Commission to settle upon was incorrect. So far as we are concerned in the North, we are willing to consider each, as I said before, that the basis of this settlement shall be upon the appropriations received for building, repairs and permanent improvements. Now, it won't require any great length of time to ascertain, either from the books of the Auditor or the Treasurer, in connection with the present, that have been made by the different Legislatures, the amounts appropriated and the amounts that have been paid. I don't know of any institution either in North or South Dakota, with one exception, that has failed to eat up its appropriation. So it seems to me there can be no delay in this matter by standing upon the basis that Mr. Caldwell has announced, and investigate the amounts.

Mr. HARRIS. It will not take half so long to take the Session Laws as it would to go on with this discussion about warrants.

Mr. CALDWELL. I have done both things. That is, I undertook to—that is go by the appropriations, and it was personally known to me there had not been an expenditure of the money appropriated; and it was known to me that when you did get an appropriation it didn't indicate what the respective institution had cost the Territory, so I went to work for the purpose of discovering precisely what they have cost the Territory; and that is shown exactly down to the penny by these reports of which I speak.

Mr. CAMP. The gentleman who spoke last gives a statement that the amount of bonded indebtedness of North Dakota institutions is about $433,000; the total amount expended about $466,000; that leaves a balance of about $33,000 which would indicate by his way of figuring it, the amount of direct appropriations to those institutions. Now, the amount of direct appropriations made by

the Legislature for permanent improvements is, including the $22,000 which he includes, $60,000. Now, I don't think any gentleman present will believe for a moment that the three institutions of North Dakota have left unexpended balances of general appropriations to the amount of $33,000 in the Treasury or anything like it. I believe the statement shows that there is a mistake, that there is an error in figuring from the Auditor's reports. I have not the slightest doubt that a man can go to work and from the Auditor's reports find out just what amounts have been expended from the general appropriations for improvements and construction; but it takes a very careful examination to do it, for the reason that you must figure up the premium on bonds; you must know just what balances from the bonds are remaining on hand. It would have to come out, as Mr. HARRIS stated. Supposing bonds issued for $50,000, and they sell at a premium of $2,000; there is $52,000. Then, there is a general appropriation made for running and permanent improvements of $500. Well, take up the Auditor's reports and it shows the list of warrants issued for construction and permanent improvements on that institution of $52,500. Mr. CALDWELL subtracts the bonds from that and it leaves $2,500, amount appropriated for that institution out of the general fund. It is absolutely wrong, because if the general appropriation has been used up, the balance in the treasury, when South Dakota assumes that institution, it is entitled to. I believe it is a very hard task to obtain from the Auditor's reports the exact amount appropriated and expended for those institutions out of the general fund.

Mr. KELLAM. I came to discharge this work, perhaps, as poorly qualified with experience with public institutions — what they had cost and what would be a fair and reasonable settlement between the two sections of Dakota with reference to them—as perhaps any man in either of these Commissions—in either part of this Joint Commission. I had a general idea and I still have it, as I expressed at the opening of the work of this Commission, that the only way in which we can arrive at a satisfactory settlement and possibly a settlement at all, is to do it in a general way without any effort upon the part of either side to be mathematically correct in all results. You know if we are to figure the exact cost of each one of these institutions and then turn it over to the new state within whose boundaries it is located, then to be fair we must make an inventory of the value of that property when it is so

turned over. The institutions of South Dakota, as stated by Mr. PURCELL, have been running many years, have served the entire Territory. Of course, it is a fact that all understand, one as well as another, that the longer a building stands, the older it is in the ordinary way, it will depreciate. Now if we are to make a mathematical investigation of exactly what each one of these institutions has cost, and make that a basis upon which to settle these matters, then must we not further go into the work of inventorying the valuation of these institutions, how much each one has depreciated by the use which it has been put to for the benefit of the entire Territory? Of course, each section has had some use of these institutions. Then to go still farther, would it not be necessary to make exactly a mathematically correct disposition of this matter, to see where the taxes came from that paid for these institutions. I only suggest this in a general way, and if it involves the labor of a week, we have come here to do it; or three months, we have come here to do it. There is nothing for us to do except to agree upon some plan and go to work and do that and get at the end. But my judgment is I have not got a head for figures. The only way we can avoid differences that will be, as they seem to me now well nigh unsurmountable, will be in a general way, honorable to both sides and fair to both sides, if we can conclude what it is, and dispose of these institutions and the debts that are upon them. I just came here with the idea that the appropriations from the general fund for the construction of these institutions would be in favor of South Dakota; that there had been more taken out of the general fund for the construction of South Dakota institutions than for North Dakota institutions. I had no idea how much. But I think all these years when the South Dakota institutions were the only institutions in the Territory and were serving the purpose of the entire Territory that they greatly depreciated in value and were not worth so much; that it would be fair to let South Dakota take its institutions, pay its bonds; and North Dakota take its institutions and pay its bonds. I don't mean to say I think this is fair towards either State, but I came here with that in my mind, that a general broad gauge way of disposing of this question would be fair for both States.

Mr. PURCELL. It is true, as you have suggested, that prior to the erection of public institutions in North Dakota the whole Territory had a right to the use of the buildings erected in the

South; but the basis upon which we figure—we don't figure the appropriations made to maintain those institutions, and, therefore the use of the institution during the time it has been a Territory is not taken into consideration, for the reason that the whole Territory contributed towards the maintenance. Now, as to the depreciation in value of these institutions. This has been indicated by the basis upon which Mr. CALDWELL suggested, because each year the Legislature has made appropriations for repairs, and therefore it is presumed the institutions are in as good condition to-day as when originally built, for the reason that whenever there has been a defect, application has been made to the Legislature, and it is for that purpose that the appropriation covering repairs has been made. It is true that the appropriations vastly exceed those made in the South to those made in North Dakota institutions, but we have not taken that; we have figured from the basis Mr. CALDWELL suggested—going for permanent improvements. And, therefore, if the appropriations made for improvements, and those appropriations were used in this respect, it is presumed the institutions are in as good condition to-day as when originally built.

Mr. KELLAM. Would you think this is true, with your knowledge, that a building of say ten years is as good as a new building?

Mr. PURCELL. Not as a general statement.

Mr. KELLAM. And many of these items charged against South Dakota are for repairs?

Mr. PURCELL. Yes.

Mr. KELLAM. Now you ask us to take the buildings at the original cost and pay for the repairs.

Mr. McGILLYCUDDY. It is a fact, Mr. PURCELL, there are a few of these buildings in Dakota built five years ago, and you can build the same for 25 per cent. less.

Mr. KELLAM. I think that your suggestion, Mr. PURCELL, is perhaps, to make us pay what the buildings originally cost, and then when I suggest depreciation, you say that the appropriations from the general fund have kept up the repairs.

Mr. PURCELL. These institutions have had appliances, apparatus, etc., and it has therefore been continually increasing, and I would make a general proposition now, that there are not one of your institutions in South Dakota, or in the North, but what is worth more to-day than when originally built, because the repairs and improvements made enhance its value.

Mr. KELLAM. On that question I could not express an intelligent answer. I am not near any of these institutions, and know nothing about them only in a general way, that buildings by their use do depreciate, and that these buildings up to this time—that these institutions are the institutions of the entire Territory, and each section has the equal use of them. Now if we take these institutions at what they cost, the party taking the older institutions will suffer most.

Mr. PURCELL. Your institutions are not very aged. The appropriations for Sioux Falls Penitentiary were made in 1881, some in 1876; Hospital for Insane, 1879, in 1881 and 1883; and your University at Vermillion in 1883; Agricultural College in 1887. So a great many of them have been recent.

Mr. KELLAM. But of course we all know that upon a building costing $100,000 the percentage of depreciation would have to be very small to make a difference of ten, fifteen or twenty thousand dollars; that in case of a dwelling house or a business house of any kind, that there is a certain depreciation.

Mr. PURCELL. Of course we did not take into consideration the amount of labor performed, and I understand there has been fifteen or twenty thousand dollars performed of that work by the prisoners alone, that don't show. You have got the benefit of that.

Mr. KELLAM. This discussion, gentlemen, only fortifies me in the thought that if we undertake to start ourselves over this thing I cannot tell how long it will take to settle. I still believe that the right way to get at this thing is to do it in a broad gauge way.

Mr. HARRIS. South Dakota has had much the largest use of them and North Dakota paid half the taxes.

Mr. KELLAM. We would have to go into that also. I can see very plainly that South Dakota may have had greater appropriations; that would be very proper to be considered; then where did the money come from that started these institutions? I don't know where the balance lies. I don't know in whose favor or to whose disadvantage this would be, but I can see, I think, that the complication would be intricate and one thing lead to another.

Mr. HARRIS. I don't think there is a man in the room who wants to go into that business—I don't think there is one of us wants to go into that. It has been brought out in the informal discussion of this question and the methods by which it could be

done. We take exception, of course, to Mr. CALDWELL's method, and I think justly so to another method.

Mr. KELLAM. I want to say now that, as I intimated when I came here, and until Mr. CALDWELL suggested those figures, I supposed there had been more money used out of the general fund for South Dakota than for North Dakota. When Mr. CALDWELL made that suggestion of figures they surprised me, and I can see now very readily how he may have made the error. I was much surprised, because I supposed the fact was directly to the contrary.

Mr. NEILL. Mr. KELLAM'S proposition was one of his own, and it was not the deliberate expression of the South Dakota Commission. It has occurred to some of us of the South Dakota Commission, and a great many others and to our Constitutional Convention, that the institutions being placed where they were, each State would be expected to assume its own proportion to the value received. Now a proposition was made something like this: That each state assume its own institutions for the debt upon it. Then there came in a very awkward matter of general appropriations, there being the debt as represented by the bonds issued to pay for those institutions. Now to deduct the amount of bonds in the case of each institution from the total cost, was not, I don't think, in Mr. CALDWELL'S mind or in any of the rest of us to presume that all the bond money had been used in the construction of these institutions, etc. I simply entertained that proposition hoping he was simply drawing that balance to show that we were paying full value for the amount of bonds we were assuming, or in other words, to show the actual cost of these institutions or the actual worth of them to each State respectively. With regard to what the unexpended balances were, he took that method to show the cost and worth of these institutions to each State, because appropriations may have been made here by the Legislature at different times, and having been made they have never been supplied, and our only method of determining the actual cost of these buildings was by resorting to the warrants actually issued and paid. The statement we find in the Auditor's and Treasurer's reports. Now, the general principle of settlement remains the same. It seems to me fair and will avoid a great deal of work.

Mr. SCOTT. Mr. CALDWELL says further--we have bonded our institutions for $100,000. We have not used the proceeds of those bonds, and we get, say $25,000 from the Territory. Now we have got $25,000 balance due us on our bonded indebtedness,

and we have that $25,000 turned over to us, when you have really got the institution, which is worth $100,000, and which has cost us $25,000 out of the general treasury, and yet you want the $25,000 surplus. Now, there is where it seems to me an error comes in on the basis of Mr. CALDWELL's figuring. Now, in addition to these unexpected balances, if there had been any appropriations the Treasurer's books show a credit of the amount appropriated; and if it has been used, has the appropriation been charged off, or does it still stand as a credit to the institution?

Mr. SPALDING. I was going to remark we were here to settle this as we would do our own business. Now, my idea was, the first thing for us to determine before entering into the calculation of the actual worth of any of these institutions—we don't know where the figures would fall—we should settle our basis. But we have branched into the cost of these institutions, and our arguments and our judgments seem to be more or less prejudiced. And it seems to me that the amounts are so great and the difference may be so great that the only way we can do is to figure on the value; that the only way we can base an estimate of what any of these institutions are worth will be presumably correct, as near as we can hope to arrive at, by figuring what they cost. If there have been frauds in South Dakota, there have been frauds in North Dakota. If there are any items we cannot determine accurately, any appropriations we cannot determine exactly what they were used for, if there are any in South Dakota, there are also some in North Dakota. They are only small amounts anyway. We can arrive nearly, it seems to me, and the only way, it seems to me, inasmuch as there are bonds outstanding, to strike a balance. Now in regard to the age of the institutions: They are all new institutions—the depreciation in value is very small—none over eight years old. It can be but a small depreciation in value; and when we get down to that basis, it seems to me about as far as we can go. I believe that if we were to go further it would show a vastly greater difference in favor of North Dakota than it may show now; but my idea would be not to follow it, for when we get the cost of an institution we have gone as far as anybody can expect us to do. Let it go at that.

Mr. CALDWELL. I was going to say in regard to the Treasurer's books, that there are simply two divisions of the funds of the Territory upon the Treasurer's books, one bond account and

the other general fund account. So it would be impossible to tell by an examination of the Treasurer's books as to the condition of these especial appropriations. The only way that can be determined is from the Auditor's books. The Auditor reports to the Legislature biennially the transactions of this office—gives in one part of his reports simply the warrants with the date and amount included under the heads as fixed in the appropriation bills. Then he continues his report with a general statement regarding that matter, the general summary; in that he groups the titles of these various items, as Agricultural College, construction, $21,673.12—for the period ending November 30th, 1884. And, Hospital for Insane, $3,666.20, etc. Hospital improvements, $2,463.57.

Mr. SCOTT. Does it show whether that was paid out of the bond account or whether there was an appropriation?

Mr. CALDWELL. No, sir.

Mr. SCOTT. Does it show in any place?

Mr. CALDWELL. It would show probably a credit by bonds in the detail account.

Mr. PRICE. It occurs to me that we have been fruitful of only one thing, and that is, mere talk. It also occurs to me, from sentiments expressed by the Joint Commission, that there is only one way to arrive at a proper solution of the question. The gentlemen from North Dakota present one statement; Mr. CALDWELL, from the South, presents another statement. There is a wide difference apparently in these two statements as to the value of the public institutions, bonded indebtedness and cost of construction. Until we arrive at some definite conclusion as to what these institutions have cost, and the amount of bonds issued for the purpose of construction and as expended from the general fund, we perhaps can go on talking till "Gabriel blows his horn" and we will effect nothing. I am of the opinion, gentlemen, that there is but little difference in these figures, and I have watched the statements carefully. I know, personally, some things included in the statement made by the gentlemen from the other side are erroneous. The $10,000 appropriation which has been referred to has never been expended. There are other matters that have not been expended. I want to move you, Mr. CHAIRMAN, that the Secretaries of this Commission be instructed to prepare, jointly, a report of the amount of bonds issued for each public institution in Dakota, the amount appropriated out of the general fund; and, also,

unexpended balances in favor of such institutions, and report to this Convention at its next session.

Mr. SPALDING. I second the motion.

Mr. KELLAM. The question is upon the motion of Judge PRICE. Are you ready for the question?

"Question; Question!"

Mr. KELLAM. Your motion is that the Secretaries of this Joint Commission prepare a statement and report to this Commission at its next session, giving the amount of bonds issued for each public institution in Dakota, and the amount of money expended or appropriated out of the general fund.

Mr. SCOTT. To what date?

Mr. HARRIS. Including the the Legislature of 1889.

Mr. CALDWELL. These unexpended balances bring it up to about the 12th of March.

Mr. HARRIS. Let them get everything except the Legislature of 1889. It states, the "Secretaries;" as you said, the "Secretaries."

Mr. KELLAM. I presume Mr. HAYDEN is familiar with the books, and MCCLAREN, also.

Mr. HARRIS. The appropriation will show just what it was for.

Mr. CALDWELL. It would be as Mr. PURCELL said; and there are some there it would be impossible to tell what part of it had been used unless we could get the warrant and examine the vouchers; and to do that, if we have a session to-morrow, these Secretaries will not be anywise near ready to report.

Mr. HARRIS. I think we can knock them out without any trouble. Appropriations made and expended for maintenance——

Mr. CALDWELL. You can't tell whether some are for ordinary supplies—you can't tell whether it is for paying a company for so many gallons, or per *diem*, or for meat, or pies, or for hydrants, etc., for the institution.

Mr. SPALDING. We want some of those things.

Mr. HARRIS. Those things we cannot determine we can wipe out.

Mr. KELLAM. The question is upon the motion of Judge PRICE. All in favor of the motion say aye; contray, no.

Mr. KELLAM. The motion prevails.

Mr. HARRIS. I move we adjourn.

Mr. KELLAM. Before the motion is put I want to say a word

very carefully in behalf of our own Commission. Two or three thoughts have occurred to me with reference to facilitating our work. We know we have been getting along slowly. We, of course, have come to stay, but we want to get away as soon as we can with due regard to this work, and if you gentlemen can arrange amongst yourselves for a longer session, or fix it in some way so as to give to this work as many hours as is possible, consistently with your duties above, I think it would oblige the Constitutional Conventions and both parties of this Joint Commission.

Mr. CAMP. I can meet in the morning or at night.

Mr. KELLAM. I was going to say, your Constitutional Convention only meets in the afternoon; in the future after we have the report of these Secretaries and a starting point, then, as far as you gentlemen can arrange to give us hours we will be obliged to you. We realize you have conflicting claims upon your time here.

Mr. SPALDING. I don't think it pays to come to figures now, but if we can get a basis, then when we get the figures it will not be but a few minutes.

Mr. KELLAM. The motion is to adjourn.

Mr. CAMP. If there is any business we can transact, any further talk we can have together that will bring us nearer a basis I am sure we are ready to spend an hour.

Mr. CALDWELL. It is a fact that the figures that are presented here, only thirty-four to thirty-five thousand difference, sixty-four thousand from ninety-nine thousand, my figures are about three thousand the other way, and I want to say that these figures are taken from the identical source from which these gentlemen will have to go, and there is no other source; and that it is demonstrated here that in one single lump $10,000 that ought not to be there—$10,000 for the Penitentiary at Sioux Falls, which never went on the Auditor's books. By looking over the Auditor's books there is only $25,000 difference between us. I say take the figures Mr. PURCELL has presented here, and which figures I know are correct, and by taking off the $10,000, why, there is all there is between us, and if we take and adopt that proposition, which is that each commonwealth take the institution within it, together with the balances that may be in its favor, and take and pay the bonds issued on account of that institution. Now, as I say, there is only—taking even the figures which Mr. PURCELL has submitted—there is only $25,000 between us.

Mr. HARRIS. Our only objection is at the method in which you arrive at your totals.

Mr. CALDWELL. It was regardless of the figures that I made the proposition; and this matter of figures has cut no figure whatever in my judgment as to what is the best possible basis for us to adopt.

Mr. McGILLYCUDDY. Appoint some committee to go into some room and come to some conclusion and refer it to this Commission to adopt.

Mr. KELLAM. If there is no objection the motion to adjourn is withdrawn. As I recollect the $25,000 appropriation, I recollect, I think—for what institution was it?

Mr. PURCELL. For the Reform School, miscellaneous expense

Mr. KELLAM. Expenses don't absolutely include the idea of being improvements.

Mr. PURCELL. It might have been for improvements—water works. Section 137, there is $9,000——

Mr. CALDWELL. That is an appropriation for maintenance—an appropriation for maintenance of our Reform School at Plankinton; section 136 is a matter of construction.

Calls of Mr. PRESIDENT; Mr. CHAIRMAN.

Mr. CALDWELL. This may sound somewhat—but I will agree to sit down with any two North Dakota gentlemen. But I believe we could take these two statements of figures and resolve them into the same identical thing.

Mr. SPALDING. I don't want to bother our brains over figuring the thing out, we have got our Secretaries to do that.

Mr. PURCELL. Said sum of $12,000 or so much thereof as may be necessary shall be expended for the proper management and for them suitable officers, servants and for such other expenses as may be neccessary.

Mr. HARRIS. That is not included.

Mr. KELLAM. Mr. PURCELL suggests it might be included.

Mr. CALDWELL. The construction is entirely different. There is maintenance and general expenses.

Mr. HARRIS. If there is nothing further I renew my motion.

Mr. CAMP. I would suggest that during the recess, if possible, each Commission consider the question of proposing to this Convention a basis of settlement which will cover the whole field of the Territorial assets, liabilities and indebtedness.

Mr. KELLAM. Just this one question, or as to library and property?

Mr. CAMP. Yes, of property of every kind except the archives and records.

Mr. HARRIS. I move we adjourn until 3 o'clock to-morrow.

Which motion prevailed and the Commission adjourned.

FOURTH DAY.

BISMARCK, *Friday, July 19, 1889.*

Commission met at 5 o'clock p. m., Mr. SPALDING in the Chair.

Mr. SPALDING. GENTLEMEN: What is your pleasure?

Mr. KELLAM. I think we are all interested in the report the Secretaries have to present to us, and they are ready to report.

Mr. SPALDING. I have not seen the report of the Secretaries, and didn't know as they had one.

"Statement of amount of bonds issued for each, premium, report of unexpended balances, etc."

Mr. HAYDEN. Taking South Dakota, the bonds for Yankton Asylum, $206,954.79—the net amount that has been received for the bonds in cash and paid into the Treasury. There has been appropriated out of the general fund $45,256.30; total $252,211.09 for the Yankton Asylum. There is in that a bond fund still on hand, unexpended, of $3,756.83; $425.62 is unexpended up to the beginning of the present year; March some time, first of March, the time of the adjournment of the Legislature. Net cost of the institution, $248,025.45.

Of the Reform School: Bonds and premiums, $30.156. There is nothing appropriated for the Reform School, simply the indebtedness of $30,156.00. There is still on the books a credit of $156.00, they having simply used $30,000 of bonds.

The School of Mines: Bonds and premiums, $33,320. Appropriated for school, $5,500—making a total of $38,820, of which there is still on hand to credit of bond fund, $179,91; and credit

of appropriation, $572,30; making a net total of $38,070.79 for the Reform School.

Spearfish Normal School: Amount of bonds and premiums, $25,130; appropriations, $5,800; total, $30,930, It has all been expended, no credits.

Madison Normal School: Bonds and premiums, $49,763; appropriations, $5,500; total, $55,263; on hand, $536.55 to the credit of bond account, leaving net amount, $54,726.45.

Agricultural College: Money received from sale of bonds, $98,423.40; appropriations, $5,255; making a total of $103,678.40, of which there is on hand to the credit of the bond account, $231.65, making the net total $103,446.75.

The Deaf Mute School: Bonds and premiums, $51,631.60; appropriations, $2,000; total, $53,631; of which $59.60 is to the credit of bond account, leaving net amount $53,562.

University of Dakota at Vermillion: Net amount received from the sale of bonds, $75,156; amount appropriated, $18,500; total, $93,656; of which there is to the credit of appropriations made, $643.25; leaving net amount, $93,012.75.

To the Sioux Falls Penitentiary: Net amount of bonds, $96,-475.05; appropriations, $5,000. This has all been expended.

For North Dakota—Jamestown Insane Hospital: Amount of bonds and premiums, $266,545.60; appropriations, $23,150. Total, $289,695,60. To the credit of bond fund, $6,379.30; to the appropriation account, $290.81; net amount, $283.025.49.

Bismarck Penitentiary: Bonds and premiums, $94,067.20; appropriations, $3,464; total, $97,531.20. There is a credit to the bond account of $7,000, leaving net amount, $90,531.20.

The Grand Forks University: Bonds and premiums, $75,016.71; appropriations $18,400; total, $93,476.71; of which there is to the credit of the bond account, $930.99, and to the credit of appropriation account, $504.84, leaving net amount, $91,981.88.

The Capitol. Of course you know this is in here simply the building. Bonds and premium, $83,507.46; appropriations for furnishing, improvements, etc., $24,866.43; total, $108,373.89. There are no credits. There was one or two items we could not determine, whether to premiums, improvements or current expenses. The $5,500 in part of School of Mines appropriation it is impossible to tell unless we go to the place itself; and there is also in North Dakota, $2,250 in the Bismarck Penitentiary for incidentals and repairs; the appropriation was made; but how much

for incidentals we cannot tell. Appropriations for South Dakota, $92,811.30; net, $91,170.13. North Dakota appropriations, $69,-084.78.

Mr. PURCELL. In your balance did you take into consideration the $10,000 spoken of?

Mr. HAYDEN. No, we did not. But that $10,000 has never been used.

Mr. PURCELL. Anything in relation to the $12,000?

Mr. HAYDEN. No, we have not had time to examine; that was not figured into yesterday, and we have not examined the books to find out except what shows in the reports. Where an appropriation was made for repairs and improvements we figured it in.

Mr. McGILLYCUDDY. Are repairs proper improvements in the building—did that enter into the building? It is supposed when you repair a building—if you improve the building that is one thing; but repairs are simply supposed to put that building in the original position, not to add to its value. Draw the line on what is repairs and what is improvements.

Mr. HARRIS. Did you take into consideration the question of the $7,000 of the Bismarck Penitentiary?

Mr. HAYDEN. That is deducted in the bonds, taken into consideration in the net.

Mr. HARRIS. So that $7,000 remains as unexpended balance?

Mr. HAYDEN. Still remains as unexpended, simply stands as a balance on the books.

Mr. SPALDING. Leaving out of consideration the bonds entirely, and take only into question such appropriations as were made for construction or improvements and repairs, there is a difference of $22,000.

Mr. HAYDEN. That is, I didn't figure it exactly,

Mr. PURCELL. There is one matter I want to call attention to, in figuring up the indebtedness of the different portions of the Territory. There are at present pending, in nearly every county in North Dakota in which there are railroad lands, suits against county treasurers, to recover back taxes received at sales of this land, railroad lands, and a great deal of this tax has been paid in in the different counties, and most of it—the territorial—tax has been paid in to the general fund and been expended generally throughout the Territory. North Dakota, of course, received her proportion, and South Dakota its proportion. There is a division

of opinion among the lawyers of the Territory as to whether judgment will be recovered against the counties. If judgments are recovered against the different territorial county treasurers to recover back the taxes, of course the counties in North Dakota will have something to pay back. At present I am unable to say to what these taxes amount; but if the counties have to refund those taxes, the Territory as a whole would be required to refund to the county whatever proportion of the taxes the Territory received. This condition does not exist in South Dakota, in consequence of the Northern Pacific Railroad grant. I simply mention this because in my judgment it perhaps may be an item we ought to consider in making this settlement.

Mr. KELLAM. Have you any idea of the amount?

Mr. PURCELL. I have not.

Mr. CALDWELL. Has the railroad paid the taxes?

Mr. PURCELL. No, sir, and the treasurer has gone on and sold. The railroads have not paid the taxes, but the purchaser at tax sales have paid the taxes. Many persons have gone on and purchased railroad lands. Now, the parties who bought at tax sale have sued the county to recover back the taxes they have paid at tax sale for railroad lands, because the Supreme Court of the United States has held that no lands conveyed to the Northern Pacific Railroad Company by this grant; that is, the title to these lands have not passed until survey fees have been paid. Many of these lands have been sold and the money not been paid in by the Railroad Company, but by purchasers, and the suits are now brought in the name of the purchaser against the counties for selling those lands.

Mr. PRICE. To settle between the individual and the county?

Mr. PURCELL. I say this again to illustrate. In the county of Cass, and in our county of Richland, the board of commissioners have refunded these taxes up to a certain period. Whatever has been refunded, the Territory should bear that proportion which it received from the sale of those lands. Of course in every county the Territory had a portion of taxes due it, and it has received its proportion. Now, if those suits recover judgment, of course the county will have to pay back to the purchaser the amount received at the tax sale, and, perhaps, with interest. Therefore, the Territory as a whole ought to reimburse the county for the proportions it received.

Mr. NEILL. Is it not a fact that of that money paid from

those counties, 30 per cent. has been repaid and 70 per cent. paid back to those counties already?

Mr. PURCELL. I don't know that it is. I simply bring this up for consideration. But if the counties of North Dakota are required to pay back, then the Territory as a whole, North and South Dakota, should reimburse.

Mr. KELLAM. That would be fair, it seems to me. But the same rule would apply to individual taxes. This is the case of taxes arising from the Northern Pacific grant or illegal assessment upon these lands. No different rule would apply to those than to any other case of illegal assessment and consequent refunding. This is something we know of and is a large amount.

Mr. PURCELL. I don't think the board of county commissioners can rebate any taxes, part of which is due to the Territory. The board cannot rebate the tax due from an individual to the Territory. Then if the board has used any taxes it has done so illegally.

Mr. KELLAM. I mean where the courts have decided the basis of assessment was illegal and the money should be returned; that that would be a similar case to this.

Mr. SPALDING. In Stutsman county alone there are about $70,000 involved in the suits of individuals to recover money paid at tax sales. This has been tried in the district court and decision rendered against the county. It has gone to the Supreme Court of the Territory, and the decision of the lower court has been affirmed. And the county of Stutsman has now taken it to the Supreme Court of the United States, and there it is at this time. There is a somewhat smaller amount involved in Barnes county. About $19,000 in Cass county. I don't know how much in Richland county; some in Traill county, and so on in those counties, large amounts, and they are awaiting the action of the Supreme Court of the United States on the Stutsman county case.

Mr. KELLAM. That is about as I understood the history of the matter.

Mr. PURCELL. Of course since the gross earnings law went into effect this would not apply. But there are numerous purchasers of those lands from the railroad company, and the decision of the Supreme Court of the United States not only extends to all lands which the railroad company still contest, but it extends to all lands sold by them to individuals upon which the survey fees have not been paid. And there are now many suits

pending in the name of individuals, residents of the county to recover taxes paid by them.

Mr. HARRIS. I would like to inquire from the gentlemen of the South Dakota Commission (we have discussed the matter somewhat and have not come to any conclusion), what their idea is, and their conclusions with regard to the appropriation, made at the last session of the Legislature for the running of the Territorial institutions. Whether or not they think we should come to some settlement now, and that the taxes in the future collected from the counties embraced in South Dakota shall go towards maintaining institutions in South Dakota, and taxes from the counties in North Dakota go towards maintaining our institutions from this time, and if we shall pay any deficiency there is in North Dakota, how much assume, and pay what deficiency; in what manner or what form can we arrive at a settlement of the matter? That is, how long shall these institutions run together, be managed by a partnership of North and South Dakota?

Mr. ELLIOTT. We would inquire from the gentlemen of North Dakota whether or not they have any proposition to make. If they have, we would like to hear it.

Mr. HARRIS. I am satisfied that so far as the North Dakota Commission is concerned, they have not arrived at a division. I don't know whether we have the power to do that.

Mr. KELLAM. I didn't get your proposition, but if I understand it, would we have authority to divide these institutions as you suggest.

Mr. HARRIS. That is the point for the discussion of the Commission. But if not, then what kind of a deal are we going to make? We are going as far as we go in shape; and this question that will have to come up as to how far we have authority, how this thing is going to be in regard to the appropriations and totals expended, as to how far this Commission can fix it, is a question we have to settle. We are getting, in regard to the bonded indebtedness and other matters, in shape where there will be no trouble to settle. One question we will have to settle is when and how this Commission has to deal with these running expenses of the institutions of our Territorial government, and the basis which we will propose to the two States on which we shall settle. As far as I am concerned I am at sea on that question.

Mr. CALDWELL. A feature of this settlement, it would seem to me, that ought to be considered at this time is the division of

the public institutions, and matters pertaining thereto. I would offer the following resolution:

Resolved, That in the division of the Territorial institutions and the property pertaining thereto, the following basis shall be adopted by this Commission: The title to any public institution, together with all hereunto belonging or appertaining, shall vest in the particular State in which it may be located; and said State shall, in consideration thereof, assume all bonds, debts, liabilities and obligations whatsoever incurred by the Territory of Dakota on account of or in relation to the said institution; and any unexpended balances or appropriations payable or to become payable for such institution, shall accrue and be a credit to such institution upon the books of their respective States.

Mr. PURCELL. As I understand, that is the same in effect, we have under consideration.

Mr. CALDWELL. I thought I would formulate something and then let others be also considering.

Mr. PURCELL. I do not think that at present we of the North are prepared to vote on that resolution, because we have been getting our information from our accounts here, and until such a time as we had an opportunity of thoroughly investigating the result I would not be in favor of supporting it.

Mr. HARRIS. There is another matter in that resolution, it seems to me, that is contrary to the method on which we have been arriving at figures. He says, "any unexpended balances or appropriations" which have ever been made to any institution shall be turned over to that institution. Now we find an appropriation of $10,000 made to the Sioux Falls Penitentiary; this had not been taken into account, yet our figures agree to that credit of $10,000. We find various appropriations and unexpended appropriations for the other institutions; it seems to me unexpended appropriations should not be cancelled so far as our settlement is concerned. So far as appropriations are concerned I don't see how we can get to work and give more appropriations than were appropriated, and pay them over to the institution. On that question I don't believe we are prepared to vote; and for this reason we ought to go through the whole basis of settlement. Bring every question which will come before this Commission up for discussion, so we can arrive at a basis of settlement of the whole matter together. We may not be able to reconsider it in the future.

Mr. CALDWELL. The $10,000 to which the gentleman refers was not for the Sioux Falls Penitentiary at all. It was an appropriation simply for the building of a prison before a place for a prison had been located; and so far as any appropriations unex-

pended as balances of appropriations may be concerned, they are, by the rule of the Auditor's office, now covered in as soon as a new appropriation is made.

Mr. KELLAM. I myself would not be in favor of adopting Mr. CALDWELL'S resolution at this time. I do believe in settling matters so far as we can come to a conclusion, and laying to one side as so much disposed of. I believe so far as when we come to an understanding upon a settlement of these institutions and the property, etc., we should pass some kind of a resolution and call that matter disposed of. But a resolution covering this should be more carefully drawn than even Mr. CALDWELL can, without deliberation. This is an important matter we have to deal with. My idea is when we take this matter up and come to an agreement, then one or two gentlemen on each side should be appointed to formulate that in some shape so it will cover all the questions we design to have settled. I believe in that way of doing with these institution and the indebtedness. I believe in this way of doing, in taking up independent subjects, so far as they are independent, and dispose of them, one at a time, not perhaps without any power upon the Commission to reconsider, but call them, for the present, disposed of. I have no objection, and perhaps it would be as well, that if there are other questions connected with this as to make the disposition of this inconvenient without having the other discussed, discuss that in an informal way, but to reach a conclusion as rightly as we can upon the different items of this business, and let some gentlemen be selected to put our conclusions into right shape and have it reported to the Joint Commission, and let us see if that expresses just what we have to do. But I myself think that resolution is too hastily drawn. I have as much confidence in Mr. CALDWELL as in any particular gentleman, but this is a matter that should be carefully covered.

Mr. CALDWELL. My proposition in offering this resolution was this: We have been considering a single topic of this matter of distribution, and I thought if there was something formulated before the House, the Commission could then take action if they saw fit. So far as I am concerned I don't care how many accounts may be brought up, but it seems to me the work of the Commission could be better carried forward by taking the things in their order.

Mr. HARRIS. I think finally we will fully be able to arrive at

a settlement by a lump settlement, and for that reason I don't see how we can settle individual things separately.

Mr. KELLAM. My idea is, it would not be in one lump, because we could not dispose of the public library, safe in the Treasurer's office, and unexpended balances in a lump. We have got to classify these in departments. That was my idea.

Mr. PRICE. For the purpose of getting this thing in proper shape before the Commission I want to move the adoption of the following resolution. It seems to me the matter may not cover the whole thing, yet we can take a vote upon this thing, and then perhaps the gentlemen on the other side may have some suggestion in its place, if it is not adopted. But if we are going to do business, we have got to do it in a business like way. It seems to me if we attempt to do business things at once we will progress very rapidly in the work we have to do. The substance of this resolution is that each part of the Territory shall take the property located within its boundaries. Now, that is all there is of it. It seems to me fair and it ought to be adopted.

Mr. SPALDING. It seems to me we have discussed this subject of public institutions, and have got figures on each, so that each of us now know where, or understand where the institutions stand in the respective parts of the Territory, and unless we discover a mistake had been made, or some reason for changing the general result, we can readily lay that matter aside now, and discuss some other item like this that was lately suggested.

Mr. PRICE. I move the adoption of Mr. CALDWELL'S resolution.

Mr. SPALDING. The Clerk will call the roll.

Mr. CALDWELL. I was going to say I simply introduced this resolution for the purpose of bringing the matter before the Commission, and if there are any suggestions in the way of amendment or anything like that, it would be a proper proceeding, of course, to so amend it. Of course I have no consideration except a desire to bring that matter to a focus, which it seems to me has been discussed.

Mr. PRICE. I want to add this; that I don't understand the resolution to be final until, even if adopted by this Commission. If I understand the Omnibus Bill correctly, after we have arrived at a final distribution and absolute settlement, then the resolutions and articles will be adopted to be made a part of the Constitution so far as the date is concerned; but this is simply to show the feel-

ing of the Commission upon this manner of settlement, not as the final.

Mr. PURCELL. According to the basis that has been formerly talked, the figures show that South Dakota has received an excess in appropriations of $22,000. Now is it your intention that North Dakota shall not receive back any portion of that $22,000? If it is, I, for one, am opposed to the passage of this resolution, because I don't feel I have any right to give $11,000 of $22,000. Whatever the difference is that exists in favor of South Dakota over and above North Dakata, I think some reimbursement should be made. In my judgment, every member of this Commission knows that for the last ten or fifteen years at least, South Dakota has received a large amount of appropriations for maintenance. I think it will not be contradicted; the institutions in the South have been sustained by an equal amount of taxes paid from the North, and we have not had the benefit or use of them as we might have had. Still the maintenance has been paid, both North and South, from the Territory at large; and I think by a fair comparison, you will find the people of the South have had the benefit to a greater extent than the people of the North. I am stating this as a reason why at the present time I am not in a position to vote for this resolution. I desire to know just how much stands appropriated to each section, what proportion of that has been used in South Dakota and North Dakota, and would like to be informed upon the amount of taxes each section has paid, so when settlement is made, we can return to the Convention and justify our acts. So when we return to our constituents we can show to them that settlement was made, and the full understanding of the affairs of this Territory, and the use that the people have had, and that no one can say we have gone at this blindly.

Mr. HARRIS. I think exactly as Mr. PURCELL does in regard to this difference in direct appropriations for repairs and construction of the institutions. There is a difference of $22,000. Did we merely wipe this out and settle on the basis of this resolution we would fix the matter of these institutions, the largest account we have to deal with; and immediately the other subjects Mr. KELLAM mentioned, public library, safe and those things here in North Dakota, and that was my reason for saying we could discuss these matters, laying them aside and discuss other matters, and then we would be ready to settle. I don't think, as the matter stands, that we can afford in any way to adopt this resolution, and for that

reason I am not in favor of it. I want to settle just as favorably with South Dakota, and as easy and as quick as we can; but in order to arrive at that we must not hasten and we must not adopt such a resolution as this that we might not want adopted twenty-four hours from now.

Mr. SPALDING. Any further remarks?

Mr. CALDWELL. If I thought any business man or any citizen of ordinary judgment would most certainly be of the opinion that the institutions of South Dakota have not depreciated upon the whole more than $22,000 worth since these appropriations of which you speak; if the difference in depreciation of value between South Dakota institutions during the time since construction, and North Dakota, is not very much more than $22,000, I would not ask North Dakota to settle upon the basis referred to in the resolution. There is nothing about it I can see, that is asking them to forego a single just claim they may have in regard to the matter.

Mr. SPALDING. Any further remarks? If not the Clerk will call the roll. All those in favor of the resolution will answer aye; those opposed, no.

Camp, absent; Harris, no; Purcell, no; Sandager, no; Scott, no; Spalding, no; Kellam, no; for the reason expressed. I think the resolution ought to be more carefully drawn.

Brott, yes; Caldwell, yes; Elliott, yes; McGillycuddy, yes; Neill, no; Price, yes; 8 nays and 5 yeas.

Mr. SPALDING. The resolution not having received a majority of both Commissions, is lost.

Mr. McGILLYCUDDY. I move a committee of four, two from North Dakota and two from South Dakota Commission, to meet and draw up a resolution bearing upon the settlement of public buildings.

Mr. SCOTT. I am not in favor for the reason above stated. I don't believe we are ripe for that yet. I don't believe we can draw up a resolution that will be carried, at the present time. I think it would only be labor for nothing, until such a time as we are ready to draw up and agree.

Mr. NEILL. In my opinion we only get into confusion ourselves on this subject, until we get some basis of agreement. In one sense I would have liked the introduction of the resolution we have just voted down; it preserved something for the future. But in my view we will have to settle this matter step by step until

the consummation of all. We will then have to settle these matters by adopting and having a contract. To begin upon public institutions, that subject we can reduce almost to a mathematical precision, it seems to me. It was evident to my mind this resolution was not satisfactory to my brethren of the North, and for this reason I voted against it, thinking they from the North would suggest something in its place. If they are not prepared to do so now, my suggestion would be that we continue our efforts towards this work, until we are satisfied we have sufficient knowledge of every question bearing upon the subject, and then formulate our work. Now, it is necessary to take into this matter, that we look into the maintenance. I say, let it go on. Let us hasten that work until we know what there is about it. If it is necessary to divide this money, or to separate our own, let it be done. But let us decide this matter as we will have to decide in the end; because it seems to me that the inference, that this cannot be decided without something hinging to it, does not strike my mind as fair. I feel that there is an honest solution to every one of these subjects which come before us. I trust we may continue in the work, looking up this subject we are at until we finish it in this general way, at least, until we formulate our basis of division.

Mr. KELLAM. I feel some as Mr. NEILL expresses it and as suggested by Mr. PURCELL, that an intelligent and fair settlement of this matter can only be made, if the information which he suggests should be obtained; then the quicker we get at that information the quicker we come to a solution of this question. Now I don't look at this matter precisely as brother PURCELL does. The Territory of Dakota is an entire institution. Its Legislature is made up from representatives from various portions of one entire, complete entity—one territory. North, south, east and west have its share and representatives in the Legislature. They located these institutions where, in their judgment, they will do the most good to the Territory at large. It certainly is the theory of the location, that they are located where they will best serve the interests of the Territory. The money must be expended where the institutions are located. It would be useless, impossible, as it looks to me, to weigh the advantages of Sioux Falls as against Jamestown or Bismarck, or some other town for the location of the public institutions. It seems to me thus from our figures we could not positively get any basis to compute; we could not arrive at any specific calculation from such; neither would it look to

me as though we could get very satisfactory results from trying to ascertain from the records how many convicts from the North or South had been in the Penitentiary at Sioux Falls or Bismarck, or how many in the Yankton Asylum. Then we would have to go to work and ascertain where the taxes had come from that had started these institutions. And while I don't know what might be the result, I am just as blind about these last figures we have developed here to-day. I say if we in discussing this subject cannot come to a conclusion, we cannot vote satisfactorily to ourselves upon this division question without this information, then let us take steps to get that information. And if any gentleman thinks he will be better satisfied by adopting some plan which will rest upon such figures as we have talked about and suggested, then I think he ought to present a proposition to this Commission, and have such figures ascertained and report it here, so we can make some progress in the settlement of these questions. I am always willing to discuss all these matters in the most informal shape. I like informality and if there is any advantage to be gained by talking on these questions, do so, and as quick as we dispose of one question take up another. That, as rapidly as we can reach even a general conclusion upon any of these questions that we say we can probably settle upon that, and lay it aside. All I intended to suggest was that if any gentleman is of the opinion that he requires this information before he can dispose of these questions, then he ought to present some plan or proposition for getting such information, so we may be gradually getting something to work upon.

Mr. PURCELL. Mr. HAYDEN, in making up your report upon the indebtedness of North Dakota, how much did you figure the bonded indebtedness of this building? The Capitol.

Mr. HAYDEN. We figured in those warrants at the face of them.

Mr. PURCELL. Is it not a fact that about $30,000 of those refunded warrants represent accrued interest upon the debt on this building?

Mr. HAYDEN. I don't know just the amount—we have the figures or a part of it. How much was interest the Treasurer could not tell. There is $21,000 interest and there is $8,000 more, but how much of it is interest I don't know.

Mr. PURCELL. I submit that that portion which represents interest, should be a charge of the whole Territory, for the reason

that the bonded indebtedness of the South, as well as in the North, has been paid out of the general fund; and this was interest accumulated and not paid out of the general fund. And inasmuch as the interest on the bonds in the South, and other bonds in the North have been paid out of the general fund, that portion which represents interest, should be borne equally.

Mr. CALDWELL. The terms of the act refunding these Capitol warrants specifically says, that the amount thereof, whether for face or the original claim, or for interest, shall be assumed by North Dakota.

Mr. PURCELL. Then I ask that the interest paid on the bonds in South Dakota should be taken into consideration, whether the act provides, or whether it does not. It has been the understandinng that the interest upon the indebtedness has been born by the whole Territory, and inasmuch as this $21,000 represents interest, that we should have the same remedy.

Mr. CALDWELL. And, furthermore, this is in the nature of a guarantee on the part of the Territory, and the Territory is to have recoupment of whatever she is out, whether upon the face of these warrants, or upon the interest thereof, or out of the sales of the Capital property. The general fund of the Territory ought to have that credit. It is not, of course, the case with these other institutions. It is not payment, direct and absolute, out of the general fund of the Territory. It is a payment provisional.

Mr. PURCELL. I desire to say that this act provides that when the Capitol property is sold, that the proceeds realized from sales, go into the treasury. But this fact exists that the deed from the railroad company to the Territory of this property says—has a clause that when this property ceases to be used for Capitol purposes that it reverts to the railroad company. Now, like yours, the question of the Capital of North Dakota is not settled, and it may be in the future that the Capital may go somewhere else, and as soon as it does go, this building, together with this property reverts to the Territory, and will not only revert to the railroad company. And the gentlemen very well understand that the Territory has sold lots wherein it has warranted the title to different parties, and it is a question as to whether the Capital remains here. If the Capital leaves here we not only lose the building but refund the money that has been paid to us.

Mr. KELLAM. Of course the answer is that you have the Capital. If you regard it as sufficient consideration to move it

somewhere else, why it is a business proposition. It is worth so much. It is a business transaction. North Dakota has the Capital. If she wants it somewhere else, why, do so. It looks to me like a business proposition.

Mr. HARRIS. As I understand the question in regard to this interest——

Mr. KELLAM. I want to say that while I don't know anything about it, if these refunding warrants actually represent interest on an indebtedness North Dakota has to assume in this division, then it only seems to me that so far as it does represent interest, it should be taken to account—that is that the interest on this Capitol indebtedness should be paid by the entire Territory to the same extent that the interest on these other funds are paid up to some time. I don't see any reason why it should not.

Mr. HARRIS. I was going to explain. There were something in the neighborhood of $55,000 worth of these Capitol warrants, drawn by the Auditor, on the Treasurer on the Capitol fund. There was no money. They were presented to the Treasurer and registered as not paid, and by operation of the law of our Territory, from the date of registry they drew 10 per cent. interest. At the time of the refunding of these warrants, when the warrants were taken up the aggregate amount was $55,000. And I understood it was this, that as the Territory, the whole Territory, had paid the interest on the bonds in North and South Dakota, it seems there was an equitable claim in regard to this interest that the whole Territory should pay the interest on these warrants.

Mr. SCOTT. Was the Territory responsible for the warrants?

Mr. PURCELL. No, sir; the Territory was not responsible for anything, but the Legislature assumed the debt. Of course those making a claim had an equitable claim.

Mr. HARRIS. I know the Commission who audited these claims was declared a legal Commission; and the Auditor who issued the warrants and signed them a legal Auditor; and that the Legislature of the Territory of Dakota declared this Commission legal and its acts legal by accepting the report of this Commission, accepting the work of the Commission; the discharge of the Commission and proceedings to further continue the work which this Commission had before that time had in their possession. That these warrants were declared legal by the Legislature and assumed as a debt of the Territory.

Mr. CALDWELL. Is the Territory or State in which the city

of Bismarck is located liable for the payment of principal and interest on the said refunding warrants?

Mr. HARRIS. They were made legal by the Territory; they were made legal by the acts of the Legislature before this refunding act was passed.

Mr. CALDWELL. Unquestionably legal against a particular fund in the Territory, which fund was to be supplied in a particular manner.

Mr. SPALDING. It seems the drift of this matter is this, that the Territory has had the use of all the territorial institutions for which there has been bonds issued, and it has in effect paid the interest on those bonds as they became due for the use of them. They have had the use of these buildings, but they didn't pay the interest on the outstanding indebtedness as it became due because it was not to be paid in a specified time. Now what would be the position provided there was no public institution on which bonds had been issued and for which interest had not been paid when it became due? In making this settlement we say that that part of the Territory or new State in which an institution is located should assume half the past due interest. We think it should be divided between the two parties.

Mr. CALDWELL. Whatever power made the general fund of this Territory liable for this principal and interest on these warrants which were payable previous to that time only out of a fund, it is a fact, as the Journal of the last Assembly will show, that the matter of the adoption of this act was referred directly to the North Dakota members, and that they by an overwhelming majority agreed to the obligation that these warrants should be made a charge upon the general fund of the Territory. That should be considered, in case of division, as a change upon their particular section of it.

Mr. PRICE. I move we adjourn until to-morrow at 1 o'clock.

Motion seconded and carried.

Mr. SPALDING. Adjourned until to-morrow at 1 o'clock, July 19th.

Mr. KELLAM I think you will begin to see that if it is a possible thing you ought to give us more time. It was 4:30 this afternoon and we have not been in session two hours.

Mr. HARRIS. I think we ought to have morning sessions.

Mr. KELLAM. I think, under the circumstances, you ought to.

Mr. PURCELL. I second the motion for 10 o'clock to-morrow morning.

Mr. SPALDING. Those in favor of the motion will say aye. The motion is carried and we adjourn to meet at 10 o'clock, July 20th.

FIFTH DAY.

BISMARCK, *Saturday, July 20, 1889.*

Commission met at 10:40 o'clock a. m.

All members present except Messrs. GRIGGS, SPALDING and CAMP. All South Dakota members present. Mr. KELLAM in the chair.

Mr. KELLAM. We have no rules, of course, and unless the minutes of the last session are called for—it has not been usual to read them—I suppose we have the same business on hand as we had at our last meeting.

Mr. PURCELL. I would like to inquire if there are any claims against the Territory.

Mr. CALDWELL. I talked with the Auditor and Treasurer about it, and it is their judgment there will be about $240,000 before November; the total amount about $240,000. About $240,000, I believe, the middle of November.

Mr. PURCELL. That will be necessary for these institutions to incur.

Mr. CALDWELL. No regular appropriations made; the amount of claims that I found by the middle of November, will amount to about $240,000, and that will only be about $100,000 to $125,000, etc., revenue within that time.

Mr. PRICE. About $125,000 amount deficiency upon that will be by the time we get through.

Mr. PURCELL. Are there any unadjusted claims and what do they amount to?

Mr. CALDWELL. I don't have the records; the intitutions have them—running up I don't believe to exceed $10,000 or $12,-

000 in all. There are some in Grand Forks, some in Jamestown and some at Vermillion.

Mr. KELLAM. Also a claim at Yankton. All I know about it is that Mr. HARRIS, representing the Yankton district in our lower convention, called my attention to an unliquidated claim, and I asked him to put it in shape so that it might be taken into account. Day before yesterday I received a package with the original contract and a letter from one of the trustees of the hospital, saying, I think, his figures were about $1,750 equitably due to the contractors, but there was no money when the work was finished to pay it and it stood in that condition. I suppose that was the character of claims?

Mr. PURCELL. That is the character I inquired about.

Mr. KELLAM. So far as claims for current expenses I suppose would be covered by some general agreement.

Mr. CALDWELL. That point was provided in that resolution I offered yesterday—each State should assume the debts and obligations incurred by or for any of the institutions located in the respective States.

Mr. PURCELL. Mr. GRIGGS has a claim as Railroad Commissioner of about $750.

Auditor McMANIMA. I will call attention to that. There are some claims, expenses of the Railroad Commission; Mr. GRIGGS has a claim, and Mr. Smith, I think, although he never presented his to the office, for traveling expenses after the appropriation was exhausted last year. The expenses will not exceed $1,500.

Mr. CALDWELL. There is one claim I think would be perfectly proper for this Commission to consider, and that is the claim of Mr. Long for this Legislative Hand Book, amounting to 1,500. That would be a claim against the entire Territory, and allowed by the Legislature, but the Governor allowed the bill to lapse; did not sign it, and the books have been used by the Territory. I know they were distributed to the Constitutional Convention at Sioux Falls, and I think up here. And it is a claim which ought to be considered.

Mr. PURCELL. I think that is in the same position as Mr. GRIGGS' and Mr. SMITH'S is.

Mr. HARRIS. More adjudicated as the Legislature passed upon it.

Mr. PURCELL. Mr. Bly, the hotel keeper, has a claim for rent of the cinch room for members of the Legislature.

Mr. SCOTT. The points suggested by Mr. CALDWELL—seems to me to be a good point to bring up now and settle. He states by November—by the middle at least—there will be $240,000 of expenditures on account of the various institutions, and only about $120,000 to $125,000 collected.

Mr. CALDWELL. For all purposes?

Mr. SCOTT. There will be a deficiency of some $115,000. We have got to come to some settlement about that, and the question is what arrangement is best to make.

Mr. CALDWELL. I would say that Brother BAILEY is here to-day and would like to leave to-night; and if there is any information the Commission would like from his department, it would be convenient to him if the matter were questioned now, although he would instruct his deputy, Mr. Claussen, of course, to furnish whatever might be necessary. There are some matters coming before this Commission regarding a matter the consideration of which has been postponed; that is, the transcription of the records of his office, and of such records of the Auditor's office as would be necessary to start the respective States going.

Mr. SCOTT. If we come to some agreement about the records then would it not be time to start about the transcribing? I presume they can get some additional help in each one of the offices.

Mr. CALDWELL. Yes, but the transcribing of the records, of course, all that would be a charge upon the respective States. It could not be paid out of the appropriation for the expenses of the Convention.

Mr. KELLAM. It seems to me the matter of disposing of the records, we ought to consider and dispose of amongst the earliest questions, because if the determination is that we must make some provision for records for both States, it would require some little time to make those records, and then they can be made. Of course, books will have to be gotten, and that can be done at once. It will take some little time to get these books, get them prepared, made, and get them back here.

Mr. CALDWELL. Of course the records of the Territory will be the common source from which the records of the two States may be compiled. As I understand it, the presence of the Territorial records at Bismarck would not be the possession by the State of North Dakota of the records, or of any part thereof, and that it would be as necessary to provide the transcription for North Dakota as for South Dakota.

Mr. SCOTT. What do you want two copies for?

Mr. CALDWELL. We would not need two copies, but neither North or South Dakota would have any right to claim the originals as the property of the Territorial officers respectively. I feel very much as I expressed myself the other day, that this is important and ought to be gotten at early at least, because if our determination is that there must be copies for either North or South Dakota of these records, the other holding the originals, it would take some time to do that, and it seems to me to be a necessity that we make provision for at least such records as will enable the two States to start on their statehood avocations. The Secretary of State, the Auditor, nor the Treasurer nor the Governor, neither will have a successor in office. Neither the Governor of North or South Dakota, the successor of the Governor, nor the Treasurer or the successor of the Treasurer. Now suppose these States are established without any disposition having been made or having any provision made for any basis to start upon for the new Treasurer, for instance. These archives and records are required to be left in the city of Bismarck, but the North Dakota Treasurer would not succeed to the possession of the territorial books any more than the South Dakota Treasurer. It would be a question for the Treasurer himself to determine what he would do with these books. There would be no title passing from him to the successor. Then how would the new State Treasurer commence his work? Suppose a warrant was drawn upon him; how would he know whether it was paid or not. Same with the Territorial Auditor—he would have nothing to start upon. The Auditor, of course, would not be authorized in turning over his books to the North Dakota Auditor any more than to the South Dakota Auditor. It looks to me for these reasons that it is almost a case of necessity—absolute necessity—that at least some temporary provision be made for such record as will be necessary to start the several State officers. I don't see how it can be done without. If these books remain—although they remain in Bismarck, of course, that don't help the North Dakota state government any more than the South Dakota, because there would be no——the Governor, the Treasurer or the Secretary would have no more claim to the possession or use of these books simply because they were in Bismarck, than the South Dakota officers would have. There would be no advantage in the one side or the

other, but there would be absolutely a lack of any material to run the new state governments with.

Mr. PURCELL. It is your idea, Major, that the present Treasurer, or the present Auditor, have a right to dispose of these records?

Mr. KELLAM. I don't mean they have any right to dispose of them—merely the right to hold them.

Mr. PURCELL. It seems to me that the records are part of the common property of this Territory, as much as the public institutions are; and no man would say that the proceeds of any—or the Yankton Asylum should have a right to make any disposition of these institutions in case the State or this Commission failed to do anything with it. It does not become their property. Now I think that is it, when it says the records shall remain at Bismarck and disposition shall be made by the two States or by this Commission. I was of the opinion the two States should make some disposition, and as was suggested by Mr. SCOTT, there would be no necessity for two copies, if for instance the two States could agree what record should be transcribed and the copy so made go to South Dakota, and the original records become the property of North Dakota. I think the two States should agree that the original records of the Territory shall remain here and become the property of the Territory—you taking the copy.

Mr. CALDWELL. I don't think we have any authority in the matter; and that no process would lie against the Auditor or the Treasurer of this Territory to require him to take and do with those records, except as he wished. And if the Auditor of this Territory, or the Treasurer or Secretary of this Territory should hold that they are the custodians, which, of course, they are, and required by law to turn them over to their successors, and certainly the corresponding officers of the entire commonwealth becomes the political successor of these. If the Auditor of this Territory should say, "here; I am the custodian of these and I don't propose to turn them over," no agreement we can arrive at can effect that.

Mr. KELLAM. Do you mean, Mr. CALDWELL, that in your judgment there must be two copies made, one for North Dakota, and one for South Dakota?

Mr. CALDWELL. If the Auditor of this Territory says, "I am the custodian of these and I cannot turn them over," to any person

who is not legally his successor, I think he is perfectly justified in that conclusion.

Mr. PRICE. The officer dies when the office dies.

Mr. PURCELL. Yes.

Mr. CALDWELL. Then who becomes the custodian of the records?

Mr. PURCELL. It then becomes the common property of North and South Dakota.

Mr. CALDWELL. When the two States go to work, and their Legislatures make provision, why, then they become the legal successors--the parties designated by these States to receive these records become the successors, and it would be wrong to turn them over.

Mr. HARRIS. This is my idea. I don't think the State has anything to do with it. It provides that this Commission shall make disposition of these records, and I believe they intended we should do it.

Mr. McGILLYCUDDY. If the Commission never provides for a disposition of the records you will never hear the end of it.

Mr. HARRIS. The records of this whole Territory are necessary to the running of the State of South Dakota, and necessary to the running of the State of North Dakota. The records of the Auditor's, Treasurer's and Secretary's office are the common property, and they will be just as necessary for the one as the other; and the first day these States start in to do business it is necessary to have these things, in my judgment. As an individual of this Commission, my idea is this: We should provide for the transcription of the records of each of these different offices, and settle as to whether the original shall remain at Bismarck or go to South Dakota, or where the certified records shall stay. When we have one record completed and the other State has the other record completed, we have all there is in these records; all that is necessary for either State to have in the running of their business. One will become the property of South Dakota, the other of North Dakota, they having a basis to start from at once; and all there is for us to do is to make the transcription, agreeing which side shall keep original and which the certified copy. And the same thing may occur as to some of the acts and bills in the Secretary's office, if it is necessary that they be transcribed.

Mr. PRICE. GENTLEMEN: Congress certainly meant something or it meant nothing, when it passed that Enabling Act.

There is, apparently, a conflict between sections five and six of the act, but we have got to read them together and construe them together. It is patent to my mind that they intended to clothe this Commission with power to make final disposition of these records; and it seems to me my position is well taken and for this reason, Congress had this in view, that this Commission would be binding. They were to examine into the affairs of the Territory, and the division between the two sections thereof. Then Congress went on and further said, in my judgment, that these gentlemen, having examined into the affairs of both sections of the Territory, the public institutions and all the business relations existing between them, they are better enabled to say where these records shall go. Another thing, if this disposition of the records was not made, we would, upon the assumption of statehood—there would be a complete block—we would have nothing to do business with. They say, this Commission will meet and they shall provide for these records and say which shall go to South Dakota and which to North Dakota so, when we are admitted to become States, we are ready to go on in business and transact business. I presume there will be no dispute on that proposition from the gentlemen on the other side, and if the records are transcribed, the expense will be borne equally by North and South Dakota; and we can decide it, perhaps, that some of the originals shall go to South Dakota and and some of the originals may remain in North Dakota. Now that is all I have to say.

Mr. CALDWELL. Mr. CHAIRMAN: I don't see in this act, anywhere, anything that either directly or by inference, can be regarded as providing for any transcription whatever. Whatever reference there is made here as to the original records, it seems to me that it would be straining the point very much to attempt to say that this act does anything further or other than simply give this Commission authority to agree as to which State may have each particular record—not a transcription thereof.

Mr. PRICE. Let me ask you a question: Are you receding from the position you took a while ago, that the records must be transcribed for both States?

Mr. CALDWELL. I said whatever transcription there was, that that book shall, when we come to be separated, go to North Dakota, and that record may go to South Dakota.

Mr. PURCELL. May we not say a copy of it shall go?

Mr. CALDWELL. No, sir. What would give a copy any validity?

Mr. SCOTT. Why, a certified copy will be just as good.

Mr. CALDWELL. Who is going to require of the Treasurer or Auditor that he shall make certified copies?

Mr. SCOTT. This Commission.

Mr. CALDWELL. In case they say, "Gentlemen where is——"

Mr. PURCELL. Make a provision for it.

Mr. CALDWELL. How is this Commission going to provide for this?

Mr. SCOTT. That is what we are here for.

Mr. CALDWELL. That is what we are here for. If they say "Where are my fees?" there is no power to compel them to pay it. By the very terms of the act these records must remain at Bismarck.

Mr. PURCELL. On your same line you might say the respective conventions would refuse to meet. Everybody is supposed to lend their assistance.

Mr. CALDWELL. Unquestionably, but there are certain considerations which these gentlemen are perfectly justifiable in asking shall be first met.

Mr. PURCELL. If we provide for payment it becomes necessary, obligatory upon the Legislature to provide for payment.

Mr. HARRIS. It is the only way South Dakota can get any place to start.

Mr. CALDWELL. The only way is by the action of the Legislature of the State that so accepts it.

Mr. SANDAGER. Transcribe one for South Dakota or North Dakota.

Mr. CALDWELL. I say whether one or two, they will have to be accepted by consent. There is nothing that gives a transcribed record any validity whatever as the record of this State, except the action of the State.

Mr. PURCELL. The action of Congress says we shall make disposition. What is meant by "disposition?"

Mr. CALDWELL. It means disposition of particular books.

Mr. McGILLYCUDDY. Are the books all separated?

Mr. CALDWELL. No, sir; they are not. Everything is taken.

Mr. PRICE. That would be against your proposition.

Mr. HARRIS. There is just one way to look at this business. If the States are to wait until after the other Legislatures meet,

and then make provision for this, you can imagine into what a snarl we will be placed. And I don't imagine the Omnibus Bill intended anything of this kind. They knew it would be necessary for each of these States to have the records to start on, with the common records of this Territory when the States are divided and cut in two, and it will be just as much one part as the others. They intended that this Commission should make such disposition of these records as would enable the States to start out in an ordinary and business-like manner, and they intended that we should refer this to each of our Constitutions, and if the Constitutions are adopted it becomes obligatory upon the Legislature to make provision for the payment of this work that has to be done. This is my idea about it, and I don't believe the Treasurer or Auditor would refuse to go ahead on this basis. We say transcription shall be made of all records in the Treasurer's and Auditor's office, one part going to South Dakota, and that the Legislature shall provide for payment. I don't believe there will be any trouble whatever in having these records transcribed, and having the States put in a position where they can begin in an orderly and business-like manner. That this Commission should have this power and assume that power, and when their acts are ratified by the people of the different sections there can be no question about what the Legislature will have to do.

Mr. McGILLYCUDDY. I have a suggestion, that if this Commission does not take some action, this thing will result in letting the records remain at Bismarck. After the Legislature assembles they will say, such records are in the possession of North Dakota; if these gentlemen of South Dakota want copies, let these gentlemen make proper provision for transcibing, and thus throw the whole burden on South Dakota. It is more necessary for South Dakota to make some provision than North Dakota.

Mr. KELLAM. That would not follow for this reason, that the records will not be in the possession of North Dakota any more than South Dakota. The records of the Auditor's office; suppose that the territorial government ceases to exist with the present Auditor, as Auditor he would have no successor to whom to turn these books over. What would be his duty, but to retain possession of them? I don't know what he would do. I should put them in a bank and seal them; I think that is the disposition that should be made of them. I think, as Mr. HARRIS and I stated, there is one thing for us to do—make provisions for the transcrib-

ing of these records. If it is desired, let it go into the Constitution so as to impose upon your Legislature to make ample compensation for these officers. But it is an absolute necessity that we put these new States in possession of such records at the very start, that they will be able to commence business. If we don't do it, this Omnibus Bill is a misnomer. The object was to divide this Territory, to make it into two States and put them into operation. They cannot go into operation without these records.

Mr. PURCELL. Don't you think this Commission has the power to make any division of the property and of the debts, and also have a general power as to the records, etc., and say that copy shall be made, and say North or South Dakota shall take that copy, or the original?

Mr. KELLAM. I would not hesitate about that at all.

Mr. PRICE. Now, it is, perhaps, true, if the Territorial Auditor of every Territory has no successor in office, that he might, perhaps, have control of these records and could place them in a vault. And that is just why I want this Commission to make disposition of these records and avoid a law suit.

Mr. HARRIS. I can't see how putting them in a vault would help either North or South Dakota.

Mr. SCOTT. Now, suppose he did seal them up and put them in a vault; then, why, what authority would the bailee—would he ever have to surrender them to any person? He received them from Mr. Bailey, the treasurer, and put them in the vault. He said the Territory receives them from Mr. Bailey, and Mr. Bailey has given no authority to have them delivered up. Where would the authority come from afterwards? It seems to me that we are in just a little the best position, because the records have got to remain here. We have records here applying to the whole Territory, and which refer exclusively to South Dakota, which will never be of any particular use to us. The records of the institutions, vouchers on which money has been paid, which will be necessary for the continuing of the business of this institution, but when separated and existing as independent state governments, we will have no use for these. There are those which apply exclusively to South Dakota—charter of the city of Yankton, or any city you have in South Dakota. Then, again, we have documents of similar character relating to similar institutions in the North, for which you have no use whatsoever; and special charters and special acts applying to the North.

If you desire copies of all these, let copies be made. Of the records which relate to both, and which all the Territory is interested in, and must have copies, let copies of these be made, and then let us decide whether we shall have the copies or you, and that North Dakota shall pay half and South Dakota pay half. I don't see that we can arrive at any other understanding. It seems to me to be the common sense view.

Mr. NEILL. There is a point here we must determine and that is whether or not we are going to make any disposition of these records. We may discuss how we will do it, and we can discuss whether we will do it at all or not. But to bring this matter before the Commission I wish to offer the following resolution:

Resolved, That disposition of the public records of the Territory of Dakota be made with the idea of starting out two new States in public business.

Mr. KELLAM. I would say——

The motion is seconded.

Mr. CALDWELL. I would say there is upon the Files of this Commission a resolution covering this matter which is upon the table for consideration.

Mr. NEILL. This is simply whether we are going to do anything with the records or not.

Mr. HARRIS. Will the Clerk read the former resolution.

The Clerk read the resolution as follows:

Resolved, That any agreement hereafter arrived at by this Commission relative to the records of the Territory of Dakota shall be reported by the committees from North and South Dakota to their respective Conventions, with the recommendation that the same be made a part of the Schedule or Ordinance to be submitted with the proposed Constitution for ratification by the people of North and South Dakota respectively.

Mr. SCOTT. Is it not proper that we should do that? We don't want any question to arise. We don't want any question to arise but what North Dakota will pay half.

Mr. NEILL. This is the point, whether we are going to make any disposition of these records. Settle that and then the manner or pay will come up very naturally.

Mr. HARRIS. The Omnibus Bill says we shall dispose of them.

Mr. CALDWELL. It is a question, what shall be regarded as "disposition."

Mr. PURCELL. In order that the State of North Dakota can-

not take any advantage by reason of the bodily presence of the records here, it will have to be regarded that these records are not the property in any sense by reason of their being here, of the State of North Dakota.

Mr. PRICE. We do not contend that.

Mr. CALDWELL. And the observation of Mr. SCOTT on the other side, that there is some advantage in favor of North Dakota, by reason of the records being at the Capital of North Dakota, it seems to me might be said as a matter of advantage, the fact that the officers in charge, or at least a considerable majority of these records, are in possession of citizens of South Dakota; and I make the point, that so far as these records are concerned in order to prevent anything like a snatch upon the books of this Territory, that they must be regarded as remaining in the possession of the officers—of the respective officers—and if there is any different disposition, if there is to be a transcription, then it is as necessary for North Dakota to have a transcription as it is for South Dakota to have a transcription.

Mr. PRICE. That is to be decided further on.

Mr. KELLAM. Your views, of course, seem to be a little advanced from most of ours. Will you just state what in your judgment this Commission should do with reference to these records?

Mr. CALDWELL. My judgment as to what this Commission should do in regard to these records is that there shall be transcribed copies made of such as are necessary in order that the two States may begin business.

Mr. KELLAM. What would you recommend be the action in regard to those not wanted?

MR. CALDWELL. That such portion of the records as might be required by the representatives of North Dakota, as essential to the establishment of business—we say of the State of North Dakota—that that part should be transcribed for their use. That such portion of the Territorial records as are necessary for the use of the Treasurer of South Daokta, as may be determined upon to be necessary by the Commission from South Dakota, should be transcribed and turned over to them, and that the original records should remain in the possession of the Territorial officers until the respective States take steps in regard to them. And here they would naturally want to know whether it was definitely transcribed or not. "And until said State officers are elected and qualified under the provisions of each Constitution, and the States respect-

ively are admitted into the Union, the Territorial officers shall continue to discharge the duties of their respecttve offices in each of said territories."

Mr. PRICE. Certainly, a man could not enter upon the discharge of the duties of an office until qualified. I want to offer the following as a substitute to the one offered by Mr. NEILL:

Resolved, That it is the sense of this Joint Commission that the Commission should make disposition of the records, archives and books of the Territory, as provided in section six of the Enabling Act; that they determine what records each of the new States should have, and when a final disposition thereof should be agreed upon an agreement shall be drawn and incorporated in the Schedule and Ordinance of the Constitution of the States of North Dakota and South Dakota and submitted to the people for ratification or rejection.

Mr. BROTT. I second that motion and move the adoption.

Mr. SCOTT. Will the gentleman please read the resolution again?

Mr. PRICE read as follows.

Resolved, That it is the sense of this Joint Commission that the Commission should make disposition of the records, archives and books of the Territory, as provided in section six of the Enabling Act; that they determine what records each of the new States should have, and when a final disposition thereof should be agreed upon an agreement shall be drawn and incorporated in the Schedule and Ordinance of the Constitution of the States of North and South Dakota and submitted to the people for ratification or rejectment.

Mr. KELLAM. The question is upon the adoption of that resolution. That should be considered, gentlemen, in connection with the resolution offered by Mr. Camp.

Mr. CALDWELL. "Resolved, That it is the sense of this Joint Commission that the Commission should make disposition of the records, archives and books of the Territory, as provided in section six of the Enabling Act; that they determine what records each of the new States should have, and when a final disposition thereof should be agreed upon an agreement shall be drawn and incorporated in the Schedule and Ordinance of the Constitution of the States of North Dakota and South Dakota and submitted to the people for ratification or rejection." Now I submit that this resolution springs really from a different construction of the provisions of section six, but I will call attention to what I regard as the difference. This resolution says, "It is the sense of this Joint Commission that the Commission *do make disposition* of the records." Now the end of the act says that they *shall agree* upon a disposition of the records. My point is this, that the Commission

has not the power to absolutely take and convey from the Territorial officers of this Territory the absolute right and title to the possession of these records by the said officers. The point is this, that we shall consider and agree among ourselves upon a basis, and that that agreement shall be final only when it is ratified by the States, as States. The point I have maintained all along is that the disposition of the records as under the provisions of section six must be made by the States; and that whatever we do is merely advisory to these respective States, with no other validity than this, that these gentlemen having been appointed for this special purpose have duly considered all the matters pertaining to the records; that they were either present where the records were kept or had an opportunity to examine them and they ought to know what ought to be done; and that we are merely the committee of our respective sections.

Mr. PRICE. How will these States proceed to do business without having records?

Mr. CALDWELL. So for as transcription is concerned any validity which that transcription can have must be simply by consent, and that if any person should attack them, nobody could take and show they possessed any binding force. The only thing that can give legality to the transcription of the records of this Territory for the use of the officers of the respective States, is the action of the States themselves through their law making power.

Mr. PRICE. Let me ask you, supposing, as we contemplate, this matter is incorporated in the Schedule and Ordinance of the Constitution and submitted to a vote of the States. Does not that give it the required validity? I think the voice of the people is as strong as anything.

Mr. PURCELL. When this matter was up on Mr. CAMP'S resolution it was new, and I was of the opinion this matter would have to be referred to the respective States to be dealt with; but since that time, in reading over the entire act from beginning to end, it seems to me the course the United States intended was that the Territory should divide, and that the divided portions should take on statehood. Now, to effect that, required the appointment of Commissioners of the respective Conventions to meet here and agree upon certain things. It directs that this Commission, who not only agree upon the public records, but it also directs that we shall agree upon a division of the property. If the position of Mr. CALDWELL is well taken, the agreement we

make here with reference to the indebtedness and apportionment of the property is of no validity, because, as he says, if we do agree we must wait until the Legislature ratifies it. That is not my construction of section six, because section six says, "after the appointment of the different Commissions it shall be their duty to assemble at Bismarck, the present Capital of said Territory, and agree upon an equitable division of the property." Now, do you say, when we agree upon an equitable division of the property, that our agreement is to be ratified by the Legislature?

Mr. CALDWELL. I do most certainly, and it is the only thing they could provide that shall be taken to give validity, by the action of the people. There is no reference whatever—most certainly, to the agreement which we make respecting the territorial debts and liabilities. Then go to work and make a special provision and incorporate that in each of the State Constitutions and each of the said States obligates themselves to pay the same as it had been concurred in by each State respectively. Most certainly an expression in regard to one point is execution in regard to the rest. While I am no lawyer, I have still managed to pick up, that as a matter of jurisprudence and the fact that it makes that provision with reference to such an agreement as we are arriving at, concerning the debts and liabilities, strengthens my decision very materially that such an agreement as we arrive at regarding the separation of the records of this Territory, that the records, those which we have undertaken to divide, to dispose of, must remain at Bismarck until an arrangement for their final and ultimate and binding disposition is made by the two States. There is one provision in there in regard to what we shall arrive at concerning the debts and liabilities, and there is another regarding the agreement which we may arrive at concerning the archives, books and records. And as I said at the beginning of the consideration of this question when it was postponed the other day, it was fair to suppose that the injection of that requirement concerning the records and books remaining at Bismarck was for the purpose of contravening what might possibly be the result of any of the acts of the Convention at present in session at Sioux Falls, in regard to section twenty-eight of the Schedule and Ordinance of the Constitution of 1885. Section twenty-eight is precisely in the language of this provision. Section twenty-eight reads as follows:

SEC. 28. All the existing archives, records and books belonging to the Territory of Dakota, shall belong to, and be a part of the public records of the State of Dakota, and be deposited at the seat of government of the said State with the Secretary of State.

Mr. PRICE. You don't suppose they would do anything of that kind.

Mr. CALDWELL. I don't believe it was written in by the author of the bill, for the reason that the author of the bill, as I understand, was one of the expectant senators of the State of South Dakota, and he went to work, as I believe—in section five was a suggestion of his part of the original draft of the bill, but that somebody suggested the introduction of this portion, section five of which I speak, in order that those records might remain here. Otherwise they might have been removed to the seat of Government of South Dakota. And the more I consider the question, the more I feel that so far as the records, so far as the records, the books are concerned, that they are no more a question—no more to be regarded as the property of North Dakota than of South Dakota, and that any arrangement which we may arrive at will have to be taken and given validity by the action of our respective States.

Mr. HARRIS. Mr. CALDWELL said before, the disposition would be to make two copies of these records; that will incur a liability, and this is a liability that will have to be assumed by those two States, which these Conventions will have to submit to the people and have it voted upon, and when it is voted upon it is obligatory upon the Legislature to pay that liability—to pass laws providing for the payment of that liability. But I don't believe the authors of this Omnibus Bill ever intended to place these two States in the position which Mr. CALDWELL would place them, and I don't believe it is necessary for us to go to the expense of making two transcriptions of these records. I believe a certified copy of these records is just as good as the original, and it is very little moment which party has the original and which has the certified copy. I believe when this Commission has arrived at a disposition of these records that will enable the two States to start off in a business like manner, and put that into the Schedule of their Constitution; if it is adopted it gives it all the validity that is necessary; and all that is necessary is for the Legislatures of the respective States to provide for the payment of the liability incurred by this disposition.

Mr. CALDWELL. In any event, it seems to me anything like a settlement of this question would not be advisable at this time, even to the adoption of any of the resolutions offered, for the reason that suggestions of one kind and another, particularly in reference to the distribution of such property as pertains to public institutions, has been held in abeyance here; and so far as I am concerned, I am ready to go to work. I am just as anxious this should be held in abeyance, if any advantage there may be if they be held in abeyance, as well as other questions voted in abeyance here.

Mr. PRICE. Every gentleman of this Commission ought to understand this, that nothing is binding here until the final agreement is made, when each member of this Commission must sign it.

Mr. CALDWELL. And, Mr. CHAIRMAN, I ask that this be kept in mind, that if that resolution be adopted, what does it require—to do away with each a majority vote of both sections? It stands then as the action of this Commission. It is clinched as the action of this Commission. So far as I am concerned, I am ready to clinch.

Mr. NEILL. It was simply intended to do this business when we get ready. I simply want to know what the opinion of this Commission is with regard to section six.

Mr. SCOTT. I should say this matter has been brought up entirely at the suggestion of the CHAIRMAN of your Commission, suggesting it was proper we proceed to do something with the records. If the South Dakota gentlemen want to go ahead and consider this question, and come to some conclusion or agreement on it, why we are ready to do so—at least I am.

Mr. McGILLYCUDDY. We are ready.

Mr. PURCELL. I stated I was unfamiliar with the question, and wanted time to consider it; but I have changed my mind, that this Commission has the right to make disposition of these records—is to agree here upon what disposition shall be made. And, feeling as I do, the resolution offered by Mr. PRICE seems to me, to bind us to nothing—that it is the *judgment* of this Commission we have a right to make disposition.

Mr. HARRIS. Take what time is wanted; we are ready to vote at any time.

Mr. SCOTT. You, gentlemen, are away from home, and we are not to a day or a week, and if you want to take some time, all

right. It is not to our interest to urge anything along unless you are anxious to have it determined. The only difference I can see between Mr. CAMP'S resolution and this of Mr. PRICE, he says, "Resolved, That it is the sense that we do dispose;" Mr. CAMP says, "in case we agree upon a disposition, it shall be done so and so." This says we agree to determine upon some disposition, and that is the only difference I can see between the two resolutions.

Mr. PURCELL. If we go ahead and make this disposition and anybody is injured, an injunction can be obtained; and if our action is null and void, no harm is done.

Mr. NEILL. What I want to know is if this is our duty or not. Mr. PURCELL says he believes it is obligatory on us to agree, and that is what I say, and said all the time.

Mr. McGILLYCUDDY. That is the first time I have heard you say so.

Mr. CALDWELL. Then you have not had your ears open. The Stenographer's records show that we have never talked anything other than that we should agree, although I have opposed the proposition that we should make a disposition settled, final and absolutely decisive. I cannot see our power to do it.

Mr. PRICE. We are not going to do it. We will submit it to a greater power than we are.

Mr. CALDWELL. Then we take and assume as is assumed by this resolution, a power that is not possessed. We say "It is the sense that we should make disposition."

Mr. NEILL. That is what the law says.

Mr. CALDWELL. No, sir.

Mr. PRICE. You can put the word "agree" in and we will all vote for it.

Mr. HARRIS. I wish to call your attention to the fact it does not say we shall make disposition of the public indebtedness.

Mr. CALDWELL. Certainly not.

Mr. HARRIS. We only say that agreement, ratified by the people, places the Legislature in a position where they have to do it, and that is all we want.

Mr. CALDWELL. Exactly. And I have not maintained any other thing. There is a very grave difference between our acting here in an advisory capacity and our acting here as the final arbitrator of the question.

Mr. PRICE. The difference between you, Mr. CALDWELL, and

I, is that I want to fix it here so the States can commence business.

Mr. HARRIS. The Omnibus Bill sends us here to be the final arbitrators.

Mr. KELLAM. I want to suggest the Stenographers cannot get any kind of a statement in such a meeting as this.

Mr. ELLIOTT. I move we adjourn until 2 o'clock.

Mr. KELLAM. I want to say a word. I don't like any of these resolutions, and I don't mean to be hypercritical. I think this, all there is between us grew out of heated expressions. I would not be in a rush to resolve it is the sense of this Commission to do just what the Omnibus Bill says we shall do. Now, a resolution saying it is the sense of this Commission we do that, don't amount to anything.

Mr. PURCELL. It keeps up a discussion.

Mr. KELLAM. Our resolution ought not to be stronger than the Omnibus Bill. A resolution covering an important matter should be carefully drawn, and I have the same opinion as has been expressed by Messrs. PURCELL and PRICE. We want to know what the judgment of this Commission is upon the question. There is not an agreement. My judgment is that it is the province of this Joint Commission in execution of the duty imposed upon us by act of Congress, under which this Commission is created, to provide for copies of such public records as will, in the judgment of this Commission, be required and necessary for the proposed States of North Dakota and South Dakota to inaugurate and continue such States respectively, in their several departments; that an agreement be made by this Commission as to disposition of both original and copies. Then attach to that the resolution of Mr. CAMP, and that resolution be reported to the Convention, incorporated into the Schedule and submitted to a vote of the people.

Mr. PURCELL. I don't see how it differs.

Mr. KELLAM. This resolution says "This Commission shall agree upon a disposition." That is precisely the language of the Omnibus Bill. If we vote it down, we simply say we won't dispose of the duty imposed on us. If we adopt it we simply state in general terms, a repetition of what the Omnibus Bill says.

Mr. PURCELL. Of course, there is a matter to decide what the Omnibus Bill is.

Mr. KELLAM. Mr. CALDWELL will hardly say that a resolu-

tion, exactly repeating the language of the Omnibus Bill, is a proper resolution—if an exact copy of the Omnibus Bill is presented here, he would vote against it. We have not taken one step in the direction of what our duties are. We have simply stated we shall do what the Omnibus Bill says we shall do. The language of the resolution is precisely the language of the Omnibus Bill. The simple point is not there, how shall we dispose of that duty —how far does it go? That resolution, either adopted or rejected, does not help out; it merely says, it is the judgment of this Joint Commission that we discharge our duties under the Omnibus Bill.

Mr. PRICE. That is where the discussion comes.

Mr. KELLAM. Then will the Commission adopt one or the other. When we in general terms repeat the precise language of the Omnibus Bill, it does not help us at all. We might just as well say this: The Commission having met here we will discharge our duties under it, as to say, we will agree to a disposition of the public records. If there is a difference of opinion as to what that duty includes, how executed, than it seems to me some action of this matter looking in that direction will amount to something. If we simply adopt a resolution reading the exact language of the Omnibus Bill I don't think it amounts to anything. I will offer the following:

Resolved, That it is the judgment of this Joint Commission that in execution of the duty imposed upon this Commission by Act of Congress under which this Commission was created, that this Commission should provide for copies of such public records as will in the judgment of this Commission be required and necessary for the proposed States of North Dakota and South Dakota to inaugurate and continue such States respectively, in their several departments; that an agreement be made by this Commission as to disposition of both original and copies.

Mr. CAMP offered the following:

"Any agreement hereafter arrived at by this Commission relative to the records of the Territory of Dakota shall be reported by the committees from North and South Dakota to their respective Conventions with the recommendations that the same be made a part of the Schedule or Ordinance to be submitted with the proposed Constitution for ratification by the people of North and South Dakota respectively."

Mr. PRICE. That it be made a part of the Schedule and Ordinance?

Mr. KELLAM. That such agreement adopt the resolution of Mr. CAMP, and shall be reported by the committees from North and South Dakota to their respective Conventions, with the recom-

mendation that the same be made a part of the Schedule and Ordinance, to be submitted to the people of North and South Dakota respectively.

Mr. PRICE. I can't see any difference between the resolution of mine. I am perfectly willing. I will vote on that.

Mr. KELLAM. Mr. NEILL's resolution says we shall make disposition.

Mr. NEILL. I don't care for my resolution.

Mr. HARRIS. I think——

Mr. KELLAM. I want it done with deliberation. How would it be for two or three gentlemen during the recess, to formulate what seems to be the prevailing idea with reference to these records, and report it to this afternoon's session?

Mr. ELLIOTT. I think it would be a good idea, and I would make a motion that the Chair appoint a committee of three, and formulate a resolution and present it to this Commission at its next meeting upon this subject.

Mr. McGILLYCUDDY. And that the Chairman be on the committee.

Mr. ELLIOTT. I agree to that.

Mr. HARRIS. I second the motion.

Mr. KELLAM. As many as are of the opinion this motion should prevail, say aye; opposed, no.

The motion is carried.

Mr. HARRIS. Our Convention meets at 2 o'clock; important matters, and I don't like to be away.

Mr. SCOTT. Suppose we have a meeting at 8 o'clock to-night.

Mr. HARRIS. I have another meeting that would prevent my meeting from 8 to 9.

Mr. KELLAM. Could we adjourn until a later hour this afternoon?

Mr. HARRIS. I think by 3:30 o'clock.

Mr. SCOTT. That is just the trouble with me.

Mr. McGILLYCUDDY. There ought to be some provision made. I think a mistake has been made by placing these gentlemen on committees. We are entirely free from committee work.

Mr. HARRIS. That does not relieve us from the fact that we are on committees.

Mr. PURCELL. It was at our request that some of us went on committees.

Mr. ELLIOTT. So far as we are concerned, we are materially

interested in the acts of our Convention. We are interested in the reports of the judiciary and legislative apportionment committees. Now, so far as I am concerned, there is no man to represent my county in that Convention. Other gentlemen are in the same condition. Now, if you gentlemen could give us a little more time it would be a great accommodation to us and we would feel a great deal better over it. We are afraid our committees will report before we get through. I see by this morning's paper that a number of committees are to report next Tuesday. We are interested in these reports, just the same as you are interested in the proceedings of your Convention. Of course, you have more work to do than our Convention has to do; but, at the same time, we are just as much interested as you are in yours. Now, so far as we are concerned, we are in this situation: supposing we get home to our Convention, and what is done is done contrary to the wishes of our constituents, they will say, you had no business to go up on that Commission. We are interested in these matters just the same as you are, and I would ask that you give us all the time you can so we can get through as soon as possible.

Mr. McGILLYCUDDY. We are here sure.

Mr. ELLIOTT. We were relieved of the duties of the Convention and accepted this.

Mr. PRICE. We have a recess over Sunday. Want to see the prize fight.

Mr. KELLAM. I will state that I think it would be the same to the gentlemen of North and South—to their interest that we give more time to this, and it is suggested we now adjourn until Monday morning at 10 o'clock. They will, in the meantime, ask the Convention to give us the entire time until we finish.

The CHAIRMAN. Gentlemen, this Committee, the appointment of which is imposed upon the chair. Have you any suggestions?

Mr. PURCELL. We suggest Mr. SCOTT on our side.

Mr. ELLIOTT. I think we had better appoint two on our side.

Mr. McGILLYCUDDY. Might appoint as the third part, Mr. CALDWELL.

Mr. CALDWELL. Of course, I cannot be expected to furnish the necessary discrimination, but Major KELLAM has stated precisely what would be my view about it.

Mr. KELLAM. In view of the last expression from Mr. CALDWELL, the chair will appoint Mr. CALDWELL.

Mr. PRICE. I move we adjourn until 10 o'clock Monday morning.

The motion is seconded and carried, and

Commission adjourns.

SIXTH DAY.

BISMARCK, *Monday, July 22, 1889.*

The Commission met at 10 o'clock a. m.

All the members of South Dakota Commission present; Messrs. Spalding, Camp, Griggs and Scott of the North Dakota Commission absent.

In the absence of Mr. CAMP, Mr. HARRIS takes the Chair.

Mr. CALDWELL. This is prepared after a consultation with Mr. SCOTT of North Dakota, and it was arranged by joining the resolution offered by Mr. KELLAM with the one previously offered by Mr. CAMP, with such changes in the phraseology as was necessary.

Resolved, That it is the sense of this Joint Commission that in execution of the duty imposed upon it by the Act of Congress under which it was created relating to the disposition of the public records, it should provide for copies of such records as will, in its judgment, be required and necessary for the proposed States of North Dakota and South Dakota to inaugurate and continue such States respectively in their several departments, and that an agreement be made by this Commission as to the desposition of both original and copies, and that such agreement shall be reported by the committees from North Dakota and South Dakota to their respective Conventions, with the recommendation that the same be made a part of the Schedule and Ordinance to be submitted with the proposed Constitution for ratification by the people of North Dakota and South Dakota respectively.

Mr. PRICE. I suppose it was agreed upon that each section should bear half the expense.

Mr. CALDWELL. That is to be arranged in the recommendation to the respective Conventions.

Mr. PRICE. That is all right—so it is understood. Mr. CHAIRMAN, I move the adoption of the resolution.

Mr. PURCELL. There is no quorum on the other side, but I presume there is no objection.

Mr. HARRIS. I think that will be satisfactory to everybody.

Mr. KELLAM. Mr. CHAIRMAN: This matter has been pretty thoroughly discussed, and it seems to be the opinion of all that this is, substantially, the judgment of all. I move that a committee of two from each side of this Commission be appointed, whose duty it shall be to examine and recommend to the Commission what records should be copied under the provisions of this resolution.

Mr. HARRIS. That motion receive a second?

Mr. ELLIOTT. I second that motion.

Mr. KELLAM. I want to say in regard to this motion now, I thought if there was somebody here who could agree upon that, they could be at work as soon as we adjourn. We cannot do very much at this session.

Mr. PURCELL. Does your motion limit the number?

Mr. KELLAM. That is the idea I had—I am not particular. Would you have it different?

Mr. PURCELL. Mr. HAYDEN is better qualified than any one of our Commission.

Mr. KELLAM. There would be no objection to Mr. HAYDEN working with the committee. I think the records would, perhaps, be better with the help that is made from the Commission.

Mr. HARRIS. I think the Assistant Secretaries can do a good part of the work.

Mr. PRICE. Let them have such assistance as they want.

Mr. KELLAM. They doubtless would have to select different parties. Would there be any objection to acting upon this motion, and then at any time you can make a selection so they can be at work.

Mr. SANDAGER. Do you suppose the business members of our committee will come here direct from the train?

Mr. PURCELL. I think that they will.

Mr. SANDAGER. I don't think until they come here we ought to take any action.

Mr. HARRIS. I think there will be no trouble about this.

Mr. KELLAM. We might adjourn then, until afternoon. Of course, with no quorum here on your side we can do no business, and we might as well relieve the stenographers, and we might,

however, discuss matters, and we can do it in an informal way without making a record of it.

Mr. HARRIS. I think that would be well, as there can be no business done.

Mr. PRICE. Then discuss the condition of the Territorial Library.

Mr. HARRIS. I was going to say——

There being no quorum present of the North Dakota Commission, the Commission had an informal discussion on various matters, without having a record made.

After discussion the Commission adjourned to meet at 2 o'clock p. m.

Commission called to order at 2 o'clock p. m., by Mr. CAMP.

All South Dakota members were present. All of the North Dakota Commission were present except Mr. GRIGGS.

Mr. CAMP. I believe there was a sub-committee appointed at the last meeting, to report to this Commission. That will be in order. The Secretary will please call the roll.

Mr. HAYDEN called the roll. All South Dakota members present. Mr. GRIGGS of the North Dakota Commission was absent.

Mr. HAYDEN then read the following report:

Resolved, That it is the sense of this Joint Commission that in execution of the duty imposed upon it by the Act of Congress, under which it was created, relating to the disposition of the public records, it should provide for copies of such records as will, in its judgment, be required and necessary for the proposed States of North Dakota and South Dakota to inaugurate and continue such States respectively in their several departments, and that an agreement be made by this Commission as to the disposition of both original and copies, and that such agreement shall be reported by the committees from North Dakota and South Dakota to their respective Conventions with the recommendation that the same be made a part of the Schedule and Ordinance, to be submitted with the proposed Constitution for ratification by the people of North Dakota and South Dakota respectively.

Mr. CALDWELL. I would say it is the resolutions offered by Mr. KELLAM and Mr. CAMP, with such changes as was necessary. I would move the adoption of the report.

The motion is seconded.

Mr. CAMP. You have heard the motion, gentlemen. The roll will be called.

The roll was called and all members voted aye, except Mr. GRIGGS, who was absent.

Mr. CAMP. Under the rule the resolution is adopted.

Mr. PRICE. I move a committee of two be appointed by this Commission—be appointed to report to this Joint Commission how the records shall be divided.

Mr. CALDWELL. And what is necessary to be transcribed?

Mr. PRICE. Yes.

Mr. CAMP. In carrying out this resolution?

Mr. PRICE. Yes, sir, and the cost of the same. Motion is seconded.

Mr. SCOTT. Would it not be better to make it a committee of two from each side?

Mr. PRICE. I am not particular. The clerks can go with them.

Mr. CAMP. The Stenographers have that motion, but perhaps it would be as well to have it in writing.

The resolution was read as follows:

Resolved, That a committee of two, one from each Commission, be appointed to examine and report to the Joint Commission what books and records it will be necessary to transcribe, and to also report the probable expense of the same.

Mr. CAMP. You have heard the motion. Are there any remarks? If not, the Secretary will call the roll.

All members present voted in the affirmative. Mr. GRIGGS was absent.

Mr. CAMP. Under the rule the motion is carried. I will appoint as that committee, from South Dakota, Mr. CALDWELL, and from North Dakota, Mr. HARRIS.

Mr. HARRIS. I suggest that you can excuse us, and we can go at the business.

Mr. CAMP. You are excused.

Mr. SCOTT. I would suggest that we dispose of the record part of the business—as to who shall have the original and who shall have the copies. I think, as soon as this Commission determines that, then we will be in a position to definitely decide the matter of public records, and then we will be enabled to finish any other branch of the subject. I make a motion to that effect.

Mr. PRICE. I second that motion. I can speak for myself, and say, as far as I am personally concerned, I don't care how these records are divided, whether South or North Dakota has the

transcribed records. I should be perfectly willing to cast lots to see which should have one and which the other.

Mr. BROTT. I should say further, I would leave it to the North Dakota Commission to say who should have the originals.

Mr. SCOTT offered the following resolution:

Resolved, That we now proceed to determine as to who shall have the copies of the public records and who the originals, upon its being ascertained what records must necessarily be copied.

Mr. CAMP. You have heard the motion; are there any remarks?

Mr. McGILLYCUDDY. I would like to ask Mr. SCOTT if that provides for disposition of all the records.

Mr. SCOTT. That is intended. I take it for granted South Dakota should have such records as pertain exclusively to South Dakota. Copies pertaining to both North and South should be made, and this resolution merely covered who would retain the originals and who should have the certified copies.

Mr. McGILLYCUDDY. Are there any records that do not properly pertain wholly to either North or South Dakota, and still that will not be necessary to copy?

Mr. SCOTT. I presume that remains for this Committee to determine.

Mr. SPALDING. It seems to me it would be well to defer action on your resolution until the Committee looks up the records, and report how many and what they are. I don't know what condition they are in. If they are in a good condition it is one thing, and if in a poor condition it might be another.

Mr. McGILLYCUDDY. I don't think that motion fully covers it. There are some of the records that do not pertain wholly to either side, and still there are some not necessary to copy.

Mr. CALDWELL. It seems to me it would be better to let this committee report what the condition of the records may be, as to the necessity for transcription, etc., and after that committee reports this matter suggested by Mr. SCOTT'S motion would come up, and the Commission would have such information as it desires to have.

Mr. SCOTT. Of course it is immaterial to me. It only applies to such records as are copied, what we shall do with them, who shall retain the original and who have the certified copy. But it is immaterial to me.

Mr. CALDWELL. I would move the consideration of this

resolution be deferred until after the report shall be made by the special committee appointed to examine the records.

The motion was seconded.

Mr. CAMP. You have heard Mr. CALDWELL'S motion, the Clerk will call the roll.

The roll was called and those voting in the affirmative were:

North Dakota—Messrs. Camp, Harris, Purcell, Sandager, Spalding—5.

South Dakota—Brott, Caldwell, Elliott, McGillycuddy, Neill—5.

Those voting in the negative were:

North Dakota—Mr. Scott.

South Dakota—Messrs, Kellam and Price.

Mr. Griggs being absent.

Mr. CAMP. Under the rule the motion is carried, and the resolution is laid on the table awaiting the report of the committee.

Mr. KELLAM. Another item I suppose we should dispose of would be the Public Library; and if no gentleman has a plan or proposition looking to the division of that, and if it seems to be the judgment of the Commission, we can dispose of it more intelligently by having some sort of an idea of its value. Would it not be necessary, or at least desirable, to have a committee appointed to examine the library and report what, in their judgment, is its value? I made inquiry of the Secretary this morning, and he says he has no list or inventory of the books, and don't know what is there except that all is there the Territory has; that he is making an effort through his office to fill up the series of reports or contributions from different States, and is occasionally receiving accessions to the library, but has no foundation for making an estimate by number of volumes or their value.

Mr. NEILL. The Secretary of State?

Mr. KELLAM. Yes.

Mr. CALDWELL. He is the Librarian.

Mr. KELLAM. I don't make it as a motion, but as a suggestion to see whether any gentleman has any different views of the easiest way to get at that matter.

Mr. CAMP. According to all reports the Library has already been sufficiently divided.

Mr. KELLAM Have to be divided again.

Mr. CALDWELL. Yes, and separated.

Mr. PURCELL. If you gentlemen of the South should hap-

pen to get it, I would advise you to go to the Library at Yankton and you will find the major part of it, with Tripp & French.

Mr. PRICE. We will have to leave Tripp out, PURCELL, he is a Democrat.

Mr. NEILL. Do you mean to say a Democrat could not steal?

Mr. PRICE. He can, but he won't. I presume all the public documents supplied by the authorities at Washington could be very generally duplicated.

Mr. SCOTT. The Journals of the different States can be duplicated.

Mr. HARRIS. I think Mr. KELLAM'S way is the proper way to do this, find out the condition it is in and report to the Commission.

Mr. CAMP. Would it not be well to include copies of records that are here, the House and Council Journals compiled—that is, the Session Laws.

Mr. KELLAM. I have no objection to them.

Mr. PURCELL. I second the motion.

Mr. CAMP. You have heard Major KELLAM'S motion. If there are no remarks the Secretary will call the roll.

The roll was called, and all members voted in the affirmative.

Mr. CAMP. The motion is carried. Of how many shall the committee consist?

Mr. KELLAM. I think two would be sufficient. I suggest Mr. PRICE of the South Dakota Commission.

Mr. PRICE. I was just fixing that up. The majority suggest Major KELLAM on the part of South Dakota.

Mr. CAMP. And the North Dakota Committee suggest Mr. SCOTT'S name.

Mr. KELLAM. I would prefer you go on that Committe, Mr. PRICE.

Mr. PRICE. I would prefer you would, Major.

Mr. CAMP. Mr. SCOTT and Mr. KELLAM will comprise the Committee.

Mr. PRICE. I don't know but we ought to appoint a committee to examine and report to the Commission about any other property lying around loose. I don't know that there is any.

Mr. PURCELL. I suppose there is some property belonging to the militia.

Mr. CALDWELL. It might be in the Adjutant General's report. There is some little property connected with these head-

quarters—such as Railway Commission, Commissioner of Immigration, Superintendent of Schools, and there were lists sent out to the various officials who have charge of this kind of property, to make a return for the benefit of the Commission. I would say I received a telegram from the Secretary of the Railway Commission. I don't know what it takes me for—"Please ship furniture Railway Commissioner office to me at once."

Mr. HARRIS. I move—think the suggestion that a committee be appointed to look up this militia business a good one.

Mr. SCOTT. This includes a part taxed up to North Dakota for the Capital?

Mr. CALDWELL. Except what is in the office of the Commissioner of Immigration. By the way, there is a lot of it brought up here from Yankton that has not been included. A miscellaneous lot of stuff. Perhaps a sub-committee could make it a special matter and inform the Commission regarding it. I think Mr. PURCELL'S motion, making it a general motion in regard—we might make one, say in regard to the militia business and another in regard to the miscellaneous property.

Mr. HARRIS. I was thinking, if we could get committees enough the Commission could adjourn.

Mr. KELLAM. I would say, I think the second day we were here the matter of supplies of the officers' headquarters was suggested. Very little was known about whether they had any property that ought to be taken into account in this division, and our Secretary wrote letters to each one of these departments asking them to report what property belonged to the Territory they had in their several offices or under their charge, and we have, I think, responses from nearly all. I got four this noon in the mail. Some of them have little or none, others have some property. If the committee should wish these letters should be turned over——

Mr. PURCELL. And part of this furnish part of that incurred, any indebtedness incurred for furniture?

Mr. KELLAM. What property I had reference to was in the hands of the Adjutant General. I know he has a type writer and desk. I presume there are several officers whose headquarters have property of a similar character. That is what I had in my mind.

Mr. CALDWELL. I just asked Mr. Quinn, ex-Secretary of the Railway Commission with regard to what property that body

had, and he said it consisted of a desk and type writer. And none of that has been included. There is also some property in the office of Commissioner of Immigration.

Mr. SCOTT. There are probably two or three type writers there.

Mr. CALDWELL. I don't know, we have got a statement here.

Mr. SPALDING. My impression is I heard at the time it cost about $1,600 for the Immigration Commission. It is only an impression, however.

Mr. CALDWELL. There has not been any $1,500 or $1,600 put in that. I don't know how much it is.

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Mr. BROTT. Why not have it include the other property?

Mr. CAMP. I think, perhaps, they would have a good deal to do to find out just what property belongs to the malitia, and that would be sufficient for them. The Secretary will call the roll.

Mr. CALDWELL. This is all immaterial.

Mr. CAMP. If there is no objection we will vote *viva voca*, and roll call will be suspended. Those in favor of the motion will say aye; those opposed, no. The motion is carried unanimously. I will appoint Mr. SANDAGER and Mr. MCGILLYCUDDY as that committee.

Mr. KELLAM. I move the appointment of another committee whose duty it shall be to report what other property belonging to the Territory should be disposed of by this Commission, not covered by these appointments.

Mr. CAMP. Any choses in action.

Mr. KELLAM. Different property distributed around. Moveable property.

Motion is seconded, and carried unanimously. Mr. CAMP and Mr. NEILL appointed as such committee.

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Mr. CALDWELL. Mr. CHAIRMAN: It has been suggested to me by a gentleman, formerly a resident of the Territory, that there was an act passed by Congress granting, I believe, seventy-two sections of land to the Territory of Dakota for university pur-

poses; and whether it has been selected or not I don't know. I think there is a reference to the matter in the Omnibus Bill.

Mr. HARRIS. You don't refer to Ex-Governor ORDWAY?

Mr. CALDWELL. No, to Mr. FLANNERY.

Mr. SCOTT. While I think of it I will suggest—I have been informed there is $6,000 coming to the Territory from the Federal Government for military purposes. It would be well enough to investigate that matter and see whether or not it is a fact.

Mr. CALDWELL. Section fourteen of the Omnibus Bill: —"An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes are hereby vested in the States of South Dakota, North Dakota and Montana, respectively, if such States are admitted into the Union as provided in this act, to the extent of the full quantity of seventy-two sections to each of said States."

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Mr. CALDWELL. This is all immaterial.

Mr. CAMP. If there is no objection we will vote *viva voca*, and roll call will be suspended. Those in favor of the motion will say aye; those opposed, no. The motion is carried unanimously. I will appoint Mr. SANDAGER and Mr. MCGILLYCUDDY as that committee.

Mr. KELLAM. I move the appointment of another committee whose duty it shall be to report what other property belonging to the Territory should be disposed of by this Commission, not covered by these appointments.

Mr. CAMP. Any choses in action.

Mr. KELLAM. Different property distributed around. Moveable property.

Motion is seconded, and carried unanimously. Mr. CAMP and Mr. NEILL appointed as such committee.

Mr. CAMP. Mr. NEILL and myself then, will constitute that committee.

Mr. CALDWELL. Mr. CHAIRMAN: It has been suggested to me by a gentleman, formerly a resident of the Territory, that there was an act passed by Congress granting, I believe, seventy-two sections of land to the Territory of Dakota for university pur-

poses; and whether it has been selected or not I don't know. I think there is a reference to the matter in the Omnibus Bill.

Mr. HARRIS. You don't refer to Ex-Governor ORDWAY?

Mr. CALDWELL. No, to Mr. FLANNERY.

Mr. SCOTT. While I think of it I will suggest—I have been informed there is $6,000 coming to the Territory from the Federal Government for military purposes. It would be well enough to investigate that matter and see whether or not it is a fact.

Mr. CALDWELL. Section fourteen of the Omnibus Bill: —"An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes are hereby vested in the States of South Dakota, North Dakota and Montana, respectively, if such States are admitted into the Union as provided in this act, to the extent of the full quantity of seventy-two sections to each of said States."

Mr. SCOTT. Section fourteen says: "There are hereby vested in the States of North Dakota, South Dakota and Montana."

Mr. CAMP. Is there anything else we can do?

Mr. HARRIS. There may have been a portion of that land selected.

Mr. CALDWELL. It would not amount to anything. Nothing for us to determine. Each State would select its own. There is another matter that possibly ought to have an investigation made, and that is concerning existing accounts against the Territory, as for instance, there is a matter that was spoken of here some time ago, and I think it proper for this body to consider such an account as that of Mr. Long, for this Hand Books account of $1,500.

Mr. HARRIS. Three accounts from the Railroad Commission.

Mr. CALDWELL. This account of the artesian well business for the Yankton Hospital. If it is of that kind we might have before the Commission—have something like a definite report, so far as that can be found.

Mr. PRICE. Of that, $37 I didn't get.

Mr. KELLAM. I would make the committee of the unemployed members.

Mr. SCOTT. There will be another, I think, for something.

Mr. CALDWELL. I move a committee of two—one from each side—be appointed for the purpose of collecting information and classifying it regarding claims that may exist against the Territory, and claims in favor of the Territory.

Mr. PRICE. I move we adjourn until 10 o'clock Monday morning.

The motion is seconded and carried, and

Commission adjourns.

SIXTH DAY.

BISMARCK, *Monday, July 22, 1889.*

The Commission met at 10 o'clock a. m.

All the members of South Dakota Commission present; Messrs. Spalding, Camp, Griggs and Scott of the North Dakota Commission absent.

In the absence of Mr. CAMP, Mr. HARRIS takes the Chair.

Mr. CALDWELL. This is prepared after a consultation with Mr. SCOTT of North Dakota, and it was arranged by joining the resolution offered by Mr. KELLAM with the one previously offered by Mr. CAMP, with such changes in the phraseology as was necessary.

Resolved, That it is the sense of this Joint Commission that in execution of the duty imposed upon it by the Act of Congress under which it was created relating to the disposition of the public records, it should provide for copies of such records as will, in its judgment, be required and necessary for the proposed States of North Dakota and South Dakota to inaugurate and continue such States respectively in their several departments, and that an agreement be made by this Commission as to the desposition of both original and copies, and that such agreement shall be reported by the committees from North Dakota and South Dakota to their respective Conventions, with the recommendation that the same be made a part of the Schedule and Ordinance to be submitted with the proposed Constitution for ratification by the people of North Dakota and South Dakota respectively.

Mr. PRICE. I suppose it was agreed upon that each section should bear half the expense.

Mr. CALDWELL. That is to be arranged in the recommendation to the respective Conventions.

Mr. PRICE. That is all right—so it is understood. Mr. CHAIRMAN, I move the adoption of the resolution.

Mr. PURCELL. There is no quorum on the other side, but I presume there is no objection.

Mr. HARRIS. I think that will be satisfactory to everybody.

Mr. KELLAM. Mr. CHAIRMAN: This matter has been pretty thoroughly discussed, and it seems to be the opinion of all that this is, substantially, the judgment of all. I move that a committee of two from each side of this Commission be appointed, whose duty it shall be to examine and recommend to the Commission what records should be copied under the provisions of this resolution.

Mr. HARRIS. That motion receive a second?

Mr. ELLIOTT. I second that motion.

Mr. KELLAM. I want to say in regard to this motion now, I thought if there was somebody here who could agree upon that, they could be at work as soon as we adjourn. We cannot do very much at this session.

Mr. PURCELL. Does your motion limit the number?

Mr. KELLAM. That is the idea I had—I am not particular. Would you have it different?

Mr. PURCELL. Mr. HAYDEN is better qualified than any one of our Commission.

Mr. KELLAM. There would be no objection to Mr. HAYDEN working with the committee. I think the records would, perhaps, be better with the help that is made from the Commission.

Mr. HARRIS. I think the Assistant Secretaries can do a good part of the work.

Mr. PRICE. Let them have such assistance as they want.

Mr. KELLAM. They doubtless would have to select different parties. Would there be any objection to acting upon this motion, and then at any time you can make a selection so they can be at work.

Mr. SANDAGER. Do you suppose the business members of our committee will come here direct from the train?

Mr. PURCELL. I think that they will.

Mr. SANDAGER. I don't think until they come here we ought to take any action.

Mr. HARRIS. I think there will be no trouble about this.

Mr. KELLAM. We might adjourn then, until afternoon. Of course, with no quorum here on your side we can do no business, and we might as well relieve the stenographers, and we might,

however, discuss matters, and we can do it in an informal way without making a record of it.

Mr. HARRIS. I think that would be well, as there can be no business done.

Mr. PRICE. Then discuss the condition of the Territorial Library.

Mr. HARRIS. I was going to say——

There being no quorum present of the North Dakota Commission, the Commission had an informal discussion on various matters, without having a record made.

After discussion the Commission adjourned to meet at 2 o'clock p. m.

Commission called to order at 2 o'clock p. m., by Mr. CAMP.

All South Dakota members were present. All of the North Dakota Commission were present except Mr. GRIGGS.

Mr. CAMP. I believe there was a sub-committee appointed at the last meeting, to report to this Commission. That will be in order. The Secretary will please call the roll.

Mr. HAYDEN called the roll. All South Dakota members present. Mr. GRIGGS of the North Dakota Commission was absent.

Mr. HAYDEN then read the following report:

Resolved, That it is the sense of this Joint Commission that in execution of the duty imposed upon it by the Act of Congress, under which it was created, relating to the disposition of the public records, it should provide for copies of such records as will, in its judgment, be required and necessary for the proposed States of North Dakota and South Dakota to inaugurate and continue such States respectively in their several departments, and that an agreement be made by this Commission as to the disposition of both original and copies, and that such agreement shall be reported by the committees from North Dakota and South Dakota to their respective Conventions with the recommendation that the same be made a part of the Schedule and Ordinance, to be submitted with the proposed Constitution for ratification by the people of North Dakota and South Dakota respectively.

Mr. CALDWELL. I would say it is the resolutions offered by Mr. KELLAM and Mr. CAMP, with such changes as was necessary. I would move the adoption of the report.

The motion is seconded.

Mr. CAMP. You have heard the motion, gentlemen. The roll will be called.

The roll was called and all members voted aye, except Mr. GRIGGS, who was absent.

Mr. CAMP. Under the rule the resolution is adopted.

Mr. PRICE. I move a committee of two be appointed by this Commission—be appointed to report to this Joint Commission how the records shall be divided.

Mr. CALDWELL. And what is necessary to be transcribed?

Mr. PRICE. Yes.

Mr. CAMP. In carrying out this resolution?

Mr. PRICE. Yes, sir, and the cost of the same. Motion is seconded.

Mr. SCOTT. Would it not be better to make it a committee of two from each side?

Mr. PRICE. I am not particular. The clerks can go with them.

Mr. CAMP. The Stenographers have that motion, but perhaps it would be as well to have it in writing.

The resolution was read as follows:

Resolved, That a committee of two, one from each Commission, be appointed to examine and report to the Joint Commission what books and records it will be necessary to transcribe, and to also report the probable expense of the same.

Mr. CAMP. You have heard the motion. Are there any remarks? If not, the Secretary will call the roll.

All members present voted in the affirmative. Mr. GRIGGS was absent.

Mr. CAMP. Under the rule the motion is carried. I will appoint as that committee, from South Dakota, Mr. CALDWELL, and from North Dakota, Mr. HARRIS.

Mr. HARRIS. I suggest that you can excuse us, and we can go at the business.

Mr. CAMP. You are excused.

Mr. SCOTT. I would suggest that we dispose of the record part of the business—as to who shall have the original and who shall have the copies. I think, as soon as this Commission determines that, then we will be in a position to definitely decide the matter of public records, and then we will be enabled to finish any other branch of the subject. I make a motion to that effect.

Mr. PRICE. I second that motion. I can speak for myself, and say, as far as I am personally concerned, I don't care how these records are divided, whether South or North Dakota has the

future use, and make some disposition of the records that don't have to be copied. We keep dodging around.

Mr. GRIGGS. How would you ascertain that fact?

Mr. McGILLYCUDDY. The committee should know what should be copied to enable us to start in.

Mr. NEILL. I think the way to do business is to keep to our text. The committee has reported certain measures; what records are to be copied. It is simply necessary for this Commission to go on now and finish this work. Now we have something to work on, and I am in favor of keeping right on with this and finishing it.

Mr. PRICE. Why can't we agree to copy those recommended by the committee, and that the officers proceed to copy them—those that will be necessary?

Mr. HARRIS. We discussed this matter of corporation records, fully. The sixteen books relating to domestic incorporation records, we decided it would be necessary to have them copied. The only thing we are driving at now is the time when to copy. My impression is, if they are to be copied at all, the time to copy them is while we are copying the other books. The Secretary of the Territory, who is now in custody of the office, can put men to work and have these records copied now much more conveniently than he, or the Secretary of State, or someone else who may have the custody of this office. If it is necessary to copy these seventeen volumes and the ten volumes of foreign corporation records, I think we should make provision for their copying now. That this is what this Commission is for; and if we decide it is necessary to have them copied, that it should be done now.

Mr. CAMP. Mr. CHAIRMAN: The question in my mind is the question of *power*. I believe we are exceeding our power when we provide for the copying of any of these records but those which it is absolutely necessary to copy. So far I am willing to go; but I am not willing to strain our power any further, because we cannot here make an agreement as to copying these records which will be binding upon the States—upon either State.

Mr. PURCELL. The resolution contemplates we shall arrive at an agreement and submit it.

Mr. CALDWELL. It provides, also, we shall ourselves order the copying commenced.

Mr. PURCELL. Only those which are needed.

Mr. CAMP. My suggestion which I have now reduced to writing, was this:

Resolved, That all records pertaining exclusively to South Dakota be turned over to South Dakota; that all records pertaining exclusively to North Dakota be left at the Capital of North Dakota. That so much of all other records, not above provided for, be copied as South Dakota shall demand copies of; the expense of such copying to be borne equally by the two States. That the first Legislatures of North Dakota and South Dakota appoint a committee of three from each Legislature who shall meet at the Capital of North Dakota and divide the records as above provided, and for copying as above provided of any records as to which a majority of both committees cannot agree that they relate exclusively to South Dakota, and which the committee from South Dakota shall require to have copied.

Mr. McGILLYCUDDY. You provide in there for the disposition of those records not necessary to be copied? As Mr. CALDWELL explained, there is a large matter that does not apply to any section.

Mr. CAMP. I am willing to add, that all other records not copied and not pertaining exclusively either to North or South Dakota, shall be divided into lots determined by the committee.

Mr. KELLAM. Gentlemen, the question is still upon the adoption of the report of this committee.

Mr. PURCELL. It seems to me the resolution of Mr. CAMP was covered by the other resolution.

Mr. KELLAM. I guess you have come in since the passage of that resolution, Mr. GRIGGS?

Mr. HARRIS. He was here when the resolution was originally offered.

Mr. CALDWELL. Mr. CHAIRMAN: I move you that the committee to which was referred this matter of securing a list of the books and records, be requested to suggest to the Commission such books as are absolutely necessary should be transcribed in order that either State should be in possession of the originals or copies, in order that it may inaugurate business, and that it be requested to suggest an agreement as to distribution of other records.

Mr. CAMP. I second that motion.

Mr. PRICE. I second that motion, too.

Mr. KELLAM. Let us see what condition we are in. The question before the House is the adoption of the report of this committee. Do you offer your motion as an amendment?

Mr. CALDWELL. As a re-amendment of this report.

Mr. KELLAM. If it is a motion to recommit, of course, it will be in order.

Mr. CALDWELL. Yes.

Mr. KELLAM. The question is to recommit this to the committee, that they suggest in writing to this Commission the books and records that are necessary to be transcribed or copied, and furnished to each of the new States, in order to start the business of the States respectively.

Mr. CALDWELL. Together with the suggestion as to the distribution of other books and records not covered by this motion.

Mr. KELLAM. Gentlemen, this is now the question before the Commission.

Mr. SCOTT. Mr. CHAIRMAN: Now, we have a list of the proyerty which is necessary to make a disposition of. That list is before us. If it is recommitted we will have to go over it again. We can take up this, item by item, and say whether they are the only ones or not. We can see what copies it will be necessary to make a record of as we go over these items, and we can see what pertain exclusively to North or South Dakota, and what is not necessary to make disposition of. We can arrive at a settlement of the whole as soon as the sub-committee can, and then it will have to come back here again. If we come to a conclusion it is necessary to copy them, there is no question but what it will be ratified and accepted by the people; and I don't know what's the use of re-committing and having it come back to the Commission.

Mr. CALDWELL. Mr. CHAIRMAN: The report of this committee in its present condition is—merely states that there are in the Treasurer's office five cash books, and in the Auditor's office seven warrant registers, and such a matter. Now, there is not before this Commission and there could not have been before the committee anything without an examination. It seems wise that they should take some action as to which of those registers or cash books would be necessary in order that the States could be in position to go ahead with their business. And this the committee can take and examine, having had the light of this discussion, and very readily, it seems to me, suggest something that can be acted upon by this Commission.

Mr. NEILL. I am opposed to the re-committal of this report for the reason that we can much more readily dispose of the mat-

ter by keeping the report before us, and check up these matters by amendment, and dispose of them as we see fit under motion for adoption. The principle I am very much opposed to, and shall never vote for so far as the work of this kind can be completed and referred to our Conventions, and through them for ratification. I am willing to carry it out and take the responsibility for it, and I never want to go home to my constituents and be forever damned. I want to see these records disposed of now, according to our best judgment, and I am satisfied our people will be satisfied with the result. We have a list of all those different records. If we had gone on and discussed them, I venture to say two-thirds would have been disposed of now. Just so long as we keep discussing the matter in this Convention, we will never reach a conclusion. It has got to be brought down to a basis. Let us provide for what records must be needed immediately—those that are necessary to be copied can be copied, and the others can be disposed of now as well as by any future Legislature. I am opposed——

Mr. PRICE. I am not afraid of being politically damned, or anything else. But it seems to me it has been demonstrated that this cannot be straightened under the plan suggested by Mr. NEILL. Now, it seems to me that this resolution offered by Mr. CALDWELL is very plain, indeed; that it instructs this committee just what to do. Then we will be prepared to offer amendments to it. Their report will come in in such shape we can offer amendments to it. I believe that it is the business of this Commission to make disposition of these records. I don't think there is any tangible report there.

Mr. CALDWELL. Of course it has to be presumed that the committee that has actually gone and looked up these books, will have a better idea as to the wants involved in the matter of distributing them, than those who have not had such an examination.

Mr. PRICE. That is the point, and this committee was not certain as to what the idea of this Commission in regard to many things was, and to have gone to work and made a lot of suggestions here that the Commission could not have had before it, was clearly wrong. I think after having the matter discussed here, the purpose of my motion was merely that this committee, having in a sense been instructed by this Commission, could now go to work and definitely suggest that it would be still necessary that the original resolution should be carried out.

Mr. SCOTT. We have got the list of these books and we can inquire of you.

Mr. CALDWELL. I could not tell without further examination.

Mr. PRICE. When you make up your final agreement if it is incorrect it will have to be——

Mr. CALDWELL. The circumstances were these: That we could not go into the Treasurer's office until the meeting of this committee. We didn't understand then that we could have the time to examine and see that only certain records were necessary in order that the business of the States should be inaugurated.

Mr. CAMP. I certainly hope that the motion will prevail, because the matter having been discussed, the committee can agree upon it in good shape.

Mr. CALDWELL. Will the stenographer read the motion?

"I move you that the committee to which was referred this matter of securing a list of books and records, be requested to suggest to this Commission such books as are absolutely necessary should be transcribed in order that either State should be in possession of the original copies, in order that it may inaugurate business, and that it be requested to suggest an agreement as to distribution of other records."

Mr. PURCELL. That seems to be all right.

Mr. KELLAM. It seems to me the only difficulty that we encounter now, we encountered from the start, and it will be constantly with us—the original question as to what is the power and duty of this Commission in the distribution of the public records. It seems to me as a starting point we ought to determine whether, in our judgment, the duty imposed upon us by the Omnibus Bill is to make a complete distribution and agreement as to disposition of *all* the public records of the Territory; whether that imposition of duty is large, covering all the records of the Territory, or whether we propose to dispose of this question upon the ground of necessity, and not upon the ground that it is a duty imposed upon us by act of Congress. Mr. CAMP has suggested that he has grave doubts as to the power of this Commission to provide for the copying of any records at all; and that he only consents to it on the ground that it is a necessity in order to inaugurate the new State government, and to consent only so far as such necessity is apparent. My own judgment is that it becomes the duty of this Commission to dispose, by agreement, of this entire question of

the public records, just as much as of the entire question of any other public property. And if that should be the judgment of the Commission then, of course, we will not discharge that duty by simply providing for the immediate necessities of the new States. If it is the judgment of the Commission that what we do with reference to preparing copies of these records is simply the outgrowth of the necessities of the situation, then, of course, the more closely we confine ourselves within those necessities, the better and wiser it will be for us. But if we do it under the provisions of sections five and six of the Omnibus Bill, then I think we should go at it and dispose of the whole question. And it seems to me this is the fundamental question we should determine in our judgment before we can intelligently dispose of this question. If we don't, we will get a little too far, and then undertake to recede a little, and then, as we get into it further, recede again, and it will be working back and forth until we come to a conclusion upon the basis upon which we are acting. We ought to recognize the fact that we can violate our powers a little, and we can a good deal. I think brother CAMP'S notion is we have no legal power to make disposition of these records; but, from the necessities of the situation, we will go a little way beyond our power, but restrain ourselves as much as we can. In my own judgment, it is the duty of this Commission to provide for *all* these matters, and that it is the duty of this Commission to do so instead of deferring and leaving it to future legislators. I think we can do it as economically, intelligently and as legally. Still there is a doubt in both sections of this Commission as to what is our power with reference to these records under the Omnibus Bill, and it seems before we can intelligently pass upon these questions, that we should determine amongst ourselves how much power we have with reference to the distribution of these records, and whether that power to dispose involves the reproduction of the records.

The CHAIRMAN. The question is upon the motion of Mr. CALDWELL to recommit this report. Are you ready for the question? The Clerk will call the roll.

PURCELL, yes; Sandager, yes; Scott, no; Spalding, (absent); Kellam, no; Brott, no; Caldwell, yes; Elliott, no; McGillycuddy, yes; Neill, no; Price, yes. South Dakota four noes, three yes. North Dakota three yes, two noes.

Mr. KELLAM. The motion under the rule would be lost.

Mr. PRICE. I would like to have some gentleman go ahead and tell us how to get out of it.

Mr. KELLAM. My own judgment is that this motion should be recommitted, upon the basis that we all agree upon as the proper motion. The report of this Committee is indifinite as Mr. PRICE suggested. There is really nothing that a motion to adopt will confirm. The report is so indefinite that should we adopt it, I don't know what we would adopt. I am in favor of sending this back to this Committee for a more definite report and recommendation, but I am not in favor of referring it with the restricted instructions that Mr. CALDWELL'S motion covers.

Mr. CALDWELL. Mr. CHAIRMAN: Of course, any report made by this Committee, or what has been reported, could not be the definite action of this Commission. Between these two reports there will be certainly sufficient information—there would have been in the report—to bring the matter definitely step by step before the Commission, and if there was any suggestion of the committee which the Commission did not see fit to confirm, it could vote it down. If any way it seemed to restrict the powers of this Commission, it could be enlarged.

Mr. SCOTT. Why not dispose of our powers here, now? I have the opinion we have the power to make full disposition, and that it is necessary to make disposition of the records. We certainly can do it as well as the Legislature. For my part, I am in favor of taking this matter in hand and making full disposition of it.

Mr. PRICE. That is what I supposed we were disputing upon.

Mr. CALDWELL. There was nothing in my motion contrary to any such idea.

Mr. KELLAM. Then I didn't get the correct idea of the motion. I thought you said such papers and records as were absolutely necessary.

Mr. CALDWELL. That there should be a report of this Commission under the resolution as originally adopted, and that there should be, also, a disposition of those other records. Let the committee report what is regarded as necessary to copy, in order that the Commission might have before it the necessary information, and could definitely act and handle it, that this information should be before it, and my idea in making such motion was nothing but that.

Mr. PURCELL. I offer the following resolution:

Resolved, That we make a complete and certified copy of all the records in their respective departments.

Mr. PRICE. I want to offer an amendment.

Mr. PURCELL. Except those records pertaining exclusively to North Dakota or South Dakota.

Mr. PRICE. I will offer the following:

Resolved, That the report of the committee on disposition of public records be referred back to said committee with instructions to report to the Joint Commission what records should be copied, together with a suggestion as to what disposition should be made of other books, records and files in the several Territorial offices.

Mr. CALDWELL. That covers everything. I presume there are some matters in these offices that are not necessary to be copied for either State.

Mr. KELLAM. Mr. PRICE offers as a substitute to Mr. PURCELL'S resolution, the following:

Resolved, That the report of the committee on disposition of public records be referred back to said committee with instructions to report to the Joint Commission what records should be copied, together with a suggestion as to what disposition should be made of other books, records and files in the several Territorial offices.

The CHAIRMAN. The question is upon the adoption of the substitute. Are you ready for the question?

Question. Question.

Mr. KELLAM. The question is upon the adoption of the substitute. The clerk will call the roll.

Camp, yes; Griggs, yes; Harris, yes; Purcell, yes; Sandager, yes.

Mr. SCOTT. I would ask for information, whether this referring to this committee, whether it is to go with the idea, with the understanding that only those books will be recommended for copying for immediate use, or refer all the books that in their judgment will necessarily have to be copied, whether for immediate or ultimate use?

Mr. PRICE. That is my object, for immediate and ultimate use.

Mr. HARRIS. Everything that in the judgment of this committee, will have to be copied; and that we are to report all the books in our judgment will be necessary to be copied, books, vouchers, records, papers of all kinds; and also recommend the disposition of the balance.

Mr. SCOTT. I vote yes. Spalding, (absent); Kellam, yes; Brott, yes; Caldwell, yes; Elliott, yes; McGillycuddy, yes; Neill, yes; Price, yes. South Dakota, seven yeas. North Dakota, six yeas; one absent.

Mr. KELLAM. The next thing is the next committee that is ready to report. There are several other committees appointed—I don't recollect what they were. Have you any reports, Mr. SECRETARY?

The Committee on Miscellaneous Property submitted the following report.

BISMARCK, D. T., July 23, 1889.

TO THE JOINT COMMISSION. GENTLEMEN: Your committee to whom was referred the matter of listing the property belonging to the various Territorial offices beg leave to make the following report:

Public Examiner, North Dakota	$ 16 50
Territorial Veterinarian, as per statement	10 00
Railroad Commissioners, Watertown, South Dakota	45 00
Board of Health, South Dakota	.....
Board of Agriculture, North Dakota	.....
Board of Agriculture, South Dakota	.....
Adjutant General, as per statement, South Dakota	95 00
Commissioner of Immigration	175 00
Railroad Commission	150 00
Desks, third floor Capitol (old)	50 00
Treasurer's office—safe	500 00
Treasurer's office, scales, measures, etc	300 00
Auditor's office, type writer and caligraph	110 00
Secretary's office, desk and safe	130 00
Board of Pharmacy	14 00
Superintendent of Education, North Dakota	187 00
Superintendent of Education, South Dakota	125 00
South Dakota Fair, per statement	60 00
	$1,967 50

Respectfully submitted,

HENRY NEILL,
E. W. CAMP, } Committee.

Mr. PURCELL. What was the purpose of the committee?

Mr. HAYDEN. To ascertain the value of any other property not enumerated in those assigned to other committees.

Mr. KELLAM. Have you the Adjutant General's statement?

Mr. CAMP. Ninety-five dollars. We have his statement here and we took the amount from his statement.

Mr. BROTT. I move the adoption of the report.

Mr. KELLAM. In these returns did the several staff officers inventory the property or give the value of it.

Mr. CAMP. They inventoried it.

Mr. KELLAM. It is not material. The only thought I had was we could then determine each item.

Mr. NEILL. They are all listed.

Mr. KELLAM. Gentlemen, the motion is upon the adoption of the report of this committee. As many as are of the opinion the motion should prevail, say aye. The motion is carried.

Mr. KELLAM. There was also a committee on the Library.

Mr. SCOTT. I would say in reference to the report of the Committee on Library, that we have made no written report. We have here a list of the books in the Territorial Library, including all public records and documents. We didn't take into consideration the reports of the various departments of the United States Government which are there, the reports of the various State governments which are there, and State Session Laws and public documents of the State. We simply inventoried the law books in the Library together with any miscellaneous books that were in the Library of any value. We have not been able to put a value upon them for the reason that we have only two complete sets of law reports in the Library, Equity Reports and the other, I believe, is the Kansas Reports, and the balance are in this shape: Alabama, volumes from 45 to 87 inclusive; Mississippi, 48, 49, 51, 52 53, 54, 55 and 56; Arkansas, from 22 to 45; Illinois, 1 to 123 inclusive. We find there is on hand sixty-two old volumes in worn condition. They are of very little or no value to any State Library. There are also 581 volumes Compiled Laws on hand, and the committee recommend that those be divided between the respective States; and, also, we have on hand a number of the Session Laws of 1889, and we recommend that they be divided between the respective States of North Dakota and South Dakota. And so far as the Library is concerned, we recommend that North and South Dakota place its own value upon that Library and that whichever wants it the worst and is willing to pay the most for it, pay one-half of the value placed upon it to the other State.

Mr. PURCELL. That report includes those books in Yankton?

Mr. SCOTT. No.

Mr. McGILLYCUDDY. Appoint a committee to hunt them up.

Mr. NEILL. How would it do to make Yankton a present of the library?

Mr. SCOTT. I would say the Secretary made a statement to us, which I didn't agree with him, that is that any person has a right to come to the Library and take a volume out of the Library by merely leaving his receipt for it. It does not seem to me that is the intent. They can come here and look up the authorities, but not take the works outside of the Capitol building.

Mr. PRICE. I guess we better take some with us.

Mr. CALDWELL. I would ask upon what basis these books —Compiled Laws—shall be distributed. Equally to each section?

Mr. SCOTT. That is what we recommend.

Mr. KELLAM. I thought the 1889 Session Laws had been distributed under the provisions of the law.

Mr. PRICE. I move the adoption of the report.

Mr. NEILL. I second the motion.

Mr. KELLAM. I was going to suggest to Mr. SCOTT we have a little more time in detail. I don't know any other way than before we get through with this work for each party to put in a sealed bid (as we understand what that means) for the Library; the one section giving the most for it, it should go there. Of course, by fixing it in that way they should put the full value upon the Library, and the one placing the highest value upon the Library, should have it by paying one-half of the value.

Mr. CAMP. I suggest the report be reduced to writing.

Mr. SCOTT. I presume the Stenographers have it.

Mr. KELLAM. The question is upon the adoption of this report.

Mr. CAMP. I move it be deferred until reduced to writing. The motion was lost.

The report was adopted.

Mr. McGILLYCUDDY. The Committee on Militia Property is not ready to report. We could get no information from the Adjutant General's office. We could get no report. Would say the following telegram has been addressed to the Adjutant General:

OFFICE JOINT COMMISSION,
BISMARCK, DAK., July 22, 1889.

J. E. HUSTON, ADJUTANT GENERAL, REDFIELD, DAKOTA:

Please have report made by mail without delay, covering all ordnance stores, arms, ammunition, etc., pertaining to military organization Dakota, property of United States or Territory. Indicate where property is stored, names of officers or individuals responsible for same, and estimated value.

V. T. McGILLYCUDDY,
A. SANDAGER. } Committee.

We have received no answer, I don't suppose it will be over three or four days. There is no way of getting anything here.

Mr. PURCELL. There are some guns out here.

Mr. McGILLYCUDDY. I don't know who they belong to. I don't know who is responsible for those arms.

Mr. SCOTT. I suggest the committee report if they ascertained where there is anything due from the United States Government. I understand there is an appropriation of $6,000 coming to the Territory so long as it remains a Territory, for military purposes.

Mr. KELLAM. This committee reports progress and asks for further time.

Mr. HAYDEN. Committee on Claims—Mr. PRICE and Mr. SPALDING—is the next one on the list.

Mr. PRICE. Will state I saw Mr. SPALDING immediately after the adjournment of the session and indicated to him I was ready to commence the labor of the committee, but he went home the day previous and had been eating string beans, and indicated he was not feeling well enough to discharge his duties, and I told him I would act on his pleasure. And I have not seen him since. I will state further, gentlemen, that I organized myself into a committee of one and have made an expedition. I find there may be a good many unliquidated claims againet the Territory, but there is no record in the Auditor's or other offices, and it occurred to me it might be well to act on the suggestion of the Auditor, inasmuch as there are a great many claims unliquidated, and that would be to recommend to our respective Conventions the appointment of a joint commission of the Legislatures of the respective States to pass upon these unliquidated claims. I don't think it would be within the scope or within the power of this Commission to say that these unliquidated claims should be paid, but we might recommend action by the respective States. I find Brother GRIGGS has a claim against the Territory, and Smith, of Huron; and Mr. Long has a claim against the Territory for publishing Long's Hand Book. Of course we are not a legislative body, and I don't think we could take any action for the payment of these claims. We could, however, refer them to the respective States, and they could then be referred to a commission appointed by the Legislators. This is only a partial report. I saw Brother SPALDING to-day, and we will present, perhaps, a written report at the next session.

Mr. CALDWELL. Mr. CHAIRMAN: I believe it has been set-

tled as a fundamental principle pertaining to the powers and duties of this Commission, that it must make an absolute, definite and final disposition of all these things; and it would seem to me that the suggestion in reference to the subsequent commission would be in contravention of what has been fixed as the principle that would be necessary to adopt.

Mr. PRICE. I want the Commission to understand that this was not my suggestion, but the suggestion of the gentleman who occupies the same position Mr. CALDWELL did at one time. It seems the minds of some are for referring things to future Legislatures. Really, this committee has absolutely nothing to do. In my judgment we cannot report anything. While there is a lot of things against the Territory, as I before stated, there is no record. There is nothing that properly comes before this committee.

Mr. CALDWELL. Mr. CHAIRMAN: I have here one of the provisions of the Enabling Act, section six. I believe that this Commission must adjust and agree upon the amount of debts and liabilities of the Territory.

Mr. PRICE. Let me suggest this: There is no claim properly filed. I submit there is nothing for us to take action upon.

Mr. PURCELL. Mr. PRICE'S theory is he is not going to run around this country and find out claims. He has got claims against the Territory.

Mr. PRICE. The Auditor informed me when a claim is rejected it is returned and no record made of it.

Mr. HARRIS. With regard to Mr. Long's claim, he gave me a copy of the bill and copy of act passed last winter by the Legislature, and, while I will not be certain, I think that it was passed and was allowed to go into the "soup" by the Governor of the Territory. The record is there. I handed it to Mr. SPALDING, who has it.

Mr. PURCELL. Why would it not be well to make a report of those claims we can tell, existing against the Territory. For instance, the claim of Mr. Long, Mr. Smith or Mr. GRIGGS, and what other claims we can find.

Mr. PRICE. I am still with Brother SPALDING, and ask for time.

Mr. NEILL. I would like to inquire what the status of a claim would be if the claim should be presented after the Territory had been divided. Where would they come in?

Mr. PRICE. For fear I might be on the bench I decline.

Mr. SCOTT. They would be in the same position as copartners; they could recover of North or South Dakota.

Mr. KELLAM Could not get service.

Mr. SCOTT. Present it to the Legislature.

Mr. KELLAM. Perhaps we can settle it.

Mr. PURCELL. Of course, the claim of Mr. Long is no better than the others. My idea is those claims we could ascertain should be brought before us, and we could then decide what to do with them.

Mr. KELLAM. I think the suggestion of Mr. PURCELL is a good one, that so far as this committee can get information about existing claims it would be well to present them to this Commission, so we can have some idea of what they are, and then if we want to make any recommendation in regard to consideration of the claims hereafter we can do it.

Mr. PRICE. Very well, we will make a written report.

Committee on Federal Appropriations—Messrs. PURCELL and ELLIOTT.

Mr. PURCELL. I believe we were to look up the Federal Appropriations. I desire to say we have been at work very hard. We have come to the conclusion we cannot make a detailed report without taking a trip to Washington and examining the records there, and see what appropriations have been made, and if the Commission feel like making provision for transportation, we would go to fully complete this report. But we ran across a little book to the Governor, and from that we are compelled to make our report. There was $15,000 appropriated by the United States to the Government Experimental Station at Brookings. There has been $9,126.17 of that expended for permanent improvements, as I figure it. The items of this calculation are as follows:

Teams and harness	$ 899 30
Horticultural implements and tools	706 60
Seeds, trees and plants	702 60
Hot beds, marking targets, etc	134 13
Plant house	3,000 00
Library books, periodicals and cases	1,391 13
Office furniture	283 00
Chemical supplies and apparatus	1,141 15
Meteorological instruments	58 85
Entomological supplies and apparatus	391 37

Making in all $9,126.17 of the $15,000 which has been used just as has been indicated by the appropriation. Besides, I am informed

there was a donation of 640 acres of land to the Insane Asylum at Yankton; and there are some other donations,I am informed, that I am unable, at present, to give any satisfactory information in regard to. It is particularly difficult to ascertain these things, because there seems to be no record made of them, and what we got is simply from this small report.

Mr. ELLIOTT. Our duty simply pertained to the Brookings institution, under the motion.

The following letter was now read:

DAKOTA AGRICULTURAL COLLEGE,
BROOKINGS, SOUTH DAKOTA, July, 19 1889.

HON. J. H. DRAKE, SECRETARY JOINT COMMISSION:

DEAR SIR: Thinking something more in detail may be needed than I was able to telegraph you in answer to yours of this afternoon. I write this line and send you some documents. The United States funds are for the maintenance of a United States Agricultural Experimental Station for Dakota. By the act of March 2, 1887, organizing those stations, $3,000 the first year may be used for building, and $750 each year thereafter. In the two years of our existence we have used these sums; $3,750 for buildings. We have also used about $1,500 for library and chemical aparatus, and a few hundred for sundry other permanent improvements. The balance due has been used for such current expenses of maintenance as seed, labor, salaries, printing and distributing bulletins, alike for the two Dakotas. I enclose copy of Congressional Act, and of first annual report. Trusting these will be satisfactory and sufficient,

I am respectfully,

LEWIS MCLOUTH,
President of College and Director of Experimental Station.

P. S.—It is possible on a close classification that $7,000 may be counted for permanent improvements. It is a little difficult to draw the line.

L. M. McL.

Mr. CALDWELL. The language of the act would indicate that this property is not, to any extent, whatever the property of the Territory, nor would it become the property of South Dakota. It remains the property of the United States; and upon the division of the Territory of Dakota into two States, the State of North Dakota could at once procure from the United States precisely these same appropriations which South Dakota has had; so that it would seem to me that it could not be a claim to any extent whatever, that South Dakota should be required to account to North Dakota for whatever it may have received in the way of permanent improvements, furnishing or maintenance of this experimental station, which as I said before, is distinctly the Federal Station.

Mr. PURCELL. I don't see how you can consider it in that way. It is not a separate and distinct institution. It shall be allowed to use one-fifth of any other appropriation at any time for permanent improvements in connection with the College.

Mr. BROTT. That has reference to the Station.

Mr. SCOTT. I presume that will come up for discussion.

Mr. PURCELL. The sum of $15,000 of appropriations is made to the State or Territory. This Station is made in connection with the institution already established in the State or Territory, and I believe is run in connection with the College.

Mr. CALDWELL. Certainly, but it may be as I understand it—if there be——

Mr. HARRIS. Mr. CHAIRMAN: As this question will come up in connection with the public institutions, I move the report of this committee be accepted and adopted.

The motion was seconded.

Mr. KELLAM. The motion is upon the adoption of the report of this committee.

Mr. PURCELL. I ask leave that the report be put in writing. The Major and I will get together and draft it.

Mr. HARRIS. I withdraw the motion then. I move you we adjourn.

Mr. CAMP. Now, gentlemen, how long will it take to finish up this sub-committee business?

Mr. CALDWELL. I should say probably four or five hours.

Mr. HARRIS. I think so; we will have to go into the offices and examine more carefully. We were to meet at 2 o'clock yesterday, and a matter came up in our Convention in which we were interested where the vote was 31 to 31, and the Chairman had the deciding vote. It was a matter in relation to counties and county seats which, if it had carried, would have made it possible to relocate and move any county seat in North Dakota, and it was necessary for us to be there. And I don't know but something of the same kind may come up this afternoon. Now, the continuation of that same part of the Constitution will come up this afternoon, and if we could fix that up in time for this sub-committee to report, and fix them up this evening——

Mr. CAMP. We will be through with the work by 3:30 o'clock.

Mr. HARRIS. Make it then, 3:30 o'clock. I want to get through with this work as soon as possible.

Mr. CALDWELL. I would suggest consideration of the fact

that the Convention of South Dakota is lingering along, simply awaiting the result of the work of this Commission. It is approaching harvest time down there, and many of our members of our Convention with us are agriculturalists and want to be at home, and anything that can be done to hasten our getting away would be particularly acceptable on that account. Of course, there are some things down there—matters in which members of this Commission are quite interested in, and that we are necessarily away from there. It seems to me it might be possible for the gentlemen in the matter that has been referred to by Mr. HARRIS, to pair with some members of the Convention, who would be upon the other side with regard to the questions that would arise.

Mr. SCOTT. Can we do anything this afternoon, anyway, until the reports are made? I have a suggestion to offer—I don't know whether it will be acceptable. Supposing each Commission prepares an offer as to basis of lump settlement of the division of the Territorial assets, covering everything but the records. For instance, let us make a proposition covering the whole business in a lump.

Mr. CALDWELL. That could not be of any value unless it should go quite largely into the details as to consideration by which the respective parties had arrived at a conclusion.

Mr. SCOTT. You can state the reasons which induced you to arrive at your conclusion.

Mr. KELLAM. I would favor the suggestion; I would favor the idea of each side preparing what it regarded as a fair and natural basis, a fair plan to dispose of these questions, save the public records, making it as a proposition to be considered by the other side in Joint Commission.

Mr. McGILLYCUDDY. I am in favor of that.

Mr. KELLAM. The details would be discussed. We would develop the fact we could agree easier, or we could not at all.

Mr. CAMP. Can't we have a meeting this evening at 7:30 o'clock.

Mr. PURCELL. We have a meeting of the Legislative Committee at that time.

Mr. CALDWELL. There is Ordway's reception.

Mr. HARRIS. That is to-morrow night.

Mr. HARRIS. If this proposition of Mr. SCOTT is looked upon favorably, it seems to me perhaps we would make as much headway by adjourning until to-morrow morning at 10 o'clock.

Mr. HARRIS. Make it 9 o'clock.

Mr. PRICE. Any time after 7 o'clock in the morning would suit me. I move you——

Mr. KELLAM. If we meet at any time before 9.30 we will have to meet at your rooms. It is to be understood that each side will get down to a candid, actual business proposition, not merely to make a proposition for the sake of doing up the other side particularly. It seems to me that would be a very fair way of starting the thing. Now, in regard to some of the matters, I would not be prepared to give my consent to another basis than the one I have already suggested.

Mr. SCOTT. If any proposition is made it should be business.

Mr. CALDWELL. So my idea would be, for instance, each side make a sort of a general proposition covering all these things; each side making a proposition in regard to the various lump items. We will say, here are the public institutions, let there be a proposition in regard to them. Then a proposition with regard to the division of other indebtedness of the Territory, which will necessarily arise before division can take place. It will be necessary for the Territorial Government to negotiate a loan which will have to be taken care of. And another consideration has been urged here, the rebate of taxes paid by these various North Dakota counties, which cases are now in the Supreme Court, and things of that kind; and so the necessity of making it broad to cover all these things. It seems to me the proper way would be to make a proposition in regard to the various items.

Mr. KELLAM. My idea would be with the view that each side has come here for the same purpose, and that is to make a reasonable and fair settlement of these matters, and that all these matters have been pretty thoroughly discussed, and now the speediest way we can settle, if we can settle at all or not, and if we can, upon what basis, will be sooner developed by each side formulating its idea of what a fair settlement would be, than in any other way. Of course, this proposition would have to be in departments. They might have to be in sections.

Mr. CALDWELL. Be in departments so it can be considered in detail.

Mr. SCOTT. We have now discussed each particular detail of this and have got facts and figures. My idea was to suggest a proposition which would cover these things as a whole. Each

side could say how they arrived at their conclusion, and see, whether or not, the reasons were good ones and whether or not, the proposition as a whole was, under the circumstances, the easiest way out of it, and add all these matters into one proposition.

Mr. KELLAM. Of course, that would necessarily——

Mr. PURCELL. The proposition should go into detail.

Mr. CAMP. You take up the Library and make a proposition in regard to that.

Mr. CALDWELL. For instance, proposition with regard to the public indebtedness of the Territory. A proposition with regard to the other property than that included in the public institutions.

Mr. HARRIS. I don't think that was Mr. SCOTT's idea—his idea was a general idea of settlement. These different things, of course, would have to go in the detail—to be in one proposition or settlement. There might be details that would be referred to by South Dakota we might object to. There might be details the other side might object to. There might be details not objected to by either party, and in that way we can arrive at a settlement.

Mr. PRICE. It was my original idea we ought to settle one thing at a time, but I don't know but what this is a pretty good plan.

Mr. CALDWELL. Each side to arrange. This proposition, of course, does not bind anybody to anything, but would be a help toward promoting the purpose for which we are assembled, and if Mr. SCOTT makes that as a motion I would second it.

Mr. SCOTT. I am in favor of anything that will assist a speedy settlement. If this will do it I am in favor of it. If not, I am not in favor of it. I am inclined to think it will.

Mr. SANDAGER. It seems to me there are some important questions on which we have not been able to get anything definite to start, for instance the military.

Mr. KELLAM. It will develop what points of difference there is.

Question.

Mr. KELLAM. The only thing I would like to have discussed, if it is necessary, is that both sides get about the same idea what shape this proposition is going to take.

Mr. SCOTT. My idea is this. We will take the difference. On one account you are indebted to us so much; on another you

are indebted to us; the total between those accounts would be so much. We say—here, you have your institutions, we have ours; you assume yours, we assume ours, as settlement in full; we take our personal property, you taking yours; you are indebted to us so much, we are indebted to you so much.

Mr. HARRIS. I second the motion of Mr. SCOTT.

Mr. KELLAM. The motion of Mr. SCOTT is that each section of this Commission submit, at the next joint session to-morrow morning, a proposition of settlement involving all matters except the distribution of the archives and records of the Territory. The question is upon this motion. Are you ready for the question?

Question.

Mr. KELLAM. The Clerk will call the roll.

All members voted in the affirmative. Messrs. SPALDING and NEILL absent.

Mr. KELLAM. The motion is carried.

Mr. HARRIS. I move we adjourn until 9:30 o'clock to-morrow morning.

The motion was seconded and carried, and

The Commission adjourned.

NINTH DAY.

BISMARCK, *Thursday, July 25, 1889.*

The Commission met at 10 o'clock a. m. E. W. CAMP in the Chair.

Mr. CAMP. The Clerk will call the roll.

All members present except Messrs. HARRIS and SPALDING.

Mr. CAMP. There were to be two propositions submitted this morning—one from North and one from South Dakota.

Mr. MCCLARREN, Clerk of the South Dakota Commission read the following proposition of the South Dakota Commission, as follows:

PROPOSITION OF SOUTH DAKOTA COMMITTEE.

Public Institutions. Each State shall take the institutions located within its boundaries, with its appurtenances, furniture, etc., and shall assume the payment of all indebtedness against the Territory, on account of such institutions respectively.

That any unexpended balances, either from bonds or direct appropriations, remaining in the Territorial Treasury at the date of dissolution of the Territorial government, shall follow the institution on whose account such bonds were issued or appropriation made, and go to the State which takes such institution.

Miscellaneous Property. All other items and articles of personal property, except the Territorial library and records, shall be divided equally between North and South Dakota.

Territorial Library. Each Commission shall submit a sealed proposition stating a sum certain at which it is willing to take said library, including such books, records and volumes as may be added thereto up to the time of the dissolution of the Territorial government, and the library as aforesaid shall go to the section whose bid as above provided, is the highest, and at the amount so bid, and such sum shall be accounted for in the settlement to be made by the Joint Commission. This disposition shall also include the library in Auditor's office.

An arrangement shall be made by this Commission with the Territorial Auditor by which he shall keep and abstract the assessment returns from the several counties of the Territory in two classes or groups, putting and keeping the counties of North Dakota in one class, and the counties of South Dakota in another class, and such distinction and separation shall be maintained and preserved through the Auditor's and Treasurer's office, to the end that all taxes paid into the Territorial Treasury, from such assessment, by the counties of North Dakota and South Dakota respectively, shall be kept separate and distinct from each other.

Any and all claims of the Territory against counties on account of delinquent taxes shall go to and belong to the State within which such counties shall be located; and all credits for taxes overpaid by counties shall likewise go to the State within which such counties may be situated.

And balances of cash remaining on hand at the termination of the Territorial government, and not otherwise covered by this proposition, or appropriated by law, shall be equally divided between North and South Dakota; and all indebtedness, except as otherwise herein provided, shall be assumed and paid by North Dakota and South Dakota, share and share alike.

Mr. PURCELL. Read that first statement again.

Mr. KELLAM. "Each State shall take the institutions located within its boundaries, with its appurtenances, furniture, etc., and shall assume the payment of all indebtedness against the Territory on account of each institution respectively. That any unexpended balances, either from bonds or direct appropriations remaining in the Territorial Treasury at the time of dissolution of the Territorial government, shall follow the institution on

whose account such bonds were issued or appropriation made, and go to the State which takes such institution."

Mr. HAYDEN read the following:

PROPOSITION OF NORTH DAKOTA.

To the Joint Commission:

The Committee from North Dakota makes the Joint Commission the following proposition:

All public institutions and buildings located in South Dakota shall be the property of South Dakota, which State shall assume and pay all the bonded indebtedness arising out of and issued for their construction, and the same as to North Dakota, except the Capitol at Bismarck. All personal property and miscellaneous effects now in South Dakota, except militia outfits and accoutrements, shall be the property of South Dakota; and all of the same in North Dakota, except militia outfits and accoutrements, and also excepting the furniture and fixtures of the Capitol at Bismarck, shall be the property of North Dakota. The State of South Dakota shall pay to the State of North Dakota, as a full settlement of unbalanced accounts, and of all claims aganst the Territory arising out of the unlawful taxation of the Northern Pacific Railroad lands, which claims shall be assumed by the State of North Dakota, the sum of $60,000. Should South Dakota desire the State of North Dakota to assume the ownership and control of the Capitol at Bismarck with its furniture and fixtures, including all claims against the Territory arising out of the acceptance of the grant of lands made to the Territory for capital purposes, and further to assume its bonded indebtedness, the State of North Dakota will do so upon the payment by South Dakota to North Dakota the sum of $40,000. All other unascertained and unliquidated debts of the Territory of Dakota shall, when proved, be borne equally by the States of North Dakota and South Dakota. And all claims in favor of the Territory shall accrue to the benefit of the respective States in like proportion. The State of North Dakota shall be entitled to all delinquent taxes due the Territory at this date from counties located in North Dakota, and the same as to South Dakota. From and after March 11, 1889, the State of South Dakota shall be credited with all taxes collected from counties within its boundaries, and charged with all moneys paid out by the Territory for appropriations made to the public institutions situated therein and one-half of all other expenditures, and the same as to North Dakota.

Mr. PRICE, How about the Public Library? I presume that is generally understood?

Mr. CALDWELL. That would come here on report of the committee.

Mr. CAMP. We are perfectly willing to let the Public Library go as suggested.

Mr. SCOTT. Yes, that was the understanding.

Mr. CAMP. I think it was.

Mr. KELLAM. Suppose you read that again.

Mr. CAMP. Gentleman requests that the offer of North Dakota be read again.

Mr. BROTT. Please read it a little slower.

The proposition was re-read.

Mr. CALDWELL. I suppose, Mr. CHAIRMAN, of course there will be necessity for each side to have time to consider the proposition made by the other side; and I would move you that further consideration of the propositions be postponed.

Mr. SCOTT. I suggest our Clerks be instructed to make copies for the use of the respective members of the Commission.

Mr. PRICE. Each member would like to have one.

Mr. CALDWELL. Yes.

Mr. KELLAM. Now we have a definite proposition from each side, and, of course, the propositions will be more fully and intelligently considered after they have been discussed by each side by ourselves, and it occurs to me perhaps we better take a recess, or adjourn until such later hour in the day as we can agree upon meeting, giving each side an opportunity by itself, to discuss these propositions.

Mr. PRICE. We might take this report of Messrs. CALDWELL and HARRIS.

Mr. KELLAM. If we can dispose of these propositions and reach an agreement upon the grounds covered by these propositions, why we have got the greater part of our work accomplished. I don't care particularly how it is done, but it occurs to me that we have got to give more thought and attention to this than to any one subject; and that the Library being disposed of as we have subsequently agreed, it leaves only the matter of the records. Now, I suggest that we better put it in the shape of a motion, but I would like to hear how the gentlemen of the other side feel about the matter.

Mr. NEILL. How long would you want to take that recess for?

Mr. KELLAM. My thought was until sometime this afternoon when these other gentlemen would be sufficiently at leisure to make an appointment.

Mr. SANDAGER. Would it be well to hear from the subcommittees who were to look into some of the affairs, such as the Library?

Mr. PURCELL. There is no question about that, Mr. SANDAGER; we have practically agreed, and we are to bid for it and the highest takes it.

Mr. KELLAM. Might we hear this report of Mr. CALDWELL,

and HARRIS. Mr. HARRIS isn't here. Probably during the afternoon by discussing these propositions amongst ourselves we can reach, upon each side, some point to which each side would be willing to go in coming together, but as I say, I am not captious, and don't care which plan we adopt, only Mr. HARRIS is not here and there are a good many questions arising in the discussion of that report, and we should like to hear from Mr. HARRIS. I am in the same condition Mr. CAMP is in regard to the military property. My idea was it did not belong to the Territory. There may be a liability to the general government on account, for these, but I suppose these arms still belong to the general government.

Mr. SCOTT. It is a fact the general government appropriates so much each year. I was talking to the Colonel of the First Regiment here—North Dakota—and he stated to me there was an appropriation of $6,000 from the general government each year. We had received about $19,000 or $20,000 material from the general government that had been charged up to the Territory, but had not been paid. He thought about $6,000 due from the federal government to the Territory, provided we looked out for it and got it before we went in as a State, because then the appropriations cease.

Mr. SANDAGER. I believe these appropriations are all due to the several companies, wherever located. I know our company at Lisbon are expecting an appropriation.

Mr. SCOTT. That is from the Territorial government.

Mr. PRICE. The Committee on Military Affairs might wire the authorities at Washington.

Mr. McGILLYCUDDY. I had a letter yesterday from the Adjutant General.

ADJUTANT GENERAL'S OFFICE,
REDFIELD, July 23, 1889.

V. T. MCGILLYCUDDY, BISMARCK, DAKOTA:

DEAR SIR: Yours of the 22d is received. Will write Gen. Carpenter, Chief of Supply, Watertown; Col. R. J. Wood, Chief of Ordnance, Sioux Falls, and Major Joseph Hare, Ordnance Officer, Bismarck. There was no report made last year. Will be *impossible* to make a *true* one now.

Respectfully yours,
J. S. HUSTON,
Adjutant General.

I don't suppose when we get that report we will know any more than we do now.

Mr. KELLAM. I suppose Mr. CAMP—I noticed the reading of

this by Mr. HAYDEN—I suppose this exception of military outfits applies to both sections?

Mr. SCOTT. Yes, it says the same as to South Dakota.

Mr. KELLAM. That probably will cover it.

Mr. PRICE. It occurred to me this might be added "equally divided between the two States."

Mr. SCOTT. I am informed there are eight pieces in the First Regiment in North Dakota, and thirteen pieces in South Dakota.

Mr. KELLAM. Twenty-one pieces?

Mr. PRICE. Yes.

Mr. SANDAGER. Telegraph to the Secretary of War at Washington, and try and see what is coming and what has been delivered.

Mr. McGILLYCUDDY. Is there anything we can refer to? There ought to be some way of finding out. At the Capital of Dakota there ought to be some way of finding out.

Mr. SCOTT. The Adjutant General ought to know.

Mr. McGILLYCUDDY. Unless we have something it will take a very long telegram to send it intelligently, unless we have some basis to go on. I think the shortest way would be for the Commission to go to Redfield.

Mr. CALDWELL. He don't know anything about it.

Mr. McGILLYCUDDY. Is it not strange there is nothing in the records here?

Mr. CAMP. I think the Adjutant General could tell how many arms had been delivered to the Governor and other officials of the Territory of Dakota; how many had been debited to the Territory, and how much appropriations the Territory had been credited with.

Mr. PRICE. You certainly can get that information by wire from Washington.

Mr. McGILLYCUDDY. Wire the Secretary of War, then. These arms—do they become the property of the Territory?

Mr. PRICE. That is what we appointed you for.

Mr. SCOTT. Get their arms from the Territory.

Mr. CALDWELL. Not their arms—it is just the clothing. Here is the law: Resolution approved July 3, 1876.

Resolved, etc., That the Secretary of War is hereby authorized to cause to be issued to the Territories, and the States bordering thereon, such arms as he may deem necessary for their protection, not to exceed 1,000 to said States each; *Provided*, That such issue shall only be from arms owned by the govern-

ment which have been superceded and no longer issued to the army; *Provided, however*, That said arms shall be issued only in the following manner and upon the following conditions, namely: Upon the requisitions of the Governor of said States or Territories, showing the absolute necessity of arms for the protection of the citizens and their property against Indian raids into said States or Territories; also that militia companies are regularly organized and under the control of the Governors of said States or Territories, to whom said arms are to be issued, and that said Governor or Governors of said States or Territories shall give a good and sufficient bond for the return of said arms, or the payment of the same at such time as the Secretary of War may designate.

Mr. CAMP. That is not the law we want.

Mr. McGILLYCUDDY. Then these don't cost the Territory anything unless they are lost. If North Dakota has not got enough you——

Mr. KELLAM. Mr. CAMP suggests this is not the law under which these arms are obtained.

Mr. SCOTT. South Dakota has more than we have.

Mr. McGILLYCUDDY. That comes right down to the same proposition.

Mr. CALDWELL. Here is another law approved February 28th, 1887:

That the Secretary of War be, and he is hereby directed to cause the Territory of Dakota to be credited on its ordnance account with the sum of $27,650 upon the delivery to the United States, at such place as the Secretary of War may direct, of all such arms and other ordnance stores remaining in the custody of said Territory of issues thereof under said act.—Approved February 28, 1887.

Mr. McGILLYCUDDY. Has that been complied with?

Mr. CALDWELL. There is nothing in the possession of the Territory——

Mr. McGILLYCUDDY. I don't see what we are trying to get at. There is something back of this, and why don't somebody come out and state it. There is an idea that somebody has got ahead on this arm business.

Mr. CAMP. I think there is another provision of the law we have not found yet.

Mr. SCOTT. Do you claim, Mr. CALDWELL, that these arms the companies have do not belong to the Territory?

Mr. CALDWELL. Yes, they don't belong to the Territory.

Mr. SCOTT. To whom do they belong?

Mr. CALDWELL. To the government.

Mr. SANDAGER. They are charged up to the Territory.

Mr. CALDWELL. They are charged to the government.

Mr. McGILLYCUDDY. Who gave the bond?

Mr. CAMP. Governor Ordway.

Mr. CALDWELL. That has been released.

Mr. McGILLYCUDDY. While Church was Governor?

Mr. CALDWELL. Yes, Governor Church got these.

Mr. CAMP. We understood that there was another matter; that there was $6,000 appropriated to the Territory every year for arms. That is what we have understood.

Mr. CALDWELL. It is an original appropriation—I think $3,500 to South Dakota and $2,500 to North Dakota. It has been divided already.

Mr. CAMP. When was it made.

Mr. CALDWELL. Why, just this year, appropriation by the general government to all the States having a militia. It has been divided between the States.

Mr. BROTT. I think we better follow Mr. KELLAM'S suggestion and have a recess.

Mr. KELLAM. If we can develop anything here we will have that disposed of. It is a matter I don't know anything about.

Mr. CALDWELL. That is not for arms, it is for general maintenance, as I understand it.

Mr. McGILLYCUDDY. Who did you purchase the arms from?

Mr. CALDWELL. All the arms used by the militia in the Territory are United States arms, of whatever date. No other used. I don't think the United States government ever issues arms not in use.

Mr. SCOTT. I don't believe—but I believe they give the latest style of rifle.

Mr. McGILLYCUDDY. The old '63.

Mr. SANDAGER. We have a better one down home.

Mr. HAYDEN. Those are different from what the companies have now.

Mr. SCOTT. Can't you look it up Mr. CALDWELL and see if that $6,000 has been received, and whether North Dakota has her share and South Dakota her share?

Mr. CALDWELL. An Act to amend section 1661 of the Revised Statutes, making an annual appropriation to provide arms and equipments for the militia:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1661 of the Revised Statutes be, and the same is hereby amended and re-enacted so as to read as follows:

SECTION 1. That the sum of $400,000 is hereby annually appropriated for the purpose of providing arms, ordnance stores, quartermaster's stores, and camp equipage for issue to the militia.

SEC. 2. That said appropriation shall be apportioned among the several states and territories under the direction of the Secretary of War, according to the number of Senators and Representatives to which each state respectively is entitled in the Congress of the United States, and to the territories and District of Columbia such proportion and under such regulations as the President may prescribe; *Provided, however*, That no state shall be entitled to the benefits of the appropriation apportioned to it unless the number of its regularly enlisted, organized, and uniformed active militia shall be at least 100 men for each Senator and Representative to which the state is entitled in the Congress of the United States. And the amount of said appropriation which is thus determined not to be available shall be covered back into the Treasury.

This appropriation of $400,000 to the states and territories is to be distributed according to the judgment of the President. It was divided between North Dakota and South Dakota, and I think it was something like $2,700 to North Dakota and $2,300 to South Dakota.

Mr CAMP. Do you know how it was the year before?

Mr. CALDWELL. No, I don't.

Mr. CAMP. There was a bond of $19,000 put up.

Mr. CALDWELL. There is that $27,500.

Mr. CAMP. I don't think that covers it.

Mr. CALDWELL. Covers all charges against the Territory up to that date, February 1, 1887.

Mr. CAMP. Now what page is that, that Act of February 28, 1887?

Mr. CALDWELL. Here is a preamble to that act:

WHEREAS, It appears from the records of the Ordnance Bureau of the War Department that the Territory of Dakota stands charged with the sum of $27,650 for ordnance and ordnance stores issued to said Territory during the year 1887, under the provisions of the act of Congress approved April 7, 1886, entitled "An act to provide arms and ammunition for the defense of the inhabitants of Dakota Territory," all of said ordnance and ordnance stores having been drawn by the Territory of Dakota and used for the purpose of aiding the general government in the protection of the borders of said Territory against Indian invasions and depredations; and,

WHEREAS, Said ordnance was issued to the inhabitants of said Territory as in said act directed, and all of the same has been lost and rendered useless in service; therefore,

Be it enacted, etc., That the Secretary of War, etc., etc.

Mr. CAMP. Ordway's bond was given in 1882, so this credit was on those old arms.

Mr. ELLIOTT. Mr. CHAIRMAN: In order that the Commission may have time to consider the propositions submitted this morning by North Dakota and South Dakota, I move we adjourn until 3 o'clock this afternoon.

Mr. PURCELL. Make it 3:30.

Mr. ELLIOTT. Well, 3:30.

Mr. CAMP. That motion seconded?

The motion was seconded.

Mr. CAMP. You have heard the motion; all in favor say aye.

Carried. The commission stands adjourned until 3:30 o'clock p. m.

The Commission was called to order at 3:40, Mr. CAMP in the chair. South Dakota members all present. North Dakota members all present except Mr. SPALDING.

Mr. CAMP. Gentlemen of the Commission, the time to convene has arrived.

Mr. CALDWELL. Mr. CHAIRMAN: I have been giving considerable time to considering this proposition as submitted by North Dakota, and, as is always the case in consideration of any document, there may arise questions as to construction, and, so far as I am concerned, I would like to request a more complete explanation of certain portions of this proposition, in order that I may know exactly what the proposition may be.

Mr. CAMP. It would be well to state——

Mr CALDWELL. Yes, I was going to say, for instance, I would like an explanation of this paragraph: "The State of South Dakota shall pay to the State of North Dakota as a full settlement of unbalanced accounts and of all claims against the Territory arising out of the unlawful taxation of the Northern Pacific railroad lands, the sum of $60,000."

Mr. PURCELL. Mr. CALDWELL, I think I stated the matter, which, perhaps, has been incorporated in the proposition, that numerous lands belonging to the Northern Pacific Railroad Company had been sold by different counties in North Dakota for taxes. In many of the counties the county treasurer was enjoined from selling those lands, which actually belong to the rail-

road company now. To some lands the injunction did not apply, but those lands which had been sold by the Northern Pacific Railroad Company to actual settlers was taxed and sold; and the purchasers at these sales in some of the counties have instituted actions against the treasurers to recover back the taxes paid. An estimate has been made of the amount of taxes that the Territory has received during the period, and by a rather conservative estimate we fixed upon the sum of $60,000, as our statement shows. In my county suits are pending against the county treasurer; in the County of Stutsman suits are pending, and in other counties in North Dakota suits are now pending against the county treasurers to recover back the taxes which were realized from the sales. The $60,000 is not alone for taxes; it is for the balance, as I understand, or difference in direct appropriations made between North and South Dakota, and other things.

Mr. CAMP. I will state in regard to the matter of taxes. In the first place, sales of lands for the taxes of 1880 and 1881 were enjoined, and the temporary injunction was dissolved and the lands sold in the fall of 1882, and in Stutsman county the sales and interest up to date amount to somewhere between $70,000 and $80,000 claims against the county. The case of Wallace vs. Stutsman county, which involves $35,000 of these taxes, went against the county in our Supreme Court, and it is now upon appeal to the United States Supreme Court, and if the United States Supreme Court sustains the Supreme and District Courts of the Territory, Stutsman county will have to rebate to the holders of these tax certificates, between $70,000 and $80,000, and it may be a little over $80,000. Of course, a portion of that money was for Territorial tax and was turned into the Territorial Treasury; Stutsman county made a claim against the Territory for that, at least a claim by a credit of that amount. That amount so paid to the Territorial Treasurer will probably be from $7,000 to $12,000. I cannot give the figures now although I did know them two years ago. And the same way with Barnes county and other counties along the line of the Northern Pacific railroad.

Mr. CALDWELL. How many counties are there involved that way?

Mr. CAMP. The counties of Barnes, Foster, Griggs, Steele, Traill, Richland, Ransom, Eddy, Wells, and I think Logan, little of Eddy, Burleigh, part of Emmons and Stark.

Mr. PRICE. Makes twenty counties.

Mr. CAMP. Then there is another claim which those counties have. Taxes now delinquent from the counties of North Dakota are on account of these same taxes levied upon railroad lands, never collected; some years the lands were sold for taxes and some years the tax was not collected. Of course if not collected they stand against the county, so it makes our delinquent tax list from North Dakota very large—equal to the whole delinquent taxes of South Dakota which has been running for years back. Probably two-thirds of the delinquencies are on account of these railroad lands which were assessed upon the assessment on which we are charged in the Territorial Treasury and never collected, the courts having enjoined us from collecting.

Mr. CALDWELL. Up to what time do you say this condition——

Mr. CAMP. Until now, because after the lands had been made taxable by act of Congress, the railroad companies, under the gross earnings law, enjoined the sales of the lands last fall, and the case was before the court at the last term at Yankton and is still pending. It may be we can collect these taxes for 1887; but prior to 1887 they were not taxable. And for 1887 and 1888 the railroad claims they were non-taxable by virtue of the gross earnings law. That is the way the case stands.

Mr. HARRIS. I would say the railroad companies enjoined the county treasurers from selling these lands for taxes at public sales for delinquent taxes, and that the tax of 1887 against the counties along the line of the Northern Pacific Railroad to-day is the bulk of their public taxes.

Mr. CALDWELL. If that be the case, we of South Dakota are asked to remunerate North Dakota to the extent of $60,000 for unbalanced accounts and claims against the Territory, arising out of unlawful taxation of the Northern Pacific Railroad lands, and the difference is included within this proposition—a provision that in case of payment of the delinquent taxes they shall go to North Dakota.

Mr. CAMP. Yes, where the land tax will never be paid. There are delinquent taxes from Barnes and Stutsman counties which are legal; but the Territory can never collect those taxes which are illegal and which the courts have enjoined from collecting and cancelled the certificates.

Mr. CALDWELL. Then this provision in regard to the allowance to North Dakota for taxes unlawfully assessed against

the Northern Pacific Railroad lands is to apply, then, only to monies that is actually paid by the respective counties to the Territory?

Mr. CAMP. Not only that, but if you deduct from the delinquent taxes of North Dakota those which are delinquent because illegal, there will be a large balance due North Dakota from South Dakota on account of the difference in delinquent taxes.

Mr. CALDWELL. Well, it is possible that might have been the case. At the same time admitting that to be the case, I would not see what figure it would cut. But in regard to one county, Lawrence county, which owes the Territory, according to the taxes of the Territory a very large balance, some $35,000, it is a fact that Lawrence county has, in regard to that matter, almost an entire set-off. That is to say: That owing to the fact that the charge of the Territory against any county for taxes is based upon the original assessment as made by the assessors and returned to the clerk without any deduction as made by the Equalizing Board; that return thus made is sent to the Auditor and is the basis for the Territory's claim against the county. The Equalization Board may then come in, as it has done upon the application of parties assessed, and make deductions from the assessments as returned by the assessor. At the time I was Auditor of the Territory, I sought to get these delinquiencies off the books, such delinquencies as were attributable to the difference between the original assessment and the equalized assessment, and in a large number of counties I succeeded in doing so; and in some of these counties you speak of, in some of these counties, I arranged with them so they took the account up. They got credit for all these irregular assessment of railroad lands. And I urged Lawrence county, its clerk and the treasurer and the chairman of the board of supervisors, that they should likewise take the steps which are necessary in order to have the books of the Territory show the actual, legitimate condition of the accounts, but they simply neglected to do so. I was, however, personally assured by the chairman of the board of supervisors, and by the clerk of the county, that there had been instances in which over $1,000,000 had been stricken from the county tax list subsequent to the time at which the return had been made by the county to the Territory. So that this delinquency in the case of Lawrence county, and in the case of many other counties, does not show any real claim against the Territory—against the

county, but merely show that there was a difference between the original assessment as made by the assessor and returned to the Territorial Auditor, and the assessment as corrected by the Board of Equalization.

Mr. PURCELL. Is it not a fact the bonded indebtedness of Lawrence county to-day exceeds $100,000.

Mr. SCOTT. I thought the law says they don't change the list sent in by the assessor.

Mr. CAMP. You mean to say the county auditor of Lawrence county sent in to the Territorial Auditor the abstract of the assessment rolls of that county previous to the equalization?

Mr. CALDWELL. Yes; and that is so with regard to many counties, and that fact was called to the attention of the Legislature in the report of the Auditor in 1886.

Mr. PURCELL. You speak of counties similarly situated in South Dakota.

Mr. CALDWELL. Yes, sir. I don't remember the counties whose accounts with the Territory were credited as I have explained.

Mr. PURCELL. Is it not a fact that one of the counties is Minnehaha?

Mr. PURCELL. There must be certainly, I should say, twenty counties whose accounts were thus corrected.

Mr. SCOTT. I notice the Barnes county list was not corrected. She appears to be delinquent about $8,000 now, and nearly all of that delinquency is caused by the illegal assessment of Northern Pacific Railroad lands. I don't think the Territory will ever get $1,000 out of it.

Mr. CALDWELL. The matter was called to the attention of the Legislature in the report of 1885. It is further directed that the county board, after the return has been made to the Territorial Auditor and the account of the Territory against the county has been determined by the amount of our assessment as thus returned, that the county board may, by exercise of specific power given them by the statute, abate assessments in particular instances. These abatements have not been reported to the Territorial Auditor and there has been no credit to the county. The county is merely the collection agent of the Territory.

Mr. KELLAM. Now, Mr. CHAIRMAN, I don't know whether or not this will lead us to a solution of the difficulty, but is this what you want or what you mean by your proposition, that whatever

loss the Territory sustains by reason of the illegal assessment of the Northern Pacific Railroad lands should be borne equally by both sections of Dakota, by North and South Dakota?

Mr. CAMP. That, perhaps, would be part of it, but part appears as already lost, that is those claims for delinquent taxes which have never been paid in. That is all lost and has increased our list so it is equal to that of South Dakota. Remove from that delinquent list the part that cannot be collected by reason of the illegal assessment, and our delinquent taxes are much smaller than those of South Dakota. We think this should be a claim in our favor against South Dakota.

Mr. KELLAM. If the counties within which these illegal assessments have taken place have on that account failed to contribute their share towards the Territorial revenue, how has it been to the disadvantage by the overpayment from the southern counties towards the revenue of the Territory?

Mr. CAMP. Each part of the Territory has been contributing taxes, but we say South Dakota is delinquent in its contributions $60,000.

Mr. PURCELL. In other words, the Major's statement would be true if taxes were apportioned for a certain territory, but where they are apportioned generally, and North Dakota pays her taxes and South Dakota doesn't, it increases the rate on North Dakota as well as for South Dakota counties who have paid them. If the taxes were levied with regard to the dividing line between North and South Dakota, and we each had a proportionate share to raise, then your proposition would be true; but we are taxed generally throughout the Territory. Now, there is a certain portion of that district in each State, or Territory, that does not pay its taxes, and consequently leaves so much more to raise, and, therefore, whatever goes to make up the deficiency comes out of the whole Territory in a body, and we pay our proportion of that.

Mr KELLAM. Is that equally true on account of the illegal assessment of railroad lands?

Mr. CAMP. There is no other way of looking at it.

Mr. PURCELL. Because we were under no legal obligation to pay those taxes.

Mr. CAMP. The way I look at it is this: We are dividing the assets and liabilities of the Territory. One of the assets is this claim for delinquent taxes. That claim appears upon the books

to be equal between the counties of North and South Dakota; that is, if the assets were divided and we were given the claims against the North Dakota counties and you the claims against the South Dakota counties we would have equal claims; but in figuring we must deduct from the claims against the counties of North Dakota so much as is due to illegal assessment and taxation. That would leave us a claim against the counties of North Dakota, we will say for example, $25,000, while you have a legal claim against the counties of South Dakota of $60,000, so the assets would not be divided equally so far as that is concerned, but would result in a charge in our favor of one-half of $35,000.

Mr. HARRIS. These illegal taxes have been declared illegal by the Supreme Court of the United States.

Mr. KELLAM. Yes; I understand a part of this question has been disposed of by the court, but not entirely. My thought was this: Conceding that there was to be a loss, to make an agreement upon the part of both Commissions that whatever loss occurred to the Territory on account of these illegal taxes having to be rebated, that that should be borne by the Territory at large. It is evident that no calculation can at this time be made by either, because one part of the question is still pending in the court. Now in that situation of affairs it would occur to me to be the only way to dispose of the question, if it is agreed that it is a proper matter to be taken into account, to make a general agreement that whatever loss occurred to the Territory by it being compelled to refund these taxes, that they should be entailed upon the two States share and share alike. If we were to sit here for two weeks we could not make any mathematical calculation of the amount of that loss. In the first place there is this undetermined question in the Supreme Court that stands in the way, and in the next place it is one of those things we cannot tell because it is to be developed in the future.

Mr. SCOTT. This question arises to my mind, and it is this, that undoubtedly the suits will be determined against the counties, and if they are determined against the counties, I don't know that there is any particular method of procedure that the county can take against the State or Territory as a whole in which to recover for the amount that they paid to the Territory; and, of course, it would be our duty here, knowing this state of facts, to make some provision by which that can be done, and that amount returned to the counties that paid their proportion into the Territorial Treas-

ury. Supposing the suits were determined and the county had a judgment against them for $50,000 or $60,000, and supposing that the pro rata they paid into the Territorial Treasury was $5,000, what way would the county have of compelling the Territory to refund that amount? But supposing we are divided into States of North Dakota and South Dakota, what claim in law has that county to have that money refunded? They would have to sue their claims and leave it to the Legislature to fix it. Suppose the Legislature of South Dakota said, "It it is a matter we don't feel disposed to pay;" what power would there be in the county to compel South Dakota, or even North Dakota, to refund that money? I am satisfied in the estimate we have made we have placed it very much lower than the true results will be found to be when the matter is determined. I know, myself, of suits aggregating full $80,000, and that is not nearly all of the claims against Barnes county for lands which were sold on which the taxes have been illegally assessed and the purchasers hold tax certificates. And the same state of facts exist in all the counties referred to. Of course the item of $60,000 was not all made up of that, and I am satisfied we have got it a great deal lower than it actually is.

Mr. CAMP. Then you are doing yourselves an injustice.

Mr. SCOTT. I take this into consideration, that some of these taxes—a party owning a tract and he finds $150 taxes against that, rather than bringing his action to clear the title and set the taxes aside, he will pay the taxes and, of course, some of the taxes will come in that way.

Mr. PURCELL. Our county has paid back already over $8,000.

Mr. SCOTT. Our county has paid $5,000.

Mr. KELLAM. What question is involved in that suit?

Mr. CAMP. It depends entirely upon the construction of one section of the statute. Of course, in this case the treasurer, having paid over the money he is not liable, and the suits are brought against the county.

Mr. PURCELL. That is the same suit that is brought in our county, and I presume in your county.

Mr. HARRIS. You can readily see where this matter will run to—at least we can approximate it. In Stutsman and Barnes counties alone there is at once $150,000 involved in these suits, and there are eighteen other counties included, some of the

largest counties in Dakota, Cass, Richland, Traill, Eddy, Foster, Burleigh, two-thirds of Emmons, McLean, Billings, Stark, Ransom, part of Sargent and all of LaMoure, part of Dickey, all of Logan, part of McIntosh, some north of the track. You can readily see that the amount of these taxes which has been sold, on which suits have already been or will be brought, will run up in the neighborhood of half a million dollars, and while this matter is undetermined finally, it has been determined by the District Court, and that has been affirmed by the Supreme Court of the Territory of Dakota, and has been carried to the Supreme Court of the United States, and we, at present, can only take it for granted, or presume, that the United States Supreme Court will affirm the decision of the courts below.

Mr. KELLAM. What question is now pending in the Supreme Court of the United States?

Mr. HARRIS. It is—the gentleman from Stutsman county can state it better than I can.

Mr. KELLAM. I understood his claim was still undetermined——

Mr. CAMP. It is in the Supreme Court of the United States.

Mr. KELLAM. You spoke of the Supreme Court. I thought you meant the Territorial Supreme Court.

Mr. CAMP. No.

Mr. PURCELL. There is another claim. Auditor Ward instructed his assessors to assess every acre of railroad land. It was and the treasurers were enjoined from collection and sale, and that is the question I understand was argued in the Supreme Court at Yankton which stands against these lands.

Mr CAMP. I would like to say as to the probabilities of the case, I think there is hardly a case in which the United States Supreme Court have reversed a state court, where the question involved was the construction of the local statute. This is entirely on the local statute.

Mr. KELLAM. I want to say, gentlemen, that I do not wish to be understood as questioning the statements you gentlemen make. My suggestions were simply to meet any square, equitable claim, as it would be. Suppose we make this allowance of $60,000, and then the Supreme Court of the United States reverses the decision of the Territorial Supreme Court; then in what position would that leave us? How could we justify ourselves? It seems to me if we make an agreement that whatever

the Territory does lose on account of these illegal assessments, we (South Dakota) shall bear one-half, and North Dakota, one-half. That is, we would leave matters just as we would be if the Territorial existence continued.

Mr. PURCELL. That would leave a matter upon which we have not settled the liabilities.

Mr. KELLAM. Well, it is contingent now.

Mr. PURCELL. If the Supreme Court of the United States should hold these taxes were legal, or they should hold they must pay back, then we have got to come to your Legislature and appeal to them.

Mr. KELLAM. Suppose they hold the other way we have to give you $60,000. I say, we ought not to be asked to settle a liability that is contingent in existence and undetermined in amount, by an agreement upon any sum; but that the fair thing is to say, "Here is a contingent liability of undetermined amount; if proved to be an actual liability, whatever the amount is, we will pay half of it." I don't see any escape from that being a fair proposition. Because if you ask us to agree upon paying a specified amount, you ask us to assume that amount you gentlemen give us, while we have no doubt it is the best you can make at this time—presume it is a fair estimate—still it puts in a disadvantage with regard to contingent—as actual liability, and if it should eventually turn out it was not a liability, then where would we be?

Mr. PURCELL. These claims exist to-day because the counties have paid back.

Mr. KELLAM. Yes, but that is all covered by the agreement I have suggested, that whatever the loss to this Territory, it would be treated the same as if the Territorial government had been continued.

Mr. PURCELL. For the payment of this $60,000, it can be understood that in case the Supreme Court of the United States holds that the taxes were not due, should not be refunded, of course, the Territory or State of North Dakota would return to you your portion of it. But there is already a claim in our favor from South Dakota for that part of it which the counties have already refunded, and, of course, many of the counties relying upon the decision of the Supreme Court of this Territory, have paid back much of these taxes, so we are out that money.

Mr. KELLAM. It looks to me if we now, here, undertook to

pay one-half of the liability, whatever it is, that this would be fair.

Mr. PRICE. It seems the objection of Mr. PURCELL could be covered by incorporating in the Schedule and Ordinance of the proposed Constitution an article empowering the Legislature to refund to North Dakota any sum that may be determined to be due her.

Mr. PURCELL. You see it leaves the whole question open for discussion, and there is no settlement of it whatever. I think, as the most of those attorneys do who have investigated this question, that perhaps the Supreme Court of the United States will sustain the Territorial court.

Mr. PRICE. You know how uncertain it is.

Mr. PURCELL. If they do, we have got to establish that claim to the satisfaction of South Dakota; we have got to come to your Legislature and do everything necessary to get that bill through to get the money. Now, it may cause us to do all that, $9,000 or $10,000 to recover back this money from South Dakota; and the purpose of offering it here in that manner, is that while we are here, to settle up all these matters. The Supreme Court of this Territory having said they shall refund the money of the county, and having refunded at least part of it, establishes the fact that the claim is just and we have shown our good faith and are entitled to the amount paid back. So here is our claim against South Dakota.

Mr. KELLAM. You speak of the difficulty and expense of proving the claim before the Legislature of South Dakota. Would you think this Commission would be justified in doing—in allowing this claim?

Mr. PURCELL. The purpose of making it here was putting it in such shape it can be verified. Whatever evidence is necessary.

Mr. PRICE. I don't think, Mr. PURCELL, you should advocate such a plan until judgment was recovered.

Mr. PURCELL. There is judgment, Mr. PRICE, in this case.

Mr. PRICE. But it is pending in the Supreme Court of the United States.

Mr. PURCELL. Many counties have refunded.

Mr. CALDWELL. When was it decided by the Territorial court?

Mr. PURCELL. May, 1888.

Mr. CALDWELL. Has there been any claims against the Territory for such money as was rebated in the payment of Territorial taxes?

Mr. PURCELL. I don't know.

Mr. CAMP. Our county has not made a claim because they appealed, you know.

Mr. SCOTT. Our county has a claim, but I don't know if it has been presented. They have been talking about it.

Mr. CALDWLLL. It is not a claim against the Territory as the county——

Mr. SCOTT. It is.

Mr. HARRIS. When the Supreme Court of the United States disposes of the matter.

Mr. CAMP. In equity they ought to get it back from the Territory. Our county board at first admitted their liability for the amount paid, and were willing to settle it at a certain per cent. with our clients.

Mr. CALDWELL. Well, in any event, a large part of this liability would be interest, penalty and cost on the delinquent taxes.

Mr. CAMP. It would be, of course, a good deal interest.

Mr. CALDWELL. Penalty, too?

Mr. CAMP. Penalty.

Mr. KELLAM. There is nothing allowing penalty to go to the Territory.

Mr. SCOTT. Of course, the amount refunded would be the amount actually paid.

Mr. CALDWELL. That would involve the original tax and penalty for non-payment, and, also, the interest which delinquent taxes draw, and likewise the cost of advertising and selling the same.

Mr. CAMP. They are small, however.

Mr. CALDWELL. It would be the usual proportion.

Mr. CAMP. These lands are sold in large tracts.

Mr. CALDWELL. The costs apply to each forty acre tract; the penalty applies to the amount, and the interest to date.

Mr. PURCELL. The Territory would only have to pay back what it received.

Mr. CALDWELL. The proportion which the Territorial tax would bear to the sum total which the county would have to refund, would probably not be over one or two per cent.

Mr. SCOTT. I think probably one-eleventh——

Mr. CALDWELL. It could not be one-tenth, because the rate of taxation—average rate for Territorial purposes, even the sale of the taxes—the average rate of taxation for Territorial purposes is at the greatest only but one-tenth of the total that has to be paid. Taking 30 per cent. interest and the penalty, all that would make the amount that would have to be refunded double the amount of the original tax.

Mr. SCOTT. Of course the interest on the money paid into the Territory should be—that would have to be paid back.

Mr. CALDWELL. No.

Mr. SCOTT. I don't see why it should not.

Mr. CALDWELL. Well, the matter of taxes having been thus generally discussed—I infer from an observation of Mr. PURCELL that this expression here, although it would seem at first—this expression, "unbalanced accounts," so coupled with the word "claims," and referring to the taxation of the Northern Pacific Railroad lands—I infer, however, that "unbalanced accounts" means something else.

Mr. PURCELL. There was a difference in direct appropriations of about $22,000 you had more than we had. We charge you with half of that.

Mr. KELLAM. What is that? I remember the $22,000 you spoke of.

Mr. PURCELL. That is the difference in the direct appropriations.

Mr. CAMP. Yes, taking out the $22,000 for Capitol, then it would be $44,000 difference.

Mr. PURCELL. Of course $22,000 difference; but in addition to that you had charged us with appropriations of $22,000 for the furniture of this building.

Mr. CALDWELL. That was one of the points that was questioned when we came to examine this. I was of the opinion that the paragraph meant that the State of South Dakota should pay to the State of North Dakota as for settlement of unbalanced accounts against the Territory.

Mr. PURCELL. It means unbalanced accounts of any claims.

Mr. CALDWELL. I don't know; but, nevertheless, if Auditor Ward would not infer that the record, that the unbalanced accounts has reference to the unlawful taxation of Northern Pacific railroad lands——

Mr. HARRIS. But this——

Mr. CAMP. It don't make any difference, we understand it.

Mr. KELLAM. They have told us what they mean by it.

Mr. NEILL. I might ask if personal property and miscellaneous effects now in South Dakota, shall be the property of South Dakota? If it means that, some property here in the Capital, for instance, in the office of the Commissioner of Immigration, has been divided, part taken down and part here, yet if it means to allow to take that part down to that office——

Mr. SCOTT. That is what I understood. I suppose it would imply that.

Mr. CAMP. They listed part of it as up here, part down there, NEILL.

Mr. NEILL. If you allow that, the balance of it to be sent down there, then there would be about $600 out of that $2,000 in South Dakota, the balance of it in North Dakota offices.

Mr. KELLAM. Now we have discussed that matter of delinquent taxes——

Mr. SCOTT. There is another matter, balance of $22,000, appropriations for permanent improvements, and then there is that $9,000 to the Brookings institution.

Mr. CALDWELL. I am glad that this inquiry was—we will see just——

Mr. SCOTT. Well, half of it.

Mr. ELLIOTT. The President says there has only been $7,000 expended there.

Mr. SCOTT. Mr. PURCELL, isn't it over $9,000?

Mr. PURCELL. That is what is shown by his report.

Mr. ELLIOTT. But his letters show about $7,000 as near as he can get at it.

Mr. PRICE. Then this $60,000 includes the $22,000 and the $9,000 to the Brookings College; now is there anything else?

Mr. CALDWELL. $22,000—$29,000.

Mr. PURCELL. No, not $29,000. We put in $4,000 as the share of the Brookings College; $4,500, leaves $26,500.

Mr. CALDWELL. So it makes $26,500 as the share.

Mr. PURCELL. Difference in appropriations to the Brookings College.

Mr. CALDWELL. That makes $2,650 to be subtracted from $60,000—$33,500 on the score of this railroad land business.

Mr. KELLAM. No, $22,000 and the $9,000; if one is divided the other is.

Mr. CAMP. We put the Capitol furniture in another deal, and that is no part of this.

Mr. CALDWELL. Twenty-two thousand dollars excess of construction appropriations for South Dakota?

Mr. CAMP. There is $44,000 in excess.

Mr. KELLAM. The Capitol is not separate.

Mr. PURCELL. In making up the direct appropriations there was included only amounts $22,000; for this furniture we took at $22,000, leaves a difference of $44,000.

Mr. KELLAM. I understand now.

Mr. HARRIS. The $44,000 wants to be cut in two in the middle, $22,000. The difference in the direct appropriations as made by our Assistant Secretaries, $22,000; then $22,000 was put into that for furniture and stuff at the Capitol which was charged to North Dakota in this statement. That leaves $22,000 difference between the two sections. Taking them and putting them together leaves $44,000; that cut in the middle would be $22,000; and the $9,000 cut in two in the middle would leave $4,500.

Mr. ELLIOTT. That is the way I understand it.

Mr. CALDWELL. Thirty-two thousand five hundred dollars on the question of railroad—Northern Pacific Railroad taxes, exclusively?

Mr. CAMP. Yes.

Mr. KELLAM. Now I want to ask if we all understand respecting claims with regard to delinquent taxes. There was a difference between our propositions with respect to the time of computing settlements and balances.

Mr. CALDWELL. Major, before we go into that we may—well that will come up.

Mr. KELLAM. I don't care——

Mr. CALDWELL. That will come up with regard to another matter. I have nothing to say.

Mr. KELLAM. I was going to make another inquiry. You fix the date of the division of these accounts at March 11th. We fixed it in our proposition at the dissolution of the Territorial existence.

Mr. SCOTT. March 11th, because that was the date the new appropriations for the fiscal year was made; beginning of the year.

Mr. HARRIS. As I understand, the appropriations made at that time, the taxes coming under the assessment which is now

made by the counties, which will be reported here. I think the intention was that the division should be made at the time, as there is nothing coming in on these taxes at all this fall, and they should be kept separate.

Mr. KELLAM. "From and after March 11, 1889, the State of South Dakota shall be credited with all taxes collected from counties within its boundaries and charged with all monies paid out by the Territory for appropriations made to the public institutions situated therein, and one-half for all other expenditures. And the same as to North Dakota." Under that proposition what would become of taxes that don't come from the counties—railroad taxes.

Mr. SCOTT. I presume the railroad tax of North—of South Dakota would go to South Dakota and the railroad tax of North Dakota go to North Dakota.

Mr. CALDWELL. It would not under this proposition.

Mr. KELLAM. The question of—there is nothing said about railroads in our proposition.

Mr. SCOTT. That was my understanding.

Mr. PURCELL. All taxes of the different localities.

Mr. SCOTT. I don't know who would have the best of the deal.

Mr. KELLAM. I don't know, but, of course, there is a large revenue that comes from the railroads, and there is the tax coming from the counties, and that would leave the matter of revenue from railroads entirely undisposed of.

Mr. SCOTT. It was my understanding we should cover the whole tax which accrued anywhere within the boundaries of North Dakota, and the same as to South Dakota.

Mr. KELLAM. Why would that plan have any advantage over the plan of closing up the books at the close of the existence of the Territorial Government, making division as of that time? Wouldn't that be the natural time at which settlement should be made?

Mr. McGILLYCUDDY. What right have we to go back of that time?

Mr. KELLAM. I have no idea, at all, which State would gain or lose by it, but I had no other idea that our agreement would be effective or contemplate its being effective, until the date of the dissolution of the Territorial Government. It seems to me this is the natural and appropriate time for us to figure towards.

Mr. CAMP. Of course, the present officers of the Territory are fair and honorable men; and yet the Auditor and Treasurer are of South Dakota, and they would probably lean towards any benefit they might confer upon South Dakota.

Mr. KELLAM. Do you know in any way in which they could?

Mr. PURCELL. As I understand it, there is no officer that knows the amounts paid in from the different sources except the Treasurer, and there is no check on the Treasurer for the amount he pays except the Auditor when he pays out for appropriations for his warrants. Of course, we are supposed to take his statement as to the amount of monies he receives from the railroads. We cannot do anything else.

Mr. SCOTT. I understand the Northern Pacific Railroad has paid into the Territorial Treasury in lieu of all taxes assessed against its lands, which it now holds, quite a considerable sum of money. Nevertheless those taxes still stand charged against those lands and the delinquent taxes still stand against our counties, so we have quite a large amount of taxes coming due, and if they are to be in lieu of all other taxes against the lands——

Mr. KELLAM. That is coming back to the old question. Will that help us out of the question now?

Mr. SCOTT. It is just a new phase of the question that struck me.

Mr. CAMP. If we leave the question open as to when the settlement should be dated, who is going to make it?

Mr. KELLAM. Date it at a time to give the Territorial officers an opportunity to close their accounts.

Mr. SCOTT. I don't know whether it would be to the benefit of North or South; but is there anything interfering?

Mr. KELLAM. I don't know that there is, but it strikes me to be an unusual thing.

Mr. CAMP. Suppose you make it in the way you propose, and make an agreement that at the time South Dakota shall stand one-half of the indebtedness then existing, and North Dakota the other half. There must be some way of dividing; of ascertaining the exact amount of that indebtedness, and certifying it to the Legislature.

Mr. KELLAM. I don't know as I understand you.

Mr. CAMP. There must be some way of certifying that to the Legislature. If we could make a settlement now, to-day, we would know just what amount of indebtedness there was, and then

any institution we kept separate from now on, why any indebtedness arising on account of South Dakota institutions would be made by South Dakota, and the same of North Dakota.

Mr. CALDWELL. The difficulty would be, we have no control over the Territorial offices, these Territorial officers, whether they come from South Dakota or North Dakota, they are the ones who are to credit with these taxes collected—they are the only persons who could tell whether they are from counties or railroads, or whatever source, and they are the only officers who can indicate what payment was made, and for what and to whom paid. The result of which would be it would require two calculations—one as to the condition on the 11th of March, 1889, and the other at the final wind-up; and it would be no more than fair that taxes were determined at the final wind-up, than part of it now and part then.

Mr. McGILLYCUDDY. Continue this Commission until that time.

Mr. CAMP. We have got to get something into our Constitution.

Mr. NEILL. Keep us on until that time.

Mr. McGILLYCUDDY. There should be some provision.

Mr. CAMP. I suggest we draw up a statement covering the contingent liabilities on account of the railroad land taxes paid in, and counties may have to refund.

Mr. KELLAM. I don't know as the members of the Commission would agree with me, but it simply occurred to me it would be a fair way of disposing of the matter, that if there was a liability we should all pay it. My idea is that the nearer we can come to keeping the Territory together as a unit until the time of dissolution, and then each assume its proper share or proportion of its debts and liabilities, providing for contingent liabilities, the nearer we will come to a fair settlement. Now, as suggested by Mr. CALDWELL, I don't see what advantage there would be in making this balance sheet on the 11th day of March, because the same officers would have control of these various departments. After the settlement they will have the same opportunities; they would have the same opportunities for favoring their section under one plan as the other.

Mr. HARRIS. I think not, Major.

Mr. KELLAM. We can't make a new law; we can't legislate; we can't impose duties; we can't furnish new books; we can't im-

pose different duties on these officers than the law now imposes on them. Now the statute even goes so far as to describe the form of some of their books; they can't depart from that under instruction from this Commission.

Mr. NEILL. Simply by getting them up. Just as easy for them to do it one way as the other.

Mr. HARRIS. I think the idea was—the appropriations made at that time and the taxes levied—made by the assessment now coming in, this thing could be kept separated easier now than afterwards.

Mr. KELLAM. We are still a Territory, and may be for ten years yet. All the revenues from the various sources of the Territory still belong to the Territory; and until the Territorial existence is terminated; and for us to undertake to say now they shall be divided six months, or eight months, or a year before that takes place, I doubt the wisdom of undertaking to do it. The railroad taxes belong to the entire Territory ; it belongs to the two States made out of it. For myself, and I presume such would be the case with each individual of the Commission, before agreeing that the railroad taxes should be divided in accordance with the locality, each would want to know whether your or my section was at a disadvantage. For myself, I would say, no, for the very reason they belong to the Territory, and it is the property of the Territory. The railroad taxes, and other taxes actually belong to the Territory as a unit.

Mr. PURCELL. Is that so? Part paid to the county?

Mr. KELLAM. Yes, but the 30 per cent. belongs to the Territory.

Mr. CALDWELL. And, furthermore, in regard to this matter of separation of the accounts, etc., with reference to North and South Dakota, I went to the Auditor and requested that he make out an abstract of the assessment roll with reference to the counties of North and South Dakota; but he doubted whether it would be the proper thing to do.

Mr. KELLAM. He said if it was the judgment of this Commission he would make it in the usual form, and also make separate sheets and return to the Treasurer, so any agreement we reached should be carried out. I didn't mean to interrupt you; but the law prescribes the form in which he should do his business. Still, of course, if an arrangement of that sort should be made here he would recognize it. I doubt, friend PURCELL, the pro-

priety of asking any of these three or four officers to separate the sources of revenue in advance of what the statute now requires.

Mr. CALDWELL. In fact it could not be done so as to effect anything because there are many institutions that have to be borne on the part of the entire Territory, and they could not be separated. They could be separated hereafter just as they have been heretofore; that is, all the institutions so far they are concerned payments to them can be determined at once.

Mr. KELLAM. I might say something ridiculous about this matter; I don't know much about methods of doing business. What shall be done with payments for South Dakota and North Dakota payments for current expenses.

Mr. SCOTT. That is charged up half and half.

Mr. KELLAM. There would have to be three accounts.

Mr. CAMP. There is an account kept with each institution.

Mr. KELLAM. If it can be done fairly without disadvantage to each side, I would not be particular.

Mr. SCOTT. Make the settlement as of March 1st, and we will not have to meet again. Suppose we make an agreement; we have got to trust these officers; if we make an agreement that upon the taking effect of the President's proclamation, any money on hand in the general fund, shall be divided share and share alike; if there is any current debts they shall be assumed share and share alike.

Mr. CALDWELL. The officers can only draw what the law provides.

Mr. SCOTT. When the Legislature made an appropriation last they made a certain amount for maintenance and a certain amount for permanent improvements; now the institution has got the right to use the whole of that amount the first year and the second year for the purpose of making permanent improvements.

Mr. KELLAM. Cover that by any agreement you choose, each institution having its ——

Mr. PURCELL. My idea was to figure up to the time of settlement and see how we stood; if South Dakota had an excess, make allowance for that. Of course, we can see advantages that might be taken by the officers.

Mr. KELLAM. I can't see how they would have any better facilities for taking any advantage in one case than another.

Mr. PURCELL. As Mr. CAMP suggests, that is their home

and they expect to return there after their term of office expires. The Secretary has no funds.

Mr. CALDWELL. These appropriations are all for two years, and they could not pay one-half of it in one year.

Mr. SCOTT. That has not been the rulings of the Auditor.

Mr. KELLAM. The appropriations of last winter have not been paid up.

Mr. SCOTT. Yes.

Mr. GRIGGS. In some cases they consume the full amount the first year.

Mr. KELLAM. The appropriations of last year, were they not to be divided? I think the appropriations were made for two years.

Mr. HARRIS. I don't so understand it.

Mr. PURCELL. The law makes no limitation on it, as I understand.

Mr. KELLAM. Of course, if one institution could do it another could. It might not be policy for them to do it.

Mr. CAMP. The Auditor might have an inclination to disallow certain warrants drawn for North Dakota institutions, as possibly he already has.

Mr. KELLAM. Well, I don't know anything about that; still if the law has appropriated that money they have a right to draw it.

Mr. CAMP. They only draw it through the Auditor. He can delay the game a great while if he wants to. They send for their vouchers to the Auditor, and the only way they can get the Auditor to allow them, if he don't want to, is by mandamus. Now, I don't think, Major, the Auditor will do anything of that kind; but at the same time we should leave ourselves at the mercy of the Auditor of the Territory.

Mr. KELLAM. I should be better prepared to vote upon this question when I see how it works.

Mr. SCOTT. I believe you will see that it is absolutely fair and right.

Mr. HARRIS. Mr. CALDWELL and I discussed the railroad matter as to where it could be determined; where it came from, and I believe there was only one railroad, the Milwaukee & St. Paul, and a little branch in Logan county.

Mr. BROTT. The Northwestern does.

Mr. CAMP. The Northwestern only runs up to Oakes.

Mr. CALDWELL. I don't see how this proposition here can in any manner prevent the officers of this Territory from doing that which is intimated they might possibly do. "From and after March 11, 1889, the State of South Dakota shall be credited with all taxes collected from counties within its boundaries." Credited by whom?

Mr. SCOTT. Who would naturally do it?

Mr. CALDWELL. The officers of the Territory. "And charged with all moneys paid out by the Territory for appropriations made to the public institutions situated therein." Who is to do that?

Mr. SCOTT. Who does that now?

Mr. CALDWELL. The Territorial officers.

Mr. CAMP. They get their money from the respective States.

Mr. SCOTT. He could pay out any money, taxes collected from South Dakota for the maintenance of North Dakota.

Mr. KELLAM. Would that be your opinion, to make an agreement binding upon the Auditor and Treasurer?

Mr. SCOTT. I have no doubt the Auditor and Treasurer would do as is requested.

Mr. KELLAM. I don't know but they would.

Mr. BROTT. It would not be binding.

Mr. SCOTT. They can keep the books.

Mr. CALDWELL. They have to do such things; they would be liable on their bond.

Mr. KELLAM. Suppose we do make an agreement of that kind. There is no money in the Treasury to pay the appropriations made to the institution by the Legislature, say the Jamestown Hospital. Suppose the Legislature made an appropriation for the Jamestown Hospital and there is no money in the Treasury coming from North Dakota counties, but there is $50,000 in the Treasury coming from South Dakota counties; now, should this agreement justify the Auditor in refusing to honor that draft?

Mr. CALDWELL. Certainly not.

Mr. KELLAM. Suppose the Legislature appropriated $50,000 to the Jamestown Asylum, but it came from the South Dakota counties; now here comes a voucher of the Jamestown Hospital for $10,000 under that appropriation; now would the Auditor be justified in refusing to pay that voucher?

Mr. SCOTT. What do they do now?

Mr. KELLAM. I say there is $50,000, but it came from the South Dakota counties.

Mr. SCOTT. But what do they do now?

Mr. CALDWELL. Go to work and issue Territorial bonds.

Mr. KELLAM. Now there is money there, $50,000; I should pay $10,000 to the Jamestown Asylum, but on account of that requirement I can't do it. How long would it require; how long would it take to require them to do it by mandamus?

Mr. SCOTT. They could issue the warrant to pay——

Mr. KELLAM. Could they issue a warrant on that $50,000 in the Treasury?

Mr. SCOTT. The chances are not one in five hundred that the case would happen. The money comes in pretty evenly. About an even number of counties between North Dakota and South Dakota, and this is a supposition case.

Mr. CALDWELL. Well, that matter has been pretty thoroughly discussed; but I would like to ask the basis of the paragraph "Should South Dakota desire the State of North Dakota to assume the ownership and control of the Capitol at Bismarck with its furniture and fixtures, including all claims against the Territory arising out of the acceptance of the grant of lands made to the Territory for Capitol purposes, and further to assume its bonded indebtedness, the State of North Dakota will do so upon the payment by South Dakota to North Dakota of the sum of $40,000."

Mr. PURCELL. That is made on the basis, Mr. CALDWELL, of the fact that there are $82,000 worth of refunding warrants issued now, which represent balances due contractors, etc., for work on this building, and, also, $22,000 which represents the furniture in the building, in all $104,000, that this Capitol stands to the Territory. Now, of course, we claim in the North, it is a contingent asset; that, the people of North Dakota will vote upon the question as to where the Capital shall be, and in case it is changed from Bismarck, according to the conditions in the deed it ceases to be used for Capitol purposes, that therefore it would revert to the mortgagors; and we take in connection with that, the fact that there has been sold from this grant of land about $100,000 worth of real estate for which warranty deeds were given, and that money used in the construction of this building. In case this should not continue to be used for public purposes and go back to the railroad company, this land which has been sold, and for which warranty deeds were

given, would be clouded, and the Territory would have to make good to purchasers of that land the purchase price with damages, whatever that might be. So, taking into consideration the contingent liability upon the warranties in these deeds, and the indebtedness already existing, we feel it would be no more than right that South Dakota, who has had the use of it equally with ourselves and during which time she has had the most of the government, should pay to us $40,000. That is the basis of that proposition. Then, of course, we take upon ourselves the burden of paying the $80,000, and in case the Capital is removed we take the burden of refunding what is advanced to the purchasers under their warranties.

Mr. SCOTT. I would say in addition to that $40,000, there is another sum something like $13,000 that would be South Dakota's share, interest included in the bonded indebtedness. The Capital is located here in North Dakota, and yet, unless the people of North Dakota locate the Capital here it is of no use to North Dakota.

Mr. PURCELL. Then we take into consideration the fact that you have no building situated in a similar condition. There was a claim that we talked about the other day, an interest matter of some $33,000, that ought to be borne by South and North Dakota alike. We claim that $33,000 is included in and forms a part of the $40,000, which leaves about $45,000 you should pay to us for taking this institution off our hands.

Mr. SCOTT. I will state to the Commission that in justice to Mr. HARRIS, that he is not at all responsible for that part of the proposition, and, in fact, does not agree, that is, as to our standing a part of this; being a citizen of Bismarck, naturally he thinks the Capital should be located here and that North Dakota has no business to change it. The rest of us on the Commission feel entirely different; we all have aspirations, more or less, just the same as you people in South Dakota, and for these reasons I merely desire to place Mr. HARRIS aright before the Commission, that nobody might seem to think he was not doing justice to his own side.

Mr. CAMP. I think it is patent to anybody that has walked up to this Capitol and examined it, that this building will not remain long the Capitol of any State.

Mr. NEILL. You don't hold South Dakota responsible for it?

Mr. PURCELL. You had a majority of the Commission that located it.

Mr. ELLIOTT. That is true, but North Dakota money brought it here.

Mr. HARRIS. North Dakota helped pay for it, too.

Mr. ELLIOTT. I believe I was a member at that time, and tried to keep it at Yankton.

Mr. PURCELL. You can have it if you want it, too.

Mr. NEILL. We have suffered enough already without paying for it any more.

Mr. CAMP. Irrespective of the question of moving the Capital, I don't think anyone will suppose, for a moment, that this building which stands us in for $104,000 will remain for any length of time the Capital of North Dakota; and if we have to take up those refunding warrants, $82,000, why, we are paying $100,000 more—$105,000 more for nothing.

Mr. PURCEEL. Besides our liability on the other deals.

Mr. HARRIS. Of course——

Mr. SCOTT. Of course this is not the Capital of North Dakota—it is the Capital of Dakota. It says the records shall remain at the Capital of Dakota, but it does not say the Capital of *North* Dakota.

Mr. ELLIOTT. But you do assume by act of Legislature you will assume the payment of these bonds.

Mr. PURCELL. You should not assume the Legislature of the Territory would obligate the State. The State of Dakota would not be obligated by it.

Mr. KELLAM. As soon as this matter was suggested the other day I looked up the Journal of the House and Council, and I noticed that when the bill for the assumption of this twenty—I don't recollect the amount—this refunding, amounting to about $83,000, when that was pending, it was referred to the members of North Dakota, and that the bill was passed upon the understanding, or something in the shape of a tacit agreement that the entire $83,000 would be assumed by North Dakota in case of division. The Journal discloses that.

Mr. SCOTT. Still, at the same time, as a proposition of law, of course we want to do what is right; but as a matter of law could the Legislature of the Territory legislate the State of North Dakota into that?

Mr. KELLAM. No, but as a matter of law——

Mr. SCOTT. Would that make any difference?

Mr. KELLAM. I think it would make a difference in collection of the indebtedness against South Dakota.

Mr. CAMP. Simply have to go back to the old indebtedness.

Mr. KELLAM. Wouldn't it be in the nature of an ovation—party accepting the contract——

Mr. CAMP. Suppose that contract was illegal?

Mr. PURCELL. Suppose the State of North Dakota refused to accept it; suppose you attempt to enforce one of these warrants against the State of South Dakota, do you suppose it could be done?

Mr. KELLAM. Why I—— It recites on its face that in case of division of the Territory into two separate States, he shall look to North Dakota for payment.

Mr. PRICE. Don't you suppose the bond against North Dakota could be enforced?

Mr. PURCELL. No, sir; not against North Dakota, or anybody. The Major don't claim that.

Mr. SCOTT. Could not enforce them against—could he enforce them against North Dakota.

Mr. KELLAM. I should suppose so. I suppose if I had a note against Mr. McGILLYCUDDY, and I changed it for a note against Mr. CAMP——

Mr. SCOTT. Yes, but Mr. CAMP don't give that note.

Mr. KELLAM. You had the Territorial note and gave it up to Dakota, and in receipt, in case of division, it should be paid by North Dakota.

Mr. CAMP. Yes, but North Dakota never signed that note.

Mr. PURCELL. In case I neglected to pay he would be entitled to go back to the original claim, and he would be allowed to substitute in the place of the one who had a claim against the whole Territory.

Mr. CALDWELL. The fundamental requirement in this Omnibus Bill is that the debts and liabilities of the said Terrritory shall be assumed and paid by the said States respectively.

Mr. SCOTT. Yes, sir.

Mr. CALDWELL. Suppose we don't agree—suppose our agreement don't cover all the libailities and debts against the Territory, I don't suppose there would be any proclamation issued.

Mr. KELLAM. My view would be these would be claims against the Territory up to the time of the division.

Mr. SCOTT. Mr. CHAIRMAN: It is now nearly 6 o'clock, and I move we adjourn until to-morrow morning at 9:30.

Mr. CAMP. Is there a second to the motion?

Mr. NEILL. I second the motion.

Mr. PURCELL. Then make it until 3:30. I second the motion until to-morrow morning at 9:30.

Mr. CAMP. All in favor of the motion say aye. The motion is carried.

TENTH DAY.

BISMARCK, *Friday, July 26, 1889.*

The Commission met at 10 o'clock a. m., with Mr. KELLAM in the Chair.

All South Dakota members were present.

Messrs. HARRIS, SPALDING, SANDAGER and PURCELL, North Dakota members, absent. There being no quorum, the Commission agreed to meet at 3:30 p. m.

AFTERNOON SESSION.

The commission met at 3:30 o'clock and had an informal discussion for a time without a record being made of the same.

At 4:10 o'clock the roll was called, with Mr. KELLAM in the chair.

All South Dakota members present. Messrs. SPALDING and SANDAGER, of North Dakota Commission, absent.

Mr. KELLAM. Gentlemen, there is no special order of business before us. We have this matter of the disposition of this property.

Mr. SCOTT. Suppose we take up that report of Messrs. CALDWELL and HARRIS.

Mr. CALDWELL. Mr. CHAIRMAN: I move that the chairman of these respective delegations, Messrs. KELLAM and CAMP, be requested to confer regarding the matters in difference between

the respective delegations, and to, as near as possible, come to an understanding thereupon, and to report said understanding to this Commission for consideration.

Mr. ELLIOTT. I second the motion.

Mr. KELLAM. Gentleman, you have heard the motion; the question is upon the motion of Mr. CALDWELL. Are you ready for the question?

Mr. HARRIS. Question.

Mr. KELLAM. The Clerk will call the roll.

Camp, pass; Griggs, yes; Harris, yes; Purcell, yes; Sandager, absent; Scott, yes; Spalding, absent; Kellam, pass; McGillycuddy, yes; Caldwell, yes; Brott, yes; Elliott, yes; Price, yes; Neill, yes.

Six of South Dakota, and four North Dakota in the affirmative.

Mr. KELLAM. Under the rule the motion is carried.

Mr. PRICE. I move we adjourn until to-morrow morning at 9:30 o'clock.

Mr. SCOTT. I second the motion.

Mr. KELLAM. Do we want to know anything more?

Mr. CAMP. I don't know.

Mr. KELLAM. The question is upon the motion to adjourn. As many as are in favor of the motion say aye. The motion is carried, and we stand adjourned to meet at 9:30 o'clock a. m., July 27th.

ELEVENTH DAY.

BISMARCK, *Saturday, July 27, 1889.*

The Commission met at 9:30 o'clock a. m.

No meeting was held in the morning, the two chairmen still consulting and not ready to report. Agreed to meet at 2 o'clock p. m.

AFTERNOON SESSION.

The Commission was called to order at 2:30 o'clock p. m., with Mr. CAMP in the chair.

Mr. CAMP. Gentlemen of the Commission, you will please come to order.

The Clerk will the roll.

Camp, here; Griggs, here; Harris, here; Purcell, (Mr. Griggs presented the following proxy signed by Mr. Purcell, and votes yes. "I hereby authorize delegate ALEX. GRIGGS to cast my vote on all questions before the Joint Commission. Signed. W. E. PURCELL.") Sandager, absent; Scott, here; Spalding, absent; all South Dakota members present.

Mr. CAMP. I don't know of any question that will arise. I don't think it will make any difference with the majority vote.

Mr. GRIGGS. In case we come to a final settlement Mr. PURCELL will be in at the death.

Mr. CALDWELL. I don't know anything about it, but it seems to me a proxy would hardly be regular.

Mr. CAMP. But I don't know as it will make any difference.

Mr. CALDWELL. No, I don't know that it will make any difference.

Mr. CAMP. Gentlemen, what is before the meeting?

Mr. BROTT. Would like the report of the committee.

Mr. CAMP. Mr. KELLAM is ready to report for that committee.

Mr. KELLAM. Now, gentleman, I want to say in behalf of Mr. CAMP and myself, that of course this plan we suggest here is

not supposed to be what the agreement will be, even if we agree upon this plan; but it is rather an outline of a general basis of agreement we recommend to the Commission:

GENERAL PLAN OF AGREEMENT PROPOSED AND RECOMMENDED.

Public Institutions. Each State shall take the public institutions located within its boundaries, with all appurtenances, furniture, etc., and shall assume the payment of all indebtedness against the Territory, bonded or funded, on account of such institutions respectively.

All other items of personal property and miscellaneous effects belonging to the Territory, except the Territorial Library, and the Territorial Records and Archives, shall be divided as nearly equally as possible between North and South Dakota.

The State of South Dakota shall pay to the State of North Dakota $42,500 on account of the excess of Territorial appropriations, for the permanent improvement of Territorial institutions, which under this agreement will go to South Dakota, and in full settlement of unbalanced accounts, and of all claims against the Territory, of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of Northern Pacific Railroad lands, and the payment of said amount shall discharge them and exempt the State of South Dakota from all liability for or on account of the several matters hereinbefore referred to, nor shall either State be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the Territory of Dakota had such Territory remained in existence, and which liability shall grow out of matters connected with any public institution of the Territory situated or located within the boundaries of the other State.

Neither State shall pay any portion of liability of the Territory arising out of erroneous taxation of property situated in the other State.

Each committee shall make a sealed statement of the amount it is willing to pay for the undivided half of the Public Library, and the one offering the the larger sum shall take the Library at the sum so offered.

If, on investigation, it appears that the militia property is divided between North and South Dakota companies in proportions nearly equal, then the property is to remain in that State within the limits of which it now is; otherwise it is to be divided as nearly equal as possible.

The final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid to the public institutions located within its boundaries on account of the current appropriations since the same became available; and South Dakota shall be charged with all sums paid to public institutions located within its boundaries on the same account and during the same time. Each State to be charged with one-half of the general expenses during the same time. That all monies paid into the Treasury during this period from about March 11th, to the time of final adjustment, from North Dakota shall be credited to North Dakota, and all such sums paid in from South Dakota for the same time shall be credited to South Dakota, except that all railroad taxes paid into the Territorial Treasury since the date above named for years prior to 1889 (that is the part thereof going to the Territory) shall be equally divided

between North and South Dakota, and the railroad taxes for 1889 shall be distributed as already provided by law, except that so much of said tax as goes to the Territorial Treasury shall be divided as follows: North Dakota shall have so much thereof as is paid by railroads in North Dakota, and South Dakota so much thereof as is paid by railroads in South Dakota. If there shall be any indebtedness at the time of final division, each shall assume its share as determined by the amount paid to each section in excess of the receipts from each section, and if there shall be a surplus at the time of such division, each shall be entitled to the amount it has paid in over the above amount it stands charged with.

The payment from South Dakota to North Dakota, or as much of it as possible, shall be made by South Dakota assuming North Dakota's share of current liabilities at the time of final adjustment, including North Dakota's share of cost of copying records.

It is further recommended that South Dakota and North Dakota pay one-half each of all liabilities now existing but not audited and allowed, except those incurred on account of public institutions.

Each State shall succeed to all rights of the Territory upon contracts for public works within such State, or bonds to secure the completion of such contracts.

Each State shall receive all unexpended balances of the bonds which it is to pay whether such balances have been covered back into the Treasury or not.

Mr. ELLIOTT. Mr. CHAIRMAN: In order to get this proposition properly before the Commission, I move the adoption of the report.

Mr. CAMP. Is that motion seconded?

Mr. SCOTT. Well, I will second it for that purpose.

Mr. CAMP. You have heard the motion. Are you ready for the question?

Mr. CALDWELL. In order that there may be an exact understanding as to the signification of certain references in the report, I would call attention to the fact that there is—that railroad taxes may possibly need be determined in one or two ways; that is to say, when we apply to certain tax, namely of 1888, we might possibly mean either that it was the tax upon the gross earnings of the railroad in 1888, or the year in which the tax was to be paid. I would ask each signification is put to these various names and then the report, this one we speak of, the 1889 tax, is understood to mean the taxes that became collectible in 1889, but which were levied upon the gross earnings of 1888.

Mr. CAMP. My understanding was it meant the erroneously paid taxes under the law of March, 1883, I think.

Mr. CALDWELL. March 7, 1883.

Mr. HARRIS. That is, the 1888 taxes paid in in 1889.

Mr. CAMP. Now there were some taxes delinquent upon the earnings of 1888, more than on those of 1887. This covers all earnings on inter-state commerce up to that time, up to the end of 1888.

Mr. CALDWELL. Just simply so there will be no misunderstanding about it.

Mr. SCOTT. What is understood by the second section of that report; by the first section which says, "all furniture, appurtenances," etc. I want to get at that with reference to the Capitol building. All in the Capitol building is included under that term, is it?

Mr. KELLAM. That was my thought. I didn't have anything in my mind further than it would include the furniture of the Capitol, as it includes the furniture of the other public institutions.

Mr. SCOTT. I didn't know. There was something said the other day about some things I think was in the Capitol, such as the safe.

Mr. KELLAM. There were a few things not covered; those things were covered by this agreement by general appropriations.

Mr. HARRIS. Some furniture in the Railroad Commissioners' office.

Mr. KELLAM. That is not part of a public institution. Any part of the Capitol or furniture.

Mr. CAMP. For instance, there is a table and typewriter in the Capitol; that is the Governor's office, and there is the Railroad Commissioners' office.

Mr. NEILL. We had that question up the other day.

Mr. SCOTT. I had reference more particularly, I think, the most valuable articles was a safe in the Treasurer's office.

Mr. NEILL. Safe and scales.

Mr. KELLAM. I didn't have any particular thought of those items; but that such items of furniture as properly and incidentally belonged to the Capitol, for instance, the furniture of the Governor's office, Auditor's office, Secretary's office, remaining in all those offices. They were proper and necessary to be kept at the Capitol.

Mr. HARRIS. You included in that, the safe in the Treasurer's office?

Mr. KELLAM. I had no thought about that. I don't know whether Mr. CAMP did or not.

Mr. CAMP. No, I didn't particularly.

Mr. CALDWELL. It would be my judgment, just viewing the matter casually, that such furniture as had been purchased for offices regularly maintained in the Capitol building, would be included as a part of the furniture, and furniture we will say in the Capitol building, offices which are maintained elsewhere; that that furniture should go to that office. Of course, this Commissioner of Immigration is maintained now at another point, and likewise the offices of the Railway Commissioners; and it seems to me a proper distribution of the matter would be to—that anything provided for the offices regularly maintained in the Capitol, that that should stay there, and any of this furniture and property provided for offices not maintained in the Capitol should be where the offices are maintained.

Mr. GRIGGS. Where is the office of the Railroad Commissioners now?

Mr. CALDWELL. At Watertown.

Mr. CAMP. As far as I am concerned I would be willing to consider it that way.

Mr. SCOTT. So far as I am concerned I would be willing to consider the furniture in the Commissioner of Immigration's office the property of South Dakota, and if the Railroad Commissioners' furniture is down there, would be willing to consider that; but the furniture we have in the Capitol here belongs to us.

Mr. GRIGGS. That expresses my opinion exactly.

Mr. KELLAM. The furniture that is used as part of the Capitol and its offices, and appliances, should be regarded as the furniture of the Capitol. In regard to the furniture of the Railroad Commission, I don't know how that is at Fargo, but at Aberdeen or Watertown or anywhere else, of course, it would not be a part of the Capitol furniture.

Mr. HARRIS. I think that is what Mr. SCOTT's idea was, too.

Mr. GRIGGS. The furniture that is here belongs to the Captol.

Mr. HARRIS. My understanding was if their offices are there, the same as Commissioner of Immigration is at Aberdeen—if their office is regularly established there, the furniture that is here should go to the office.

Mr. SCOTT. Well, I would not quarrel about it.

Mr. CALDWELL. That would seem a fair thing to do. The fact is, of course, for a considerable time the property of the Ter-

ritory—that is, these offices in order to run their business, ought to have the furniture at the place the office is maintained.

Mr. GRIGGS. In all probability they have that down there.

Mr. NEILL. They have part, and expect to take the rest when this Commission was appointed. They have referred the matter to us asking us to ship it, but we have paid no attention until disposition was made.

Mr. GRIGGS. One of the Commissioners was here a short time ago and used that room; and I think it is perfectly proper it should be left there. I don't think it is right to take it away.

Mr. McGILLYCUDDY. How much does that amount to?

Mr. NEILL. About $175.

Mr. McGILLYCUDDY. The amount is so small I hardly thought it worth arguing over—five minutes talk about it.

Mr. NEILL. It is not the value as much as the principle involved. There is $2,000 listed and that is really all South Dakota has got out of it. It is all we ask, and simply ask it to complete these offices already established.

Mr. CALDWELL. It is necessary for them to conduct their business, and they would have to take these or buy some other.

Mr. GRIGGS. It is here and the furniture is here. Gentlemen, I think it is very wrong to move that furniture. The Capital is located here and we can't help it. I think as it is we are sacrificing enough if we get this proposition, because you gentlemen are where—the institutions you have in the South are worth very much more than what we have in the North over and above the bonded indebtedness.

Mr. McGILLYCUDDY. It would come down to the question who contributed the most, North or South.

Mr. PRICE. It seems to me entirely unnecessary to discuss that.

Mr. NEILL. This matter was suggested the other day.

Mr. PRICE. As far as I am concerned I am willing to let them have the furniture. I don't think we have much use for it either.

Mr. GRIGGS. I will tell you one thing. We do have use for Railroad Commissioners in North Dakota.

Mr. CALDWELL. Yes, that is right; you have.

Mr. ELLIOTT. No doubt of that at all.

Mr. CALDWELL. If we had railroad companies in the South

like you have in North Dakota, it would be a good thing. Up here they try to do something for the benefit of their patrons.

Mr. BROTT. Of course the type writer should be where the office is.

Mr. CALDWELL. I tell you now, the boys have made a most excellent adjustment of things.

Mr. CAMP. The question is upon the adoption of the report. We certainly ought to have more discussion.

Mr. McGILLYCUDDY. Does the adoption of the report bind it?

Mr. NEILL. Yes.

Mr. ELLIOTT. Now is the time to get your talk in.

Mr. CALDWELL. I ask simply to determine if the division——

Mr. PRICE. It is satisfactory to me; I would like to make a speech as well as any man on earth.

Mr. KELLAM. Under this recommendation South Dakota pays to North Dakota the lump sum of $42,500; that this payment shall be liquidated in part by assuming certain indebtedness of the entire Territory at the time of the dissolution; North Dakota half, we take it and take a credit of $42,500; if the copying of these records amount to $5,000 we pay the whole of it and take a credit of $2,500.

Mr. SCOTT. I feel just this way, I want this thing straightened up. Of course, it was necessary to get a great many facts and look the business up, and we were not posted. It took considerable length of time to be in a position to make any proposition. I don't want to stand out for any small difference between us, for I think the Territory is too great, and its resources are too grand to let the Commission, an honorable Commission like this, dispute over small sums. Now, our original proposition was an amount in the aggregate, $100,000. I have discussed this matter over with our Chairman, and the rest of the members of the Commission have done the same. I want to see a settlement. I thought that the settlement should at least be the round sum of $50,000. It has, cutting it in two just exactly; and that is the way I feel about it; and I should be in favor, so far as I am concerned, of making the sum, if it was changed from $42,000 to $50,000. But I really think then, that the boys from the South here have got the best of us. At the same time I want to see the settlement go through and without any further delay. We should draw our stipulations up and be ready to report the early part of

next week and let you gentlemen get home to your duties there. It is an inconvenience to us and I am sure much more of an inconvenience to the members from the South. But I do think the report should be so amended that $50,000 should be inserted in the place of $42,500.

Mr. CALDWELL. There is just one question I would like to ask in regard to this matter of railroad tax. Now it says in there, the tax of 1889 shall be divided equally between North Dakota and South Dakota. Does that mean according to where it came from?

Mr. KELLAM. No, it doesn't say so.

Mr. CALDWELL. I mean the 1889 taxes divided according to the sources from which it comes. Is the tax of 1889, understood as including anything else than the assessment upon the gross earnings of 1888?

Mr. CAMP. That is all.

Mr. CALDWELL. That is all.

Mr. CAMP. Due after March 11, 1889.

Mr. KELLAM. I think Mr. CAMP and I agreed to cover under the first clause all taxes in arrears; that is, taxes that should have been paid before 1889, and in the other, all taxes that should be paid in 1889.

Mr. CAMP. Everything in arrears up to March 11, 1889. Everything due or shall become due since March 11, 1889, as divided.

Mr. CALDWELL. As I understood it, the tax on the gross earnings of 1888, and delinquents prior to that time, is divided into two payments in 1889, one payment about the 7th of April, the other about the 15th of August.

Mr. CAMP. The law says within thirty days after the passage and approval of the act all arrears shall be paid.

Mr. CALDWELL. It was not the purpose to take or to divide the penalties in two payments.

Mr. CAMP. No.

Mr. CALDWELL. That fixes that point.

Mr. NEILL. That's all straight.

Mr. CALDWELL. Yes.

Mr. CAMP. I would like to hear a more general expression all around.

Mr. McGILLYCUDDY. This $8,000, or $7,500, seems to be a question in Mr. SCOTT's mind, the difference between $42,500 and $50,000; you take and compare that to the amount involved; some-

thing over $2,000,000 is very small, hardly worth taking into consideration. The Chairmen of the two committees of North and South Dakota made at the request of the two committees as an arbitration committee a report, and tried to come to some definite understanding. So far as I am concerned I am willing to stand by it. But to raise that amount $500 I should certainly vote no.

Mr. KELLAM. I don't know whether I ought to say anything or not, but it is only in reply to the suggestion of Mr. SCOTT. I don't know which side would get the advantage, or whether there would be any advantage, and I don't think that it is possible for any man to tell which side would get the advantage whether we settled upon the basis of no payment, each territory taking its institution without any payment either way, or whether we settled upon the basis we suggested the other day, or settled upon the basis of payment of $42,500. Now, I don't, for myself, agree to the proposition of paying $42,500 because I believe that is just the amount we ought to pay; but simply because we have agreed upon that amount as a sort of compromise of the claims of both sides. I know this, that at least two of the members of our Commission only will consent to the amount of $42,500, because the matter was rather left to us, Mr. CAMP and myself. These two gentlemen say we would like to vote no, because we would like to be upon the record "no" when it goes South; but at the same time, having entrusted this matter to you and Mr. CAMP, if you agree to it, we shall. And I am satisfied this is the only consideration for two of our members. I say again, I don't agree to that, and I don't suppose Mr. CAMP does, and I don't suppose any man on the Commission does, because he thinks it is the exact amount between us. My own judgment would be that a fairer settlement would be upon a much less sum, and still I don't know as it would. I simply say we are delaying this matter unless we can approach each other in the spirit of compromise and concession, and we cannot make any settlement. Now, when we came here we thought our proposition was a fair one. I have no doubt you thought your proposition was a fair one. We naturally looked at these matters from our different standpoints, and this amount we have arrived at, we did it in an endeavor to reach a settlement of these adverse claims. Now, I really think that the gentlemen of the North Dakota Commission should sympathize somewhat with Mr. CAMP and myself in this matter. This is the second time the matter has been left

with us, and the second time with rather a tacit understanding that we, knowing the feeling of our respective Commissions, would recommend such a compromise as would probably be acceptable. All I intended to say was that two of our Commission are not at all satisfied with the amount we have recommended, and only do it, as they say, for the sake of harmony and out of deference to the judgment of the committee.

Mr. CAMP. GRIGGS, we have not heard from you yet.

Mr. McGILLYCUDDY. Forty-two thousand five hundred dollars sounds better that $50,000. It seems to me there must have been some——

Mr. GRIGGS. Mr. PRESIDENT: I move that the report be amended so it will say $50,000 in lieu of $42,500.

Mr. SCOTT. Yes, I will second the motion. Now, it is not out of disrespect for Mr. KELLAM or Mr. CAMP.

Mr. KELLAM. I will not charge up anything.

Mr. SCOTT. Our original proposition was $100,000, and, of course, that is on our record, as it is on yours. Naturally, when it comes to be investigated and looked over, the question will arise, how is it the North Dakota boys came down from $100,000 to $42,500. Of course, it would be an easy explanation to say, why, the South Dakota proposition was to call it square. Our proposition was to have $100,000, and we just split the difference for the sake of arriving at a settlement.

Mr. BROTT. Might say you started too high.

Mr. SCOTT. I don't think they are liable to do that,

Mr. CAMP. The question is on the amendment to the motion to adopt the report. Any further remarks? If not the Clerk will call the roll.

Camp, I would like to pass; Griggs, yes; Harris, yes; Purcell, yes (by Griggs); Sandager, yes; Scott, yes; Spalding, absent; Kellam, no; McGillycuddy, no; Caldwell, no; Brott, no; Elliott, no; Price, no; Neill, no.

Mr. CAMP. Under the rule the motion is lost. The question recurs upon the motion to adopt the report of the committee. If there are no further remarks the Clerk will call the roll.

Camp, yes: Griggs, ——

Mr. SCOTT. I would suggest the Clerk call the names of the South Dakota Commission first.

Mr. NEILL. All right.

Kellam, yes; McGillycuddy, yes; Caldwell, yes; Brott, no; Elliott, yes; Price, yes; Neill, yes.

Camp, yes; Griggs, Mr. GRIGGS. Well, out of respect to their feelings I will vote yes; Purcell, yes (by Griggs as proxy for Purcell); Sandager, absent; Scott, yes; Spalding, absent.

Mr. BROTT. I move we make this unanimous.

Mr. KELLAM. Mr. BROTT, this is for the South Dakota Commission and not for the North Dakota Commission. It would please me, still I don't think myself it is a settlement we will get any glory out of down South. I don't want you to go down there and say you protested against this. All our Commission rather have it unanimous.

Mr. BROTT. I will change my vote to yes.

Mr. KELLAM. I don't want you to do it if you don't want to.

Mr. BROTT. I can stand all the glory I will get.

Mr. CAMP. The next thing will be to draw up a formal agreement which will be recommended to be adopted by the two Conventions. But we have yet to find out about the militia and to go into the details of this division of the property of the offices. We had better arrange to——

Mr. CALDWELL. Would it not be well to have, at this time, the report of the Committee on Records.

Mr. PRICE. I want to introduce this motion at this time: "The Chairmen of the respective Commissions shall prepare and and present to the Joint Commission the final agreement."

Mr. SCOTT. I second the motion.

Mr. CAMP. You have heard the motion. If there are no remarks, all in favor of the motion say aye; opposed, no. The motion is carried.

I think it would be a good plan to have the report of the Committee on Records.

The following report was read by Mr. CALDWELL:

BISMARCK, July 24, 1889.

To the Joint Commission of North and South Dakota:

GENTLEMEN: Your sub-committee appointed to suggest an agreement for disposition of the archives, records and books of the Territory, as provided in sections five and six of the Enabling Act, would respectfully recommend:

First. That certain records as herein indicated should be transcribed—the originals to be allotted to one of the States and the copies to the other, by such arrangement as may be arrived at by the Commission.

Second. That such books, files, etc., as refer particularly to either section shall be allotted to that section, where a division of said files is possible.

Third. That in case of files, correspondence, etc., which shall refer to the two sections in general; that such files, correspondence, etc., shall be grouped in convenient lots, and said groups to be selected from by the respective sections alternately; the first choice to be determined by lot.

Fourth. That where transcription is recommended, the expense thereof shall be divided equally between the two sections.

Fifth. The more particular details as to this agreement are given below:

RECORDS TO BE TRANSCRIBED.

Secretary's Office: Two volumes Railroad, Deeds, Mortgages and Leases, twenty-seven volumes Foreign and Domestic Incorporation Records, three Notarial Commission Records, one General Executive Record, one Record of Appointments, one Record of Elections.

Auditor's Office: Six volumes Appropriation Records (Ledgers), one Executive Record, one volume Insurance Record, 1889, Articles of Domestic and Foreign Insurance Companies.

Treasurer's Office: Three Cash Books, one Journal, two Ledgers, two old books—Journal and Cash Book and Ledger, one Bond Register.

Governor's Office: One Requisition Record; one Executive Record.

Adjutant General's Office: Record Books.

Supreme Court Records: Record Books.

TO BE DISTRIBUTED ACCORDING TO LOCALITY.

Secretary's Office: Election Returns, Constitutional Conventions and Local Option; Application and Bonds of Notarial Commissions; Enrolled Bills of Local Application; Applications for Pardons; Articles of Domestic Incorporation; Papers relating to Organization of Counties.

Auditor's Office: Vouchers of Local Application; One Bond Register, County Bonds, South Dakota.

Treasurer's Office: One Warrant Register, to go to North Dakota; Letters to be divided by Counties, and Vouchers and Receipts the same; Bonds, Coupons paid; Railroad Report of Gross Earnings; Canceled Bonds, South Dakota.

Public Examiner: Records to go to section where located.

Boards of Agriculture: Records.

Dental Examiners: Records.

Boards of Pharmacy: Records.

Governor's Office: Census returns; requisition papers.

Commissioner of Immigration: (Nothing.)

TO BE DIVIDED BY LOT.

SECRETARY'S OFFICE.

No. 1. Correspondence, including Letter Files and Letter Books.

No. 2. Bills introduced in Legislature to date, House and Council Journals and Bill Books.

No. 3. Enrolled Bills of General Application.

No. 4. Applications and Affidavits of Foreign Loan and Building Associations.

No. 5. Proclamations of Governors.

No. 6. Oaths of Office, Commissioners of Deeds.
No. 7. Oaths and Bonds of Territorial Officials.
No. 8. Articles—Foreign Corporations.
No. 9. Articles not Specified.

GOVERNOR'S OFFICE.

No. 8½. Two volumes Visitors' Registers.
No. 9½. Official Correspondence, Letter Files and Letter Books.
No. 10½. Lincoln Memorial.
No. 11½. Articles not specified.

AUDITOR'S OFFICE.

No. 10. Warrant Register.
No. 11. Warrant Stubs and Redeemed Warrants.
No. 12. Vouchers other than those of Local Origin.
No. 13. Six volumes Insurance Records.
No. 14. Letter Files and Letter Books.
No. 15. Abstract of Assessment Roll. (One copy is with Auditor and the other is with Treasurer.)
No. 16. Annual Statements and Correspondence with Insurance Companies.
No. 16½. Articles not specified.

TREASURER'S OFFICE.

No. 17. Two Warrant Registers with Auditor's Receipts.
No. 18. Five Letter Books.
No. 19. Stub Receipts given for Railroad and other funds paid in.

ATTORNEY GENERAL'S OFFICE.

No. 20. Letters and papers.
No. 21. Commissioner of Immigration. Letters and Papers.

VETERINARY SURGEON.

No. 22. Letters and Papers.

RAILROAD COMMISSIONERS.

No. 22½. Letters and Papers.

BOARD OF HEALTH.

No. 23. Letters and Papers.

ADJUTANT GENERAL'S OFFICE.

No. 24. Correspondence, etc.

Respectfully submitted,

HARVEY HARRIS, E. W. CALDWELL, } Committee.

Mr. CALDWELL. Supreme Court Records: With regard to them I don't know what would be absolutely necessary to be transcribed. The Committee asked Mr. HAYDEN to see the Superintendent of Public Instruction with regard to the records in his

office, and he says there are some two or three record books pertaining indiscriminately to North Dakota and South Dakota, and it is the judgment of Mr. ROSE that these ought to be copied.

Mr. CAMP. Is not there another department of Education down South?

Mr. CALDWELL. No. There is a Board of Education, the General Superintendent and two assistants, and the General Superintendent is in North Dakota and the two assistants down there. It is a Territorial Board of Education, really. I wanted to say, at the time of the appointing of this committee, it was the judgment of the Commission that these corporation records should be copied, and so I coincided with brother HARRIS' views and reported in favor of that. My judgment is against copying all those, andI make this explanation in regard to that, that when I might say something against it, that it might not seem inconsistent with the recommendation. In regard to a good many, particularly of the Domestic Corporations, the original articles as forwarded to the office of the Secretary were returned to the party after transcribing into the records of the office. It is only that consideration that leads me to think there is a justification, probably, of the copying of the records. Particularly is it the case with regard to incorporation—charters of incorporations; and where the corporations were doing a general business, why they in a business way would send up here their original articles and keep a duplicate; they would send up here their original articles, and out of deference and request from them, the Secretary has in many cases returned them.

Mr. CAMP. Would it not be possible to copy just the South Dakota corporations?

Mr. CALDWELL. The difficulty would be the corporations have secured the privilege of doing business in the Territory, and there might be some question as to its powers under the charter. It is a very close question and a great many considerations both ways. To some it will be this: just a question of economy on one side and possible use.

Mr. CAMP. There is another question I want to ask, and that is, have you recommended those volumes which are necessary in order that the States may respectively commence operations?

Mr. CALDWELL. That matter was—that distinction was most emphatically sat down upon by the Commission by the resolution I introduced, and was voted down; and then

the expression of the Commission was in favor of copying, not only such books as should be necessary—absolutely necessary for the respective States to commence business, but also to copy anything that in their presumption might be desirable to copy hereafter.

Mr. SCOTT. I understood the committee would recommend such as should be copied immediately—for immediate use, such as must eventually be copied.

Mr. CAMP. That is what I supposed.

Mr. CALDWELL. We believed we were to report together. It was Mr. HARRIS, I believe, who introduced the resolution, and he said it was his object to take and recommend the copying now of anything that would be necessary to copy.

Mr. HARRIS. My idea is this: The Territorial officials are here and everything is in shape to do this work. If these States are to go into operation and all these books, records and vouchers in the offices are packed away, and these officials cease to have them in custody and go back to their respective homes, we would be in a bad shape to get this work done and have it certified to by the men who have charge of the records. What is necessary to be copied should be done now, before they leave the offices, and can certify to the records.

Mr. ELLIOTT. That was my understanding at the time the resolution was adopted. What records were necessary for the States for their immediate use should be copied first.

Mr. SCOTT. Returning again to those twenty-seven books, what size books are they?

Mr. CALDWELL. Of about 500 pages each, averaging three folios to the page; cost about $150 apiece to copy them.

Mr. SCOTT. Now, what actual use, what legal use or necessity is there for copying them?

Mr. CAMP. Why can't the State of North Dakota make the corporations pay for them?

Mr. CALDWELL. They could not do that; they have secured the vested right to do business in the Territory.

Mr. KELLAM. I confess in this matter that my views have been modified back and forth two or three times with reference to these records. I can see a great deal of force in the suggestion of Mr. HARRIS, that what seems must be done first or last, might as well be provided for now; and still I think that we are always anxious to avoid as much expense for the two States as we can.

This thought occurred to me—I don't know now as I would be in favor of it—still it is a thought I think worth considering. To select such books as are indispensable to both the new States to inaugurate State governments in the several departments, which would be—I don't know sufficiently about the methods of book-keeping to know, but suppose we select the last Journal and Ledger, the one now in use in the Auditor's office, and Treasurer's office and Secretary's office, as they will be indispensible to each new State in starting off in business, and then to make an agreement that either one State or the other should hold the entire records of this Territory as trustee for both States without compensation further than they individually may be entitled to fees for certifying, or the copying as he is now, with the further provision that if at any time within a stated term the Legislature of the State not having the custody of the books, desires copies of them made, that then such copies shall be made, and the expense borne equally by the two States. It is hard for me to get over the force of the suggestion of Mr. HARRIS; and still I know, speaking for myself and the locality I go back to, I know that it is going to require a good deal of argument on the part of this Commission to justify our action in this Joint Commission, and you gentlemen say the same thing. Now, if we take such action in copying the whole complete set, the first question will be asked, what is going to be the expense? Well, I say, as nearly as we can estimate, ten, twelve or fifteen thousand dollars. Well, what do you get back for it; what necessity was there for it? Now, I am anxious, for myself, to avoid that possible criticism; and still to many men it would be a complete answer to repeat the argument of Mr. HARRIS. I think the other plan the better of leaving the entire records as they are except providing for such copying as we shall need in South Dakota and North Dakota, or else provide copies for North Dakota, and South Dakota take the entire records, with the agreement that the State shall hold them; shall be considered the trustee of the two States—each side having equal access and being equally the property of both States; with the agreement that within a stated time the State not having them may indicate what copies they want, and that that shall be the assertion of their right to have copies made whatever the expense is, and each State shall bear one-half the burden.

Mr. CAMP. One item, twenty-seven volumes at 10 cents a

folio; we would have to pay $4,000 for copying those Corporation Records.

Mr. KELLAM. Then there is another thing I don't like, Mr. CALDWELL. Your judgment ought to be better than mine, but I don't like the idea of "chopping" up those vouchers and paid warrants. Of course, so far as the bonds are concerned, actually paid and cancelled, if each State wants its own bonds, there will be no objection to "chopping." I would rather it would go to one State or the other. There would be no difficulty in the parties interested in any state applying for such information as they wanted at the office, either in North or South Dakota.

Mr. SCOTT. Make it obligatory to those in possession to give any information concerning them. It would be no greater trouble for men in South Dakota to write up to Bismarck than to write to any Capital in the Territory.

Mr. PRICE. No, but it would make a difference to South Dakota men who don't visit the Capital.

Mr. CALDWELL. Two records of the contents of warrants in sequence—in one book they are entered in regular sequence by their order.

Mr. KELLAM. What is the object?

Mr. CALDWELL. I know it is a very frequent experience that they will write to the office and want to know about a warrant of a particular number; they ask you to what fund did you charge warrant No. 22,312. Shows the necessity of being able to find readily the warrant. If the warrant register go to one place and the stubs to go to the other there would be the same information in both sections.

Mr. CAMP. While you were reading that report this thought suggested itself to me: that is the necessity of dividing up a particular office. You might arrange that all the reports, say of the Treasurer's office, shall stay at one place; all the records of the Auditor's office stay in another.

Mr. CALDWELL. Well, that same idea was suggested to us, and the thought was this: that it is trusting so much of it to one, that when the thing was done, why, the side which happened to draw the longest straw would have much the best of it. I think I would prefer the Secretary's office, if I had my choice.

Mr. CAMP. You could make a lump of two or three of the minor offices. That is, a group together.

Mr. CALDWELL. Yes, I should regard the records of the Secretary's office as the first choice.

Mr. KELLAM. Are there any questions for information going to the Auditor, for instance, in which to answer he has to have access to the records of either of the other departments.

Mr. CALDWELL. No, sir. Occasionally there are some questions in which it is necessary to consult the records of both the offices of the Auditor and Treasurer.

Mr. KELLAM. That is what I meant, whether there would be any inconvenience resulting from a separation of these records—putting the records of the Auditor North and the records of the Secretary's office South; or whether there would be any advantage in keeping these records together as kept now, or whether there would be any inconvenience resulting from a separation of the Auditor's office to one and the Treasurer's office to another.

Mr. CALDWELL. I don't think there would be any more inconvenience than is incident to separation.

Mr. PRICE. I suggest to Mr. HARRIS that the extra expense in having complete records of all the Territorial records will not exceed $5,000.

Mr. SCOTT. Six thousand dollars.

Mr. PRICE. Say $7,000.

Mr. SCOTT. You could not have them copied for $20,000.

Mr. PRICE. It amounts to about 2 cents for every woman and child in the Territory of Dakota. But this Commission is sent here to adjust the affairs of this Territory. The records are part and parcel, and everybody is interested, and everybody will be interested. Now, here is something we ought to take into consideration: If we don't provide for the copying of these records, just as sure as the Legislature in North Dakota meets, just as sure as the Legislature in South Dakota meets, some enterprising officers will get a bill through the Legislature providing for the copying of the records. They can go before the people with their pleasure plan, and say they ought to have it. As long as we have got to buy these records—it is only a question of time when we have to buy them—I would like to have this debt divided. What belongs to one side belongs to the other, and nothing will satisfy me except a complete record of everything.

Mr. SCOTT. Now, do you think a complete record of everything could be made for $15,000?

Mr. CALDWELL. I don't think it could be made for $50,000.

Mr. PRICE. I was speaking of the Secretary's office——

Mr. CALDWELL. If we made a complete record of the Secretary's office—what is there so far as a matter of history more important than the proceedings of the Legislatures.

Mr. PRICE. They are all printed.

Mr. CALDWELL. There are four sessions that are not printed.

Mr. HARRIS. We are speaking of the original bills.

Mr. CALDWELL. You see——

Mr. CAMP. I would renew my original suggestion which is the same the committee has suggested, that is, that the vouchers pertaining to the Yankton asylum go south, and vouchers pertaining to North Dakota Hospital should stay here. The vouchers for the Sioux Falls Penitentiary go south, and the vouchers for the Jamestown Asylum go north. So far all right. Then as to other matters, those pertaining generally to the Territory, remain here; then South Dakota can provide for copying any it chooses at its first session. That would cover those twenty-seven volumes of Corporation Records, and then we provide for copying so much as is absolutely necessary for the States to commence business.

Mr. PRICE. That ought to be done at first, of course.

Mr. CALDWELL. That doesn't include more than half.

Mr. HARRIS. The expense would be very light for the records for the States to begin business. If the first session of the Legislature of South Dakota might make provision for having it done, let us make provision here for North and South Dakota; however, if the Legislature down there will make provision for having it done, then all right, if the copies are worth more than the originals. There is a large volume of stuff in those Incorporation Records, a great deal never used. Still the question will come right up the first thing on being a State. They want copies of those things—they can send to North Dakota.

Mr. SCOTT. They would have to send to the Capital of North Dakota for them.

Mr. PRICE. The Auditor informs me that he gets inquiries very frequently about matters that, without these records, the Auditor could not get the desired information.

Mr. KELLAM. I am in favor of copying such records as are absolutely necessary now; we then determine by lot whether the records remain here or go to South Dakota; or I would be willing to do as Mr. CAMP suggests, take the records of one office remain-

ing here; records of another office go South. All these records are so independent of each other that they don't have to be used in connection.

Mr. CALDWELL. They don't amount to anything.

Mr. KELLAM. That perhaps would be fair if they are independent of each other.

Mr. PRICE. To get this before the Commission, I move that this report be amended by inserting under the title "Records to be Transcribed" the Warrant Register in the Auditor's Office.

Mr. CAMP. Just put that in writing, Mr. PRICE.

Mr. PRICE. I talked with the Auditor about this when the matter was under consideration, and he told me there was a good many vouchers in the office of a general nature that could not be divided—those relating particularly to certain institutions could be divided, and vouchers of a general nature could not be divided.

Mr. SCOTT. It is evidently for the interest of these officials to get as much transcribing as possible.

Mr. CALDWELL. He has taken up a lot of stuff that would be an interesting thing to have, and I should personally very much like to have it, but it would make a stack of stuff; you can see a vault full of it in there, going back to the beginning of the history of this Territory, and involving an amount of work nobody can possibly estimate. Over 22,000 warrants, each a separate voucher, and in some instances the entries will amount to 100; take, for instance, the vouchers of the transporation of insane patients to the hospitals; that voucher, it is a closely printed blank, legal cap.

Mr. PRICE. What's the matter with using the blank?

Mr. CALDWELL. There are some would go to work and get a different form. Each warden has a different form.

Mr. PRICE. If there are as many as you state we could probably get them.

Mr. CALDWELL. That probably amounts to 1,000 of them; and so far as pay for transcribing, they will get just as much for printed blanks as they do for written stuff.

Mr. PRICE. I believe our action would be approved by the people of this Territory, by supplying each section of it with true copies of the records of the Territory.

Mr. SCOTT. But such a mass of stuff as that, Mr. PRICE, I don't believe we would be justified in copying.

Mr. CALDWELL. Some of these records reach back to the time when the Territory of Dakota included Wyoming and a good share of Montana and Idaho.

Mr. PRICE. That is a nice matter of history. The Bible reaches back a long ways, but it is a good thing.

Mr. BROTT. Very few read it.

Mr. SCOTT. What interest is it to North or South Dakota to know how much a certain sheriff charged to the county two years ago for bringing an insane patient to the Jamestown Asylum, or taking them down to Yankton?

Mr. CAMP. That is going to the institution.

Mr. CALDWELL. No, there are general vouchers.

Mr. PRICE. If I can't get any second to the amendment, I move the adoption of the report. I will explain about these warrant registers. These warrant registers show number and date of the issue, to whom issued and on whose account. Now, these stubs, my friend has a notion to divide into groups. They don't show when the warrant was redeemed; it is not a complete record; you take it separate and apart from the register and it don't amount to anything.

Mr. CALDWELL. I would say in regard to that, here are the reports of the Auditors going back as far as the warrant register; they show identically the same information. There is a copy of the warrant register showing the number of every warrant and day issued, and person to whom issued and the purpose for which it was issued, and the date of its redemption.

Mr. SCOTT. That would be complete enough.

Mr. GRIGGS. Certainly.

Mr. PRICE. Well I make another motion. I move that the original records be retained by North Dakota.

Mr. CAMP. The first motion is in order.

Mr. CALDWELL. Mr. CHAIRMAN: I am not now prepared to vote for that report as it is, notwithstanding my name was signed to it.

Mr. PRICE. I think we will settle this thing quickly if we decide who is going to have the originals and who the copies.

Mr. CAMP. I don't think either side is entitled to all the records.

Mr. PRICE. I think they ought to be copied together. That is my judgment.

Mr. SCOTT. Why wouldn't this be a good suggestion: Let

the records that pertain exclusively to South Dakota go, and the records pertaining exclusively to North Dakota stay here. Such as are necessary, we can decide, what are necessary to be transcribed, for transcribing; as to the miscellaneous records within, that are in the Secretary's office, let us keep them; the miscellaneous records in the Auditor's office you take; you take the miscellaneous records in the Treasurer's office; we take the miscellaneous records in some other place.

Mr. CALDWELL. Well, I would feel that the records in the Auditor's and Treasurer's offices might do for a set, with the records in the Secretary's office, possibly. I think I would prefer the records in the Secretary's office because they are the proceedings of the Territory from the beginning to the present time. Therecords in the Auditor's office are incomplete.

Mr. CAMP. Make two lots of miscellaneous records, and we choose, or you make the lots and let us choose.

Mr. CALDWELL. Well, that would be a fair thing. It seems to me too much like separating a family.

Mr. NEILL. That is what we are doing.

Mr. ELLIOTT. That is what we are here for.

Mr. CALDWELL. I think these records ought all to be in North Dakota or South Dakota. All that would be necessary to transcribe in order that either commonwealth could inaugurate and continue its business, which is the language of the first resolution introduced or passed; in the Auditor's office the last appropriation ledger, because that shows not only the appropriations of the last Legislature, but there is likewise brought forward to the credit of the several accounts the balances which were available at the close of the last biennial period.

Mr. PRICE. These pamphlets are just as good. What is the matter of taking any of them?

Mr. CALDWELL. They only run to last November.

Mr. HARRIS. The fact of the whole matter is there are certain books absolutely necessary for the States to have in beginning business. There are other records each of the States will want, and the Legislature could not provide for that; but there is a large mass of stuff we have provided shall be separated by lot, each a block, of no value whatever, neither will be wanted by either State except as a matter of history. And when the historian in ages to come goes back into all these vouchers, he will take it out of a large volume of stuff. That is all it will ever be

used for. It seems to me we ought not to divide by lot, Mr. CALDWELL. I didn't agree—that is he didn't agree with me about those incorporation records; we talked the matter over at that time. My suggestion was, each office at least should have all that stuff connected with that office, that it might not be separated.

Mr. CALDWELL. That is the conclusion I have come to.

Mr. KELLAM. What do you think of a suggestion something like this:

Resolved, That the committee be requested to make examination and report such books and records as it will be necessary for each State to have to inaugurate its existence and business as a State, and that provision be made by this Commission for copying such books and records, one State to have the original and the other the copies; the expense of copying the same to be borne equally by the two States.

And that all records and papers pertaining exclusively to institutions in South Dakota shall be delivered to South Dakota. All records pertaining exclusively to institutions in North Dakota shall be left in North Dakota. All other records shall be grouped in lots so that the records of no one office shall be divided, and each committee shall select alternately; the right of first selection to be determined by lot.

And the first Legislatures of the two States may provide for copying any records to be sent to the other States, and the expense thereof shall be borne by each State equally.

The theory of this is: There shall be copied only such books as would be immediately necessary; then, that the records pertaining to North Dakota institutions shall be left here, the records pertaining to South Dakota institutions shall go to South Dakota, and then the other records shall be grouped; that is, the Secretary's office and the Auditor's office, so the records of each office shall be together; the first selection to be determined by lot. The first Legislatures of the two States may provide for copying any records to be sent to the other State, and the expense thereof shall be borne by each State equally. The Secretary's records may remain here and the Auditor's go south. Now, if South Dakota wants copies of the Secretary's records it may have them by so declaring by the Legislature, both States bearing equally the expense. If North Dakota wants copies of the Auditor's records it may have them in the same way.

Mr. NEILL. Is it necessary that both Legislatures take action.

Mr. KELLAM. I think that is not the intention.

Mr. NEILL. That is I——

Mr. KELLAM. That the Legislature not having any of these

records may get them by applying, and the expense be borne equally by both States.

Mr. NEILL. I move the adoption of the resolution.

Mr. CALDWELL. There is ——

Mr. ELLIOTT, I second the motion.

Mr. CALDWELL. There is a matter not covered, pertaining only to public institutions; there are many records, for instance, special charters of cities, in the Secretary's office.

Mr. KELLAM. Public institutions—it provides for institutions in North and South Dakota.

Mr. CALDWELL. But it wants to be broader.

Mr. SCOTT. The resolution does not say so.

Mr. CALDWELL. It says public institutions, but that ——

Mr. SCOTT. Here is the report of the other committee, which says what papers do pertain to North Dakota and South Dakota.

Mr. NEILL. That can be taken as the——

Mr. KELLAM. Now, what records have you in your mind?

Mr. CALDWELL. For instance: In the Treasurer's office there is—I mean in the Secretary's office there are, for instance, the enrolled bills pertaining, those that are especially to South Dakota; for instance, charters of cities or organized counties.

Mr. KELLAM. In that case you break up the records.

Mr. CAMP. That is true.

Mr. KELLAM. I don't think that ought to be.

Mr. CALDWELL. There is nothing that makes it desirable to have the vouchers for the respective institutions in the other State.

Mr. KELLAM. I prefer to strike them out. I prefer to keep the records of each office intact.

Mr. CAMP. We shall want to have the vouchers of the Insane Asylum for North Dakota, and you will want the vouchers of the Insane Asylum at Yankton, and we won't care about the Insane Asylum at Yankton. We havn't any use for them, and you won't have any use for the vouchers of the Asylum at Jamestown.

Mr. SCOTT. None whatever.

Mr. CAMP. You take, for instance, the charter of the City of Chamberlain; that, of course, has been printed, and nobody ever refers to the enrolled bill.

Mr. CALDWELL. That is true, too.

Mr. CAMP. I don't happen to have a copy, but where it is needed, the city has its own printed copy.

Mr. CALDWELL. Yes, that is true.

Mr. PRICE. I am opposed to the motion, for I think the records ought to remain in North or South Dakota intact, and for the further reason that, if I understand the duties of this Commission, they are to make disposition of the records of this Territory.

Mr. CALDWELL. Yes.

Mr. PRICE. I think that you are providing that the Legislature shall make disposition.

Mr. CALDWELL. We are disposing of the records if we take and send some of them south and leave some of them up here.

Mr. SCOTT. If you will make the motion you made some time ago, I will second it.

Mr. PRICE. I don't know what it was now. I move the adoption of this report, and it has a second.

Mr. CAMP. This resolution I understand has been introduced and seconded, and that is now the motion before the house. Are there any remarks upon this resolution?

Mr. HARRIS. I will call the attention of the Commission to another fact, the records of domestic and foreign insurance companies.

Mr. CALDWELL. One hundred and fifty insurance companies and some charters include eight pages of law books, and some more.

Mr. GRIGGS. Could they not be left at one seat of government for reference?

Mr. CALDWELL. That is my judgment of it.

Mr. PRICE. I move further consideration be postponed until 9:30 o'clock Monday, because everybody has a different view; there are no two men exactly alike.

Mr. BROTT. How will they be any nearer Monday?

Mr. PRICE. Well, stay here.

Mr. BROTT. Decide now as well as we can Monday.

Mr. CAMP. I suggest we better refer it back to the committee again and see if they can draw up a plan that will be acceptable by the commission.

Mr. PRICE. You don't agree with Mr. CALDWELL on some things. I agree with you on some things but not on all things.

Mr. CAMP. I see there is a diversity of opinion in referring this back to the committee; they have not got very much light from the discussion because there seems to be no prevailing opinion to be a guide for them in drawing a plan.

Mr. NEILL. The subject is too complex with us who are not familiar with the records, to determine what is important. Some purposes of a more general nature because within the grasp of our judgment, we can take definite action on that and know what we are doing. Of course if we get down to detail as the committee has been, we are trusting entirely to the judgment of the committee and know nothing about it ourselves; and that is why I indorse the other resolution, because it is something that comes within the scope of my knowlege.

Mr. HARRIS. Your Chairman made a proposition; it was referred back to them that this Commission wanted to know all the plans and specifications included in it; we then prepared this detailed statement.

Mr. KELLAM. Mr. CHAIRMAN: I move the further consideration of this matter be postponed until Monday morning, and that this committee be requested to report at that time what books or records it will be necessary for the two States to have to inagurate its existence. If we want it we will have it. Or will you incorporate that in yours——

Mr. PRICE. To please you, yes. I don't want you to understand, however, that I am in favor of any such plan as that indicated by Mr. KELLAM. I don't believe in it.

Mr. CAMP. The motion is that further action be postponed until Monday morning at 9:30 o'clock, and at that time the committee, consisting of Messrs. CALDWELL and HARRIS, report to this Commission what books and papers it will be necessary to have copied in order that the two States may inaugurate their existence. Are you ready for the question?

Question; question!

Mr. CAMP. The Clerk will call the roll.

Camp, yes; Griggs, yes. Harris, yes; Purcell, yes, (by Griggs); Sandager, absent; Scott, ——

Mr. SCOTT. What's the question.

Mr. CAMP. That further action be postponed until Monday morning.

Mr. Scott, yes; Kellam, yes; McGillycuddy, yes; Caldwell, yes; Brott, yes; Elliott, yes: Price, yes; Neill, no.

Mr. CAMP. Under the rule the motion is carried. Is there any further business?

Mr. KELLAM. Is there any subject that requires further discussion.

Mr. HARRIS. Mr. CHAIRMAN: Another little subject—I don't know but it is covered by reports of other committees. There is a small library in the Auditor's office comprising statistical reports from different States and Territories. I understand there is also a library of about the same size in the office of the Commissioner of Immigration. It seems this subject might be taken up and disposed of this evening.

Mr. CALDWELL. Mr. CHAIRMAN: As I feel about it now, and what I am inclined to believe will be the ultimate judgment of the Commission, these several offices, wherever they may be located, all the records pertaining to them will go with it.

Mr. PRICE. I don't feel that way about it.

Mr. CALDWELL. And that wherever it goes it would be proper that these reports remain with the other records, because they are practically the records of that office.

Mr. PRICE. Why not offset one against the other? I move the statistics of the Auditor's library—that one section shall have them, andthe other shall have the miscellaneous books in the Commissioner of Immigration office, and shall be decided by lots which each shall have.

Mr. ELLIOTT. I second the motion.

Mr. CALDWELL. I move as an amendment that the libraries in the respective offices be considered a part of the records of that office, and be allowed to contiune the records wherever they may go.

Mr. PRICE. It has been decided that we separate them.

Mr. CALDWELL. No, it has not been decided to separate them.

Mr. KELLAM. If the idea has prevailed that the records of each office shall be kept by themselves, and they are kept at one place or distributed as provided for in this last resolution, then I should be in favor of Mr. CALDWELL'S motion, that those books which are incidental to each office should be kept with the office as a part of the records of the office. I can hardly vote intelligently on this question until I know what the general disposition is with regard to chopping up these records.

Mr. SCOTT. I don't think we ought to take that up now.

Mr. KELLAM. It seems to me we cannot determine that until we know what is to become of the records. Suppose this motion prevails, and the Immigration books go south and the other records are kept here; the Immigration books would not be of any account. Suppose the Auditor's records—suppose we should determine that we would take them and leave the records of one office here—another should go south; if the Auditor's should go south we would want those books of course, and the books separated from the office would be worth very little.

Mr. HARRIS. They are statistics of the different states.

Mr. PRICE. Probably all could be supplied.

Mr. KELLAM. Then wouldn't it be just as well to leave these books to be disposed of with the office itself?

Mr. CALDWELL. I would move that the further consideration of the resolution of Mr. PRICE be deferred until there be a determination as to the records of the respective offices.

Mr. PRICE. I'll second the motion.

Mr. CAMP. All in favor say aye. The motion is carried.

Mr. CAMP. There is the matter of the militia, and we can't make a final agreement until we know about that.

Mr. McGILLYCUDDY. Here is the report of the Adjutant General.

Mr. McGILLYCUDDY then read the following report of the Adjutant General:

Report of Ordnance and Ordnance stores received and remaining in charge of the Militia of the Territory of Dakota during the year ending December 31. 1888. (As near as I can give it.):

2 three-inch Wrought Iron Rifles	$ 450 00	$ 900 00
2 Carriages and Libers complete	325 00	650 00
2 Artillery Tarpaillins, 12x15 feet	11 75	23 50
2 Gunner Haversacks	3 35	6 70
6 Handspikes, trail	1 00	6 00
4 Lanyards for friction primers	10	40
2 Priming Wires—field	10	20
4 Sponges and Rammers	1 00	4 00
4 Sponge Covers, three-inch	30	1 20
2 Tube Punches	1 50	3 00
4 Thumb Stalls	20	80
2 Tompions	30	60
2 Vent Covers	40	80
2 Pole Pads (Can't find price)	....	....
2 Pole Straps—pairs. (Can't find price)	....	....
Total	.....	$1,597 20

Capt. Wm. K. Smith, Commanding Battery "A" supposed to be "responsible" for the above, Also ten, I think, Springfield Rifles—caliber, 45.

*a*950	Springfield Rifles, model 1884, cal. 45, $13.12 each	$ 12,464 00
50	do Cadet, $13 12 each	356 00
500	Blanket Bags, $1 35 each	675 00
500	do. shoulder straps, pairs, 56 cents	280 00
500	Blanket Bag coat straps, pairs, 38 cents	190 00
500	Bayonet Scabbards, steel, Hoffman's att., 90c. each	450 00
500	Cartridge Belts, woven, $1 00 each	500 00
500	do plates, 25c. each	125 00
500	Cartridge Boxes, $1 22 each	610 00
500	Canteens, 53c. each	265 00
500	do straps, 30c. each	150 00
520	Gun Slings, (17 in Adjt. Genl's office, 20 rec't'd for), 36c. each	187 20
500	Haversacks, 88c. each	440 00
500	do straps, 56c. each	280 00
*b*100,000	Rifle Ball Cartridges, cal. 45, $18 50 per M	1,850 00
20,000	Rifle Bullets, $5 45 per M	109 00
20,500	Cartridge Primers, 60c. per M	12 30
*c*200	Small Arm Powder—lbs., 18c per lb	36 00
*d*125	Paper Targets, (A. B. and C.) average 5c. each	6 25
150	Centers for paper targets, 2c. each	3 00
1,000	Pasters	13
51	Arm Chests, $6 00 each	306 00
1	Hand Reloading Tools—set	12 83
2	Resizing dies (extra) $2 07 each	4 14
200	Marksman's buttons (196 in Adjt. Genl's office)	20 00
10	Sharpshooter's badges, (6 in Adjt. Genl's office), no acc't, $1 00,	10 00
1,000	Healess Shell Extractors, 30c. each	300 00
1,000	Screw drivers, model 1879, 24c. each	240 00
1,000	Wooden Wiping Rods, 12c. each	120 00
200	Tumbler Punches, 15c. each	30 00
51	Spring Vises, 28c. each	14 28
	Total	$21,943 33

a Don't know where these are. At some college, I think.

b Probably from 80,000 to 86,000 expended or in hands of companies.

c I think very little of this is on hand.

d Greater number expended.

The above stores are either in the hands of the companies or the ordnance officers. Major Joseph Hare, Assistant Ordnance Officer at Bismarck, unloaded and stored what was not issued at Huron in September, 1888.

Besides the above there are stored in the Capitol 944 (about 900 in boxes and 44 in racks in Governor's room) "condemned" Springfield rifles, model 1886, calibre 50, and a lot of ball cartridges, calibre 50, stored at Bismarck in care of Major Hare. (These guns and cartridges should be estimated and divided.)

There are also a lot of tents, of which I have never seen an invoice or any account. General George W. Carpenter, of Watertown, could account for them. Have written him to do so. Part of the number are in his charge at Watertown, and part were shipped back to Bismarck for use on July 4th.

I have written General Carpenter, Watertown; Colonel B. J. Woods, Chief of Ordnance, Sioux Falls, and Major Joseph Hare, Assistant Ordnance Officer, Bismarck, for a report of such stores as they may be accountable for. I have marked in red ink the probable expenditure of ammunition, etc.

Respectfully submitted,

J. S. HUSTON,
Adjutant General.

Redfield, Dak., July 24th, 1889.

Mr. SCOTT. That doesn't show where the arms are.

Mr. McGILLYCUDDY. They got them from the Adjutant General.

Mr. KELLAM. Do you know how many companies are in the Territory?

Mr. HARRIS. Twenty-one; eight in North Dakota and the balance in South Dakota.

Mr. McGILLYCUDDY. If they were about forty or fifty to the company, there would be about 950.

Mr. SCOTT. They don't run that many.

Mr. CALDWELL. The question is who owns this property? Some of this is old stuff obtained by the Territory probably fifteen years ago, and now no longer in use; no longer in use by the company.

Mr. SCOTT. Not good for anything.

Mr. McGILLYCUDDY. Good guns for riot, but the government no longer uses them.

Mr. SCOTT. Would be good in case of riot?

Mr. McGILLYCUDDY. All serviceable.

Mr. SANDAGER. We have not been able to get all the reports in.

Mr. McGILLYCUDDY. The question is, who does it belong to?

Mr. SCOTT. Did you reach the Secretary of War?

Mr. McGILLYCUDDY. No; it would take a month even if you wired him to-day. You would not get an answer for two weeks.

Mr. HARRIS. Don't he say part of the camp equipage was shipped to Bismarck?

Mr. McGILLYCUDDY. Yes, shipped back here for use the 4th of July. "Part of the number are in his charge at Watertown, and part were shipped back to Bismarck for use on July 4th."

Mr. HARRIS. Didn't come then, I guess.

Mr. McGILLYCUDDY. There is some reason for making this notation: "These guns and cartridges should be estimated and divided." He evidently recognizes this as the property of the Territory; as being the property of the Territory.

Mr. ELLIOTT. I think that is so or he would not have made that suggestion.

Mr. McGILLYCUDDY. That is very evident.

Mr. HARRIS. Probably is. The rest of the stuff is in the hands of the companies.

Mr. SCOTT. We could not distribute that even if we could hunt them up, if companies have got it.

Mr. ELLIOTT. We could not make distribution of what the company has.

Mr. CALDWELL. I suppose final adjustment can better be made after we have complete returns.

Mr. McGILLYCUDDY. From those offices?

Mr. CALDWELL. I would like to call up the matter of mutual boundary between North Dakota and South Dakota.

Mr. PRICE. I don't think we can do that; our Convention has reported an article which has been fixed as a part of the Constitution.

Mr. BROTT. We have nothing to do with it.

Mr. CALDWELL. All right then.

Mr. CAMP. Don't bring up the question of boundary.

Here the two committees retired for consultation, and upon reassembling the following bids were opened and read:

The bid of South Dakota for the undivided half of the Territorial Library is $4,000.

A. G. KELLAM,
Chairman.

The North Dakota Commission value the Public Library at $1,500, and will pay South Dakota $750 for her half interest.

EDGAR W. CAMP,
Chairmam.

Mr. KELLAM. I move we adjourn until 9:30 o'clock Monday morning, July 29th.

The motion was seconded.

Mr. CAMP. All in favor of the motion say aye. The motion is carried and we stand adjourned.

THIRTEENTH DAY.

BISMARCK, *Monday, July 29, 1889.*

The Commission met at 10 o'clock a. m., but as the Chairmen were not ready to report, no session was had.

The Commission met at 2 o'clock p. m., but as the Chairmen were not ready to report the Commission adjourned to meet at 10 o'clock a. m., July 30th.

FOURTEENTH DAY.

BISMARCK, *Tuesday, July 30, 1889.*

The Commission was called to order at 10:30 a. m., with Mr. KELLAM in the Chair.

Mr. KELLAM. Gentlemen you will come to order.

The Clerk will call the roll.

All members w ere present except Messrs. Spalding, Purcell and Scott of the North Dakota Commission. All members of the South Dakota Commission were present.

Mr. KELLAM. Gentlemen, my recollection is that the business of the Commission stands about in this shape: There is a pending resolution—a resolution adopted by the Commission, asking the Committee on Records to make a report, and it was also referred by the Commission to Mr. CAMP and myself to prepare an outline of the agreement, so far as the work of the Commission had progressed, which shall be taken up. If there is no objection we will hear the agreement so far as it is made, read.

Mr. CALDWELL. I suppose any member who, during the read-

ing, discovers anything that is not precisely clear to him, it will be in order to interrogate in regard to it.

Mr. KELLAM. I think that is proper. Mr. CAMP, will you read it.

Mr. PRICE. It seems to me we will not make any headway reading this over. It is prepared, and each member can read it for himself. It will have to be submitted again when the other members come, I suppose.

Mr. ELLIOTT. Yes, I don't see what headway we can make now.

Mr. BROTT. I think we can better dispose of the records now.

Mr. KELLAM. Two copies are made of this agreement; we can pass it around. Our members have not seen it, except two or three. Each man can read it, or read it in groups.

Mr. ELLIOTT. I think it would be better so. Get a better understanding of it.

Mr. KELLAM. Gentlemen, as many as are not in favor of now presenting and reading the Agreement will manifest it by saying aye. Motion is lost. As many as are in favor of now hearing the report of the committee appointed to make a list of records, will say aye. Contrary, no. Motion is carried, and report of such committee will be the order of business.

Mr. CALDWELL then read the following report:

BISMARCK, D. T., July 29, 1889.

Gentlemen of the Joint Commission:

Your sub-committee to whom was referred the duty of making a list of such records in the several Territorial offices as in its judgment were necessary for the respective States to have in their possession, in order that the officers thereof could commence business, beg leave to report as follows:

In our judgment the records referred to, are to be found in the offices of the Auditor and the Treasurer.

In the Auditor's office there is the Current Appropriation Ledger, which contains not only the appropriations made by the last Legislature, but also the balances of previous appropriations, and it therefore shows the condition of every account up to date. There is also in said office a Warrant Register, in which the more recent warrants, covering a period of probably three years, have been entered in numerical sequence. This book may be said to be the Journal of the financial transactions of the office, and is the book of original entry. In addition to showing the number, date, payee and purpose of each warrant, it shows also its date of cancellation. In the Insurance department of the Auditor's office there is a record showing the names and residences of agents appointed by the several companies in the different judicial districts of the Territory, and, as undoubtedly each State will be required to know who is

authorized to represent any particular company, the transcription of this book would be necessary even though its application can cover only two months of statehood existence, as it expires December 31st. From the same department your committee would also recommend that there be procured a list of Insurance companies entitled to do business in the several judicial districts of the respective States. This information is nowhere collated in such form that transcription would supply the desired information. It is our judgment that copies of the volumes referred to above would enable the Auditor's office of either State to inagurate business in its several departments.

In the Treasurer's office there are the following records which we would recommend should be transcribed: The Ledger showing the receipts and expenditures of the several bond funds and the general funds of the Territory. Also the ledger showing the charges against the several counties by reason of the assessments made upon property therein during recent years, and showing likewise the payments made by said counties upon such assessments. Also one cash book showing detailed receipts and expenditures during recent years. Also one general bond register, giving the purpose for which bonds have been issued, with their dates, denominations, etc.

HARVEY HARRIS,
E. W. CALDWELL, } Committee.

Mr. NEILL. I move the report of the committee be adopted.

The motion was seconded.

Mr. HARRIS. As that resolution under which this committee was acting merely called for a statement as to the books which were absolutely necessary to be copied to enable the States to begin business, we have stated the books there that would be necessary to be copied.

Mr. KELLAM. What do you mean by the motion to adopt the report?

Mr. NEILL. I thought it meant the recommendation that these especial books be copied, but it does not, so my motion is hardly in order with the report; but I meant, we decide these books should be divided. I move that the books reported by this committee as necessary to the beginning of the respective States be copied preliminary to that time.

Mr. ELLIOTT. You offer that as an amendment to the motion made by Mr. KELLAM at our last meeting; you know there was a motion made to this effect at our last meeting, and in order to vote intelligently upon that motion the committee was reappointed to report to this Commission just what books were necessary.

Mr. KELLAM. My recollection of the matter is as outlined by Mr. ELLIOTT, that the resolution was offered here consisting of part of which was mine and part Mr. CAMP'S, and that the further

consideration of your resolution was postponed to the next session; in the meantime it was referred back to the committee consisting of Messrs. HARRIS and CALDWELL to furnish information that would enable the Commission to decide what action to take on your resolution.

Mr. ELLIOTT. That was the object exactly.

Mr. NEILL. In so far as the report goes the motion just made may be used as an amendment to that report, or by itself.

Mr. CAMP. I suggest, in order to get it before us, that we take the former resolution from the table.

Mr. NEILL. Well, I withdraw my motion.

Mr. KELLAM. The Secretary will read the resolution.

Mr. MCCLARREN here read the resolution as follows:

Resolved, That the committee be requested to make examination and report such books and records as it will be necessary for each State to have to inaugurate its existence and business as a State, and that provision be made by this Commission for copying such books and records; one State to have original and the other copies, and the expense of copying the same to be borne equally by the two States. All records pertaining exclusively to institutions in South Dakota shall be delivered to South Dakota. All records pertaining exclusively to institutions in North Dakota shall be left in North Dakota. All other records shall be grouped in lots so that the records of no one office shall be divided, and each committee shall select alternately; the right of first selection to be determined by lot. And the first Legislatures of the two States may provide for copying any records to be sent to the other state, and the expense thereof shall be borne by each State equally.

Mr. CAMP. What record is there of the disposition of that?

Mr. KELLAM. My recollection is that some one made a motion that the further consideration be postponed until the next session.

Mr. CAMP. This being the session that takes the place of the Monday morning session, the resolution which is read is now before us for consideration.

Mr. CALDWELL. Mr. CHAIRMAN: I believe it would be better to divide this resolution, and I will read such of it as I will move its adoption. It is this:

Resolved, That the committee be requested to make examination, and report such books and records as shall be necessary for each State to have to inaugurate its business as a State, and that provision be made by this Commission for copying such books and records, one State to have the original and the other the copies; the expense to be borne equally by the two States.

I would move the adoption.

Mr. NEILL. Why not add to it the report of this Commission pertaining to the records?

Mr. KELLAM. And that the books and records be as follows:

Mr. NEILL. In so far as that resolution was postponed to get this information, I think now is the time to amend the resolution by incorporating the new matter.

Mr. CALDWELL. I would offer this as a substitute for so much of this resolution that "Provision be made by this Commission for copying such books and records as those which are specified in the report of the sub-committee; one State to have the originals and the other the copies; the expense of copying the same to be borne equally by the two States."

Mr. PRICE. Well, I support that motion.

Mr. KELLAM. Gentlemen, listen to the reading of the motion.

Mr. GOODNER reads: "Provision be made by this Commission for copying such books and records as those which are specified in the report of the sub-committee; one State to have the originals and the other the copies, the expense of copying the same to be borne equally by the two States."

Mr. KELLAM. You move the adoption? If you are sure the Stenographers have that. Gentlemen, Mr. CALDWELL offers as a substitute the resolution just read by the Stenographer, and moves the adoption; Mr. PRICE seconds the motion. Are you ready for the question?

Question; question!

The CHAIRMAN. As many as are of the opinion that the motion should prevail, say aye; contrary, no. Carried. Gentlemen, let us have this record appear. This motion was taken under the roll of the adoption of this motion. The Clerk will call the roll.

Camp, yes; Purcell, absent; Sandager, yes; Kellam, yes; McGillycuddy, yes.

Caldwell, yes; Brott, yes; Price, yes; Spalding, absent; Scott, absent; Elliott, yes; Harris, yes; Griggs, yes.

Mr. KELLAM. Under the rule the motion prevails.

Mr. CALDWELL. Then, Mr. CHAIRMAN, I move the adoption of the second paragraph of this resolution as originally introduced, as follows: "All records pertaining exclusively to institutions in South Dakota shall be delivered to South Dakota. All records pertaining exclusively to institutions in North Dakota shall be left in North Dakota. All other records shall be grouped in lots so the records of no one office shall be divided, (except as

herein provided for) and each committee shall select alternately—the right of first selection to be determined by lot." I have introduced in there, Mr. CHAIRMAN, the limitation "except as herein provided for," because the resolution by its own terms provided for division of the records from pertaining specifically to any particular institution.

Mr. NEILL. I second the motion.

Mr. CALDWELL. I would say, Mr. CHAIRMAN, I make that for the purpose of indicating to the Committee on Agreement, the general idea of the Commission and, of course, that it will be modified so as to make it come in as a plank in the agreement.

Mr. KELLAM. That is the thing I was speaking of.

Mr. CALDWELL. It would be better, at least, to have it understood that this sub-committee on preparation of the agreement should have the authority to change any of these documents so as to make them tally.

Mr. KELLAM. That is the understanding. That is the general plan of disposition of the records.

Mr. PRICE. I don't understand this thing yet, I want that read again.

Mr. HARRIS. All records pertaining exclusively to institutions in South Dakota shall be delivered to South Dakota. All records pertaining to institutions in North Dakota shall be left in North Dakota. All other records shall be grouped in lots so the records of no one office shall be divided, and each committee shall select alternately; the right of first selection to be determined by lot.

Mr. PRICE. Then do I understand that the records of the Secretary's office shall be grouped together; all the books and papers, one committee should select one lot. And the Auditor's shall be grouped in one lot?

Mr. CALDWELL. Yes, that can be done. The idea was by arranging in two lots as near equal as could be——

Mr. PRICE. This with reference to miscellaneaus matter?

Mr. CALDWELL. Yes, just simply miscellaneous matter—the files.

Mr. HARRIS. Then the question is, if that refers only to miscellaneous stuff, what are you going to do with this list of records and material which we divided the other day—would it be necessary to copy them some time?

Mr. CALDWELL. There is a third plank in this resolution

that refers to that. That will come up for consideration when we consider the third paragraph.

Mr. McGILLYCUDDY. "Except as hereafter provided."

Mr. ELLIOTT. Then, as I understand that resolution, South Dakota would take the books and records of one office, North Dakota take another, and so on?

Mr. CALDWELL. That is the idea.

Mr. KELLAM. Let me suggest that this is an important matter. Only one of us should talk at a time so the Stenographers can get a report. It might be necessary to refer to this discussion by Mr. CAMP and myself to get the agreement, and these Stenographers can't get any report of the discussion when there are two or three talking at a time.

Mr. HARRIS. Then, if I understand the situation, this part of the resolution does not refer to any such matter as we consider will be necessary to be copied at some future time by action of the Legislators of the respective States. Only to that matter which it will not be necessary to copy any time.

Mr. CALDWELL. Exactly. That is attempted to be covered by that portion of that resolution.

Mr. CAMP. I think the language, then, is too broad.

Mr. PRICE. I think so.

Mr. HARRIS. It says, "All other records shall be grouped in lots——

Mr. CAMP. Let's see. If you read the third paragraph is it conflicting?

Mr. NEILL. It seems to me there is a certain number of books here that will have to be taken out if we cut on this resolution. Now, the other part of this resolution should be taken up first, it seems to me.

Mr. KELLAM. Mr. HARRIS, will you be kind enough to read the second and third paragraph of that?

Mr. HARRIS. "All records pertaining exclusively to to institutions in South Dakota shall be delivered to South Dakota. All records pertaining exclusively to inititutions in North Dakota shall be left in North Dakota. All other records shall be grouped in lots so the records of no one office shall be divided, and each committee shall select alternately, the right of first selection to be determined by lot. And the first Legislatures of the two States may provide for copying any records to be sent to the other State, and the expense thereof shall be borne by each State equally."

Now, Mr. CHAIRMAN, in my judgment the meaning of that resolution is just this; that the records not included in the first clause, which we have already passed and approved, shall be divided into lots so no one office shall be divided; and the intention of the resolution would seem to be they shall be taken to the respective States; and then that when the Legislatures of the respective States have made provision for their copying, such records as remain in North Dakota, if the State of South Dakota wishes, copies shall be made in North Dakota; and such records as were South should be copied there.

Mr. KELLAM. That was my understanding.

Mr. ELLIOTT. That is my understanding.

Mr. KELLAM. My understanding was that these records be assorted into two lots; first, those that need to be copied so each State shall have a copy of such records and books as are necesrary to inaugurate its State government. This being disposed of, then that all the other records, those in the Secretary's office, those in the Treasurer's office and those in the Auditor's, and all other records, should be disposed of as indicated by that resolution, a part of them going—part remaining in the north and part going south. Then the third provision was that if either Legislature desired copies of the books and records it would so indicate and such copies would be made, each State bearing one-half of the expense. I think that is right. What's your idea Mr. CAMP?

Mr. CAMP. That is my idea, except with this modification, that records pertaining exclusively to North Dakota——

Mr. KELLAM. Yes. Have you a definite idea, Mr. CALDWELL?

Mr. CALDWELL. No, sir.

Mr. PRICE. I don't see how it can be anything else.

Mr. HARRIS. I think, Mr. PRICE and I agree on one thing, that all necessary to be copied should be copied now, and as I stated last Saturday, that is my view. That being my view I am not in favor, if any of these records that will be necessary to be copied, should leave North Dakota until such copies are made. I am not in favor of dividing these records that it may be necessary to copy and sending them away in different lots. They are here in this building; they are in files there, well taken care of, and I am not in favor of dividing them up and shipping them all over the country until they are copied. I am perfectly willing we should make provision for the copying of these records, and that

either the originals or copies shall go to South Dakota, I am not particular which. But if we don't make provision for the copying of these records which are necessary to be copied, then I want them to remain in this building. North Dakota can act as trustee to South Dakota. As I said this does not seem fair to South Dakota, but I certainly would not be in favor of dividing them up and sending them out before being copied.

Mr. PRICE. It seems to me there is force in what Mr. HARRIS says, that if these records are sent down to South Dakota without being copied, you don't know whether they are going to be placed in a vault or not. Of course, we would have a temporary Capital fight, perhaps, so we will not have a Capitol building for a good while, and no safe place for the preservation of these records. I think this is one of the strongest arguments advanced for having these records copied now. If they are not you have the risk of fire.

Mr. CALDWELL. Mr. CHAIRMAN: The point made by Mr. HARRIS in regart to the difficulty of guaranteeing the preservation of these records, is certainly a very strong one, and it is so strong that it has so modified my views to this extent, that it would seem to me that the desirable way of arranging the matter would be that we shall dispose of these records to the extent that we shall determine here the title of the respective States to particular records: all of them to remain here, however, in the offices of the Capitol until such time as North Dakota may have opportunity to make copies of such of those as we may distribute by lot to South Dakota; and that when this time has expired that South Dakota may send here and take these records to the Capital of South Dakota. That would seem to be fair. Of course, anybody can see what dangers the records might be subjected to.

Mr. HARRIS. No doubt the first Legislature of South Dakota will make provision for taking care of that property.

Mr. PRICE. I take it from Mr. CALDWELL that he admits, practically, that the respective States will desire these records to be copied hereafter.

Mr. CALDWELL. Well, we can't tell.

Mr. PRICE. I take this position: That this Commission is, perhaps, in as good a position to see what records ought to be copied, as 150 new men in the Legislature will—I think a great deal better; and if it is a fact, and that is what I have insisted on all the time, it was only a question of time when we would have to

copy all these records, I can't see any reason for delaying and leaving it to the Legislatures who, perhaps, would make a great deal worse bargain than we. My idea is those records ought not to be divided until—I am not in sympathy with this plan to give one part to one State and the other part of the records to the other. It seems to me they ought to be kept together; and if the gentlemen all agree these records were going to be copied sometime in the future, I don't know why we can't provide now for their being copied.

Mr. CALDWELL. I suppose I am as well acquainted with the character of the records of the Territory as any gentleman of the Commission, both from the fact I have been Auditor, and have made an examination of the records, and I have had more or less to do with it in the previous years, and I could not to-day determine definitely what ought to be copied and what not. There is no line that can be drawn between what would be desirable as the record of a State, and that which would be desirable merely as a matter of curiosity—merely a matter of history, so I would not want at this time to undertake to say for the State of South Dakota what of these records should be copied. It would be impossible to fix any standard which would determine the matter for that reason. It seems to me, so far as the copying is concerned, we should limit this to simply those records which it is absolutely necessary that the respective officers of either State should have in order to commence the business of a State. If we get away from that rule, then it is a matter of individual opinion as to what ought to be copied.

Mr. KELLAM. Gentlemen, if this was a matter no one was interested in but myself, of South Dakota, I would have a very clearly defined notion of what I would do; and the only thing that prevents me expressing myself officially in favor of the plan is the possible criticism that might follow it from our people in South Dakota. My judgment is that a business like way of disposing of this question is to leave all the records here except such as are already disposed of—such as would be necessary to put South Dakota in a position to commence; leave all the records here, where they are properly taken care of, properly classified and in fire-proof vaults, with the understanding and agreement that if a copy should be—I would not limit it to the first Legislature for the very reason that the first Legislature of each State, particularly of South Dakota, have no permanent Capital; we

will not have any proper offices for any of our State departments; we will have no place to put our records for some time to come. Indeed, I would leave all records in the Capitol of North Dakota except as we have already provided for, with the agreement that if at any time within a stated term—I would not limit it to the first Legislature—I don't think that would be fair to South Dakota——

Mr. NEILL. Make it ten years.

Mr. KELLAM. I would make it long enough so in the meantime places would be provided for each office; then South Dakota at any time within a stated time might indicate by legislative action what copies of any or all of the papers it wanted, and that the expense of making copies should be divided equally between the two States. Now, there is this further fact. Of course, we have been talking of large amounts because large amounts were involved; but every $1,000 that has to be immediately paid by either of these two States increases embarrassment of the States in starting out on their existence. Each State has got to go into State existence without any money and in debt. Now, if we tie each State of North Dakota and South Dakota to the necessity of incurring the expense of copying these records by the first Legislature, then if that Legislature is composed of honest or prudent men, they will be very careful about how many records they order copied. Now, I would extend that time—I would not care for ten years. I want that left for South Dakota to say itself, when it will be in a condition to take care of them; that if it wanted part of the records it could say so; if it wanted the balance in three years from that time it could say so. Now, I say again, I am very much inclined to think that if we make this agreement that there would be numerous people down there who would say, "Why didn't you bring half of those records down here?" and it would be difficult to explain to a great many men. But I believe it is the business way of disposing of this thing, and if the records were mine I would not move anything except what was absolutely necessary to be moved until I had a place to put it, and keep it.

Mr. CALDWELL. Mr. CHAIRMAN. I don't believe that the average citizen of South Dakota would be satisfied to give up entirely all the records of the Territory which have accumulated up to this time. Indeed, the language of section twenty-eight of the Schedule and Ordinance of the Constitution of 1885 shows that the people down there have felt that they, being the older section of

the Territory, were entitled to the possession of the originals; but there, of course, in face of this is the fact of there being no place for the caring of them. So it would seem to me that every feeling of fairness and of sentiment in regard to these matters would be satisfied if it could be said to these people "You have half the original records, but you cannot have possession of them until such time as there is a fixed place for their care and custody." And if it could be arranged with this Commission that while all the original records should be allowed to remain here, yet by an arrangement as may be agreed upon here they may be regarded as the property of South Dakota, that it would then satisfy all these feelings of which I speak.

Mr. KELLAM. I have no objection to that. I think that would be proper.

Mr. CAMP. As a sort of a preliminary motion I suggest something of this kind: This commission shall agree upon a division of the records, but all records which are to go to South Dakota shall remain at the Capital of North Dakota until the Legislature of South Dakota shall demand them, and gives North Dakota reasonable time to copy, if North Dakota chooses to copy.

Mr. CALDWELL. That seems to me to be——

Mr. CAMP. That is those pertaining exclusively to South Dakota shall remain here until the Legislature indicates it is ready to receive them.

Mr. CALDWELL. I think North Dakota should have reasonable time to copy.

Mr. PRICE. There seems to be no provision for payment.

Mr. CAMP. That is merely provisional. We will make provision.

Mr. KELLAM. Mr. HARRIS is preparing something. Let us read that in connection.

Mr. McGILLYCUDDY. They shall remain here—don't say any particular time.

Mr. CAMP. Mr. HARRIS has drawn a resolution to supplement the preliminary resolution I presented to you a few moments ago; the whole would read like this: "This Commission shall agree upon a division of the records, but all records that are to go to South Dakota shall remain at the Capital of North Dakota until the Legislature of South Dakota demands them and gives North Dakota reasonable time to copy such as North Dakota chooses. All records pertaining exclusively to institutions in South Dakota

shall be the property of South Dakota. All records pertaining exclusively to institutions in North Dakota shall be the property of North Dakota. All other records, vouchers, etc., not divided as above, shall be separated into two lots, so the records of no one office shall be divided, and each State shall have one lot. South Dakota may demand copies of any records which are the property of North Dakota. All expense of copying records shall be borne equally by North Dakota and South Dakota. It shall be decided by lot which State shall have the originals of the records and which this Commission provides for the copying of."

Mr. NEILL. Does that cover the whole ground?

Mr. CAMP. Well, I think so.

Mr. BROTT. I move we do adopt that.

Mr. CALDWELL. I second the motion.

Mr. BROTT. That is in addition to those recommended to be copied.

Mr. CALDWELL. That is what ——

Mr. GRIGGS. There is no time specified.

Mr. CAMP. The Legislature may at any time, at a session of the Legislature of South Dakota, may demand them and North Dakota has time to copy, if North Dakota chooses to copy.

Mr. CALDWELL. The Legislature may within ten years demand them.

Mr. KELLAM. Ought we not to put in a definite time?

Mr. CALDWELL. They are to remain here until the Legislature of South Dakota demands them.

Mr. HARRIS. Then giving North Dakota reasonable time to do the work.

Mr. GRIGGS. There is no definite time as when this arrangement would stop.

Mr. CAMP. I suppose we are perfectly willing to keep these records until South Dakota demands them.

Mr. GRIGGS. Certainly, if it is fifty years.

Mr. CAMP. They will probably demand the most of them right away.

Mr. KELLAM. We will have to arrange with North Dakota, as trustee for the two Dakotas.

Mr. CAMP. "All records pertaining exclusively to institutions in South Dakota shall be the property of South Dakota; all records pertaining exclusively to institutions in North Dakota

shall be the property of North Dakota. All other records, vouchers——

Mr. CALDWELL. Make that "all records and files."

Mr. CAMP. "And files." I will just insert that.

Mr. GRIGGS. That is all left to the Legislature.

Mr. KELLAM. Left to the Legislature to make copies; but if any man of South Dakota should want a copy of an article of incorporation he would apply to the Secretary and pay when he gets it.

Mr. PRICE. Suppose some officer elected to the State Government does not want to be compelled to furnish a paper without pay, and under this arrangement we would have to pay North Dakota.

Mr. KELLAM. Suppose it becomes necessary for the Treasurer of South Dakota to have a copy of some record up here, and he should apply to the Treasurer of North Dakota for it, he ought not to be compelled to pay the ordinary fees.

Mr. GRIGGS. They will want fees, and the officers of South Dakota will want copies.

Mr. PRICE. I don't think we could make an agreement to bind an officer in regulating his fees.

Mr. CALDWELL. Furthermore, it is the case, even under the Territorial Government, that public officers, county officers for instance, want records that are made in some Territorial office, and the Territorial officer charges that county officer just the same as he would charge an individual. And it is, also, frequently the case that one officer will want a certified record out of another office; as, for instance, the Auditor may sometimes want copies of the appropriation bill, and it has been the case that the Auditor had to take and procure them from the Secretary and pay out of the contingent fund of the office the same fee.

Mr. KELLAM. They are all in the fa mily, and it don't make any difference, for it was still in the Territorial fund. But the situation with these records is this: The records really belong to South Dakota, and a South Dakota officer having charge of the department in South Dakot a wants a copy of some paper up here; that officer, if he had to pay for it, it would come out of South Dakota. I don't know, as PRICE suggested, how we might cover that amount. Now, the records of the Treasurer's office, if they belong to South Dakota—still if some South Dakota man wanted a copy he would apply to the Treasurer of North Dakota and pay for it—

that fee would go to the officer who had this in charge, and it would look to me that the fees would compensate him for making what few records would be required by the officers of the State of South Dakota.

Mr. GRIGGS. Excuse me, I meant if South Dakota officers write to North Dakota officers for any article, then these North Dakota officers would make his charge as a matter of course, and who is going to pay for them? The South Dakota officer would pay it, and then render the account to the Legislature for it.

Mr. PRICE. There was something occurrred to me, I don't know whether there is anything in it or not.

Mr. GRIGGS. An officer might object, might refuse to give a copy, and I think there ought to be some provision to compel him.

Mr. CALDWELL. Every officer is compelled to furnish a certified copy of any record in his office.

Mr. GRIGGS. In other words, if we keep these records here, I want South Dakota to have a chance to get any copy she may desire, and we share the expense. I don't want any loop holes.

Mr. PRICE. Well, my suggestion is this: Supposing at the time we close our Territorial existence and these records are allowed to remain in North Dakota, and your section assumes Statehood; and suppose a case is pending in court and I want a certified copy of articles of incorporation, something of that kind; certified to by the Treasurer, or Secretary of North Dakota; would that be legal evidence in the State of South Dakota? You certainly are not the proper custodian of the records of South Dakota.

Mr. GRIGGS. That is my idea.

Mr. CALDWELL. I think it would be if we arrange in regard to the division; we recite in the testimony accompanying the certificate, and it seems to me ——

Mr. PRICE. I think it would be no better certificate than any individual would make.

Mr. CALDWELL. It certainly would not be if there was no legal arrangement—one which the courts were required to take judicial notice of; but such an arrangement as this is part of the law of the land. Furthermore, what sort of a certificate could a man make, getting a copy from a transcribed record?

Mr. PRICE. Certified copy.

Mr. CALDWELL. Certainly, a certified copy of a transcription.

Mr. CAMP. There is a way I can suggest to meet the question Capt. GRIGGS raises, and the gentlemen on the other side. This is what I would suggest: That South Dakota may designate one or more individuals, men, who shall have access to all records in the Capitol here, which belong to South Dakota, and make his own copies of them.

Mr. PRICE. My understanding is that any citizen has access to the public records.

Mr. CAMP. Well, not quite ——

Mr. PRICE. That is so long as he doesn't interfere with the officer he may.

Mr. CAMP. He cannot get in to make copies.

Mr. PRICE. Indeed he can.

Mr. CAMP. They should designate the men who should make the copy.

Mr. GRIGGS. The men designated should make a reasonable charge.

Mr. CALDWELL. Let me ask this question: As a matter of law can the Constitution give any, or the Schedule and Ordinance of the Constitution go on and declare that a certain thing would be evidence, different from that which the State declares to be evidence of that fact? This Schedule and Ordinance could declare that certified copies of the Territorial records made by the State officers who succeeded to their custody should be considered as the same as similar certificates made by the Territorial officers now required to make them under the statutes of the Territory; but to incorporate such a provision as that into the Schedule and Ordinance—of course the courts of the Territory would have to take judicial cognizance of it. Even if the certificate should show a copy made from a transcription of the record instead of the original, would seem to be competent evidence.

Mr. CAMP. No doubt.

Mr. HARRIS. I think Mr. KELLAM and Mr. CAMP could put that in shape.

Mr. CALDWELL. It would raise the point made by Mr. PRICE.

Mr. PRICE. Yes.

Mr. CAMP. Perhaps we better put this over until afternoon.

Mr. KELLAM. I don't want to do anything unless we know what we are doing. There seems to be a sort of miscellaneous confusion of ideas on this motion.

Mr. CALDWELL. It would, according to my——

Mr. BROTT. I move we leave this to the two chairmen.

Mr. KELLAM. How would it do to let this go over until the afternoon session? It looks to me that there is a little lack of harmony in the South Dakota Commission.

Mr. HARRIS. My idea is that we know what it relates to; if we pass this, you and Mr. CAMP in drawing the agreement can put in——

Mr. KELLAM. I think, Mr. CAMP, we should agree upon some definite plan, and then if the language of the resolution needs changing, we would perhaps take the responsibility of that.

Mr. CAMP. The Commission must decide first what particular record is going to a particular place.

Mr. CALDWELL. Yes, that is true.

Mr. KELLAM. We have got to go to work and actually determine what belongs to South Dakota before you and I can get to work.

Mr. CAMP. Perhaps, Mr. KELLAM, you can make some suggestion that would harmonize them.

Mr. KELLAM. Yes—well, I can't just now.

Mr. GRIGGS. Well, it is now dinner time.

Mr. KELLAM. Then there ought to be—as you suggest—suppose in the division of these records the records of the Secretary should become the property of South Dakota; of all the corporations, probably four-fifths of them are South Dakota corporations. When North Dakota wants its copy it would only desire to copy, perhaps, such records as regarded institutions in the north, or it might prefer to distribute the records. On the other hand, suppose they go to the State of North Dakota; now North Dakota really has no interest in five-sixths of those articles of incorporations, but South Dakota would probably want a transcript, and North Dakota might say, we don't want to pay half.

Mr. ELLIOTT. Is it necessary that we at this time determine what records go to South Dakota and what remain in North Dakota?

Mr. PRICE. I think we should leave it to the Legislature.

Mr. CALDWELL. No, we are required to make disposition of the records.

Mr. CAMP. Agree upon a disposition.

Mr. CALDWELL. Yes—the matter of transcription left to the Legislature, but the——

Mr. McGILLYCUDDY. Disposition of the originals?

Mr. CALDWELL. Yes.

Mr. PRICE. How would this be: We have decided just what books and papers—how would it be to leave the whole, the rest, to the Legislature; to the Legislature and let them appoint a joint commission to determine what they will want and give them full power to settle the thing. They will have to appoint a commission to come here.

Mr. McGILLYCUDDY. What are we here for?

Mr. PRICE. That is what I have been trying to find out.

Mr. NEILL. I came here to make disposition of these records and we want to finish it up.

Mr. PRICE. That wss my idea from the start, we ought to make disposition of the records, and provide for copies for the new State.

Mr. CALDWELL. Providing copies is not part of the disposition.

Mr. PRICE. I don't think the people of South Dakota will smile upon us very much if we make North Dakota the trustee for us.

Mr. CAMP. Let them be here subject to your call—the Legislature can call for them at any time.

Mr. NEILL. As soon as you get a house to put them in.

Mr. McGILLYCUDDY. The bill says they shall remain here, and just as soon as South Dakota indicates they have a place for the records they can take them.

Mr. PRICE. The Legislature will undoubtedly provide for copies, and have to send a Commission here, and probably would be at a larger expense than at this time.

Mr. ELLIOTT. The question is as to who shall saddle the responsibility.

Mr. PRICE. I am willing to take one-fourth part of it.

Mr. CAMP. One-fourteenth perhaps.

Mr. PRICE. Yes, one-fourteenth.

Mr. McGILLYCUDDY. It strikes me there will be a vault provided in South Dakota so South Dakota may take its share of the records when the State Government opens up, and copies such as South Dakota requires to be made.

Mr. PRICE. What's to interfere about having it done now?

Mr. McGILLYCUDDY. Copying a large amount of records is a question to great many minds as to whether it will be necessary;

whether the Legislature will approve our action and pay for the work. I would not take the contract and pay for these records. They ought to get five times as much as it was worth. I would not take the responsibility.

Mr. PRICE. I guess there would be no one afraid to take the contract.

Mr. McGILLYCUDDY. Want a large margin on it.

Mr. PRICE. I would take my chances at ten cents a folio, and take the chances of getting the money out of the Legislature.

Mr. McGILLYCUDDY. There isn't anything in the Omnibus Bill that provides for this Commission incurring any expense.

Mr. PRICE. If that is true we have no right to have these copies made at all.

Mr. McGILLYCUDDY. There isn't any provision for it, but as it is we will provide for it.

Mr. PRICE. There are some things we have got to have.

Mr. McGILLYCUDDY. It is a question whether a copy of all the other papers are necessary.

Mr. KELLAM. This seems to me to cover about the ground. Read this; take it and adjust it: "This Commission shall agree upon a division of all records, papers, files and books not already provided to be copied, in manner following, to-wit: All records and files pertaining exclusively to institutions in South Dakota shall be the property of South Dakota, and all records and files pertaining exclusively to institutions in North Dakota shall be the property of North Dakota. All other records, etc., not provided to be copied or divided as above shall be divided and grouped into two lots, as nearly of equal importance and value as possible, but so that the records of no office shall be divided by such grouping. Each State to have one of such two groups, to be determined by lot by this Commission. All records shall remain at the Capital of North Dakota. South Dakota may at any time take possession of such of the records, files, etc., as under this agreement becomes the property of South Dakota, giving North Dakota reasonable time to make copies or abstracts thereof. If either State requires copies or abstracts of the records which under this agreement go to the other State, the expense thereof shall be borne equally by the two States. It shall also be determined by lot which State shall take the originals and which the copies of such records as are arranged by this Commission to be copied." Does that omit anything?

Mr. CALDWELL. I don't believe it does. I believe that covers everything. Just to show how our ideas had followed along on the same plan after such discussion has been had, I will read such part of my resolution as I had prepared.

Resolved, That the Territorial records, the transcription of which has not been provided for by this Commission, shall be disposed of as follows: Such records and files as belong to either State particularly shall be allotted to such State; and such records as are of general application to the Territory at large shall be grouped in two lots to be determined by this Commission. But the records which are thus disposed of shall remain at the Capital of North Dakota, the successors of the office now in charge, with the power of trustee of the State of South Dakota, so far as the records are concerned.

That is merely preliminary. I would move the adoption of the plan suggested by Major KELLAM, just read.

Mr. GRIGGS. I move we adjourn until 3 o'clock.

Mr. PRICE. I second the motion.

Mr. ELLIOTT. 2 o'clock; make it 2 o'clock.

Mr. KELLAM. Will there probably be a convention of your men this afternoon.

Mr. CAMP. Well, there ought to be.

Mr. KELLAM. What is your judgment as to time? There is no use adjourning until 2 o'clock if you are sure you could not get here.

Mr. CAMP. We have got to be here.

Mr. KELLAM. I suppose we understand, while we have got it in our mind, we can dispose of it.

Mr. GRIGGS. I guess we better adjourn to 2 o'clock.

Mr. CAMP. I guess we better let everything else go.

Mr. KELLAM. I am sure we can dispose of that matter in a very few minutes—we have had it on our minds.

The motion to adjourn was seconded and carried, and the Commission adjourned until 2 o'clock p. m.

AFTERNOON SESSION.

The Commission was called to order at 2 o'clock with Mr. KELLAM in the Chair.

All members of the Joint Commission were present.

Mr. KELLAM. When we adjourned the matter of public records was before the Commission.

Mr. SCOTT. What progress have you made?

Mr. KELLAM. It is very difficult to tell.

Mr. CAMP. Might have the resolution read.

Mr. KELLAM. Perhaps it would be well to state that we discussed the matter in a general way through the forenoon, and finally the proposition which is now being called for, was written as covering, I think, the drift of the sentiment. But nothing was determined. The Clerk will read. It is not in the form of a resolution, but a memorandum.

The Clerk read the resolution.

Mr. KELLAM. That, perhaps, needs this explanation to such of you as were not here. The matter was left to a committee consisting of Messrs. HARRIS and CALDWELL to report to this Commission the books that seemed to be necessary and indispensable for the two States to initiate their State existence, and they reported such books as were necessary; and this Commission then agreed that we would provide for the copying of those books, one State to have the original and one the copy. Then we have this proposition for disposition of the balance of the records.

Mr. CAMP. This provides that South Dakota may have copies of records left in North Dakota.

Mr. KELLAM. No, I think not, only that if either State requires copies of records——

Mr. CAMP. It leaves it implied.

Mr. KELLAM. I think the proposition reads something like this: If either State requires records it may go to the other State and have them, giving them time to copy—each State paying one-half of the expense. Gentlemen, there is really nothing pending before the Commission, that is not in the form of a resolution.

Mr. SCOTT. Two lots been made?

Mr. CALDWELL. Mr. HARRIS and myself were to make up the lots.

Mr. SCOTT. Under this resolution one State can require the other to make complete record of anything that remains in its possession. Then it is not at all probable that either State would desire copies of records pertaining exclusively to institutions in the other State.

Mr. CALDWELL. No.

Mr. GRIGGS. If they should at any time want any particular articles, they could send and get them.

Mr. KELLAM. The thought is to leave that to the States themselves, hereafter.

Mr. GRIGGS. That seems to be very fair; the records remain

here until such time as North Dakota has time to make a copy of them.

Mr. KELLAM. It has seemed to us from the South that while there is no real tangible advantage to North Dakota in such a disposition, the apparent advantage is to North Dakota. But it is a fact we have no place in South Dakota where the records, even those coming to us, would be as safely kept as here.

Mr. SCOTT. Then there is no provision made; we keep every one of the records contained in the lots.

Mr. KELLAM. Those are divided; part going as the property of one State, and the other of the other.

Mr. SCOTT. I think that is proper because it would be an enormous amount of work to copy everything. Now this resolution provides just as I thought it did, that is that the State of South Dakota can ask North Dakota to make copies of everything included in that lot and shall pay half of the expense; and the State of North Dakota can ask South Dakota to make copies of everything they have in that lot and they shall pay half the expense. I don't believe—I don't think that anything should be provided for the copying of any of these records that are not considered of enough importance to divide.

Mr. CAMP. They are divided.

Mr. KELLAM. How would you prefer to have each one take the records?

Mr. SCOTT. Let them pay for them, because it may be possible that some one of the Legislatures, one of the two States, may ask for a complete copy of all these records. That is going to cost $20,000 or $30,000 to do it. I don't believe we should leave such a thing as that open.

Mr. CAMP. Our Legislature is just as liable to do it as theirs.

Mr. SCOTT. I know if one does, the other will come in.

Mr. KELLAM. Do you think we could make any provision here that would preclude the Legislatures ——

Mr. SCOTT. No; but if our Legislature saw fit to make a copy of what you have got, let them pay for it. And if your Legislature asks for copies let them pay for it.

Mr. PURCELL. It may be necessary, Mr. SCOTT—these records are put in files or lots, and it may be some very important record is in the lot going to South Dakota that we might need, and it may be necessary for us to have a copy of that; the chances are just as much in our favor as in South Dakota. My view was

to copy the whole thing now in lieu of making lots, each party paying half the expenses.

Mr. GRIGGS. Mr. SCOTT'S amendment would be all right; it might save some expense. If each party pays what they ask for, it is just as fair for the one as the other.

Mr. KELLAM. That proposition, it seems to me, would result in injustice to one side or the other. In this other case, as Mr. PURCELL says, it is just as fair for one as the other.

Mr. PURCELL. It may be some very important matter goes to South Dakota. We may have to copy all—they may not need to copy.

Mr. SCOTT. We want to determine what we pay for if we copy.

Mr. CALDWELL. The other side would be very careful what they copied when they pay half the expense. If the proposition were that one side should make a selection with regard to copying, and the other pay the whole thing, you would see the force of Mr. SCOTT'S observation.

Mr. PURCELL. Then the liability is as great on one side as the other, and it is fair to presume that as much caution would be used on one side as the other.

Mr. SCOTT. No one would throw away money to get even with the other.

Mr. PRICE. I think what ought to be copied, I am in favor of copying now.

Mr. PURCELL. He presumes it may be——

Mr. SPALDING. I think a large number of the records here are of no use to anybody.

Mr. CALDWELL. Never would be.

Mr. SPALDING. Many of no use to any part of the Territory, and it would be of no use for us to copy those records relating to corporations in South Dakota, and South Dakota would have no use for records relating to corporations in North Dakota, and a good many things in the same way.

Mr. GRIGGS. If one Legislature orders copies the opposite Legislature would retaliate.

Mr. PURCELL. It would not be any worse in that case than if we should copy them all, each bearing one-half the expense.

Mr. GRIGGS. I am speaking now of Mr. SCOTT'S amendment that each part pay for its own copying.

Mr. SPALDING. That would be all right if these records

were going to be divided exactly; and if separated accordingly to the office they belong to, according to the set of books they belong in so as to preserve the unity of the different sets of records—when we do it this way we make the other do half the work.

Mr. CAMP. I am not sure the Legislature is going to order a full copy of the Legislature's bill books for 1889.

Mr. GRIGGS. You don't know what the Legislature will do.

Mr. SPALDING. They will have it on their own responsibility, not ours.

Mr. KELLAM. We of the south are willing to leave the records here for the reason that we are not prepared to take care of them now. They are safe here, in fire proof vaults. Now, suppose we make the division and we take our records down there this fall; we have no place to put them. We could do it, of course, and such would be regarded as fair, if we wanted to do it. Make an agreement to leave them here for the next five years. Our election this fall is temporarily on the Capital question and it may be two or three, four or five years before we have a permanent Capital.

Mr. SANDAGER. I think we better leave it to the Legislature.

Mr. PURCELL. The necessity may be just as great.

Mr. KELLAM. It doesn't matter to me—it could be an advantage to North Dakota to keep the records here.

Mr. SCOTT. No, I think that it would——

Mr. KELLAM I think it was a generous proposition on our part.

Mr. CAMP. It strikes me it is impossible for us to speculate upon the future extravagance of the Legislature.

Mr. SPALDING. It may be some years——

Mr. KELLAM. I think it is very doubtful about what number——

Mr. CALDWELL. Mr. CHAIRMAN: I move the adoption of this resolution or memorandum as presented by Mr. KELLAM, and that it be reported to the committee, or Chairmen of the respective delegations, together with such expressions as they have heard here regarding the views of the Commission, and they be requested to incorporate it into a formal agreement regarding the distribution of these records.

Mr. CAMP. Now it strikes me we have not got far enough with such resolution——

Mr. KELLAM. I suggest, Mr. CALDWELL, that you limit your motion to the adoption of the plan outlined here.

Mr. CALDWELL. Very well, I will move the adoption of the memorandum as read.

Mr. ELLIOTT. I second the motion.

Mr. KELLAM. Gentlemen you have heard the motion, are you ready for the question? The Clerk will call the roll.

Camp, yes; Griggs, no; Harris, no; Purcell, yes; Sandager, yes; Scott, no; Spalding, yes; Kellam, yes; McGillycuddy, yes; Caldwell, yes; Brott, yes; Elliott, yes; Price, no.

Mr. PRICE explained his vo te as follows: I believe, as has already been decided by this Commission heretofore, that we have an absolute right to provide for the copying of all these records; and, for the further reason that I think these records ought not to be separated, and that the records made during the Territorial existence ought to be kept in one place. And also, for the further reason that I think it is inevitable that copies of all these records or the great majority of them, will be required by the respective States later on, and that they can be provided at this time at less expense to the people of the Territory than to refer it to the Legislatures of the States. And for the further reasons that I believe that this resolution, as a whole, is contrary to the spirit of the Omnibus Bill.

Mr. NEILL voted yes.

Mr. PURCELL. As I understand, this resolution provides the records shall remain here through the Territorial existence.

Mr. PRICE. I think what records have been made during the Territorial existence ought to remain either in South Dakota or North Dakota, and not be separated.

Mr. KELLAM. The Chair understands under the rule that the motion is carried.

Mr. GRIGGS. I think it is a mistake—in some things right.

Mr. PURCELL. We will have to copy——

Mr. GRIGGS. If you refer it to the Legislature you know what they will do—they will copy everything.

Mr. SPALDING. If they want to take the responsibility of it let them do it. But there is copying here amounting to $15,000 or $20,000. Let somebody who wants to take the responsibility take it.

Mr. CALDWELL. Let it be done by appropriation to pay for it.

Mr. SCOTT. We have greater responsibility than the Legislature if we have the power to keep the Legislature from doing it.

Mr. KELLAM. I don't understand this Commission can tie the future Legislatures with regard to copying, or anything else. There might not be any necessity for copying; but the Legislature may provide for three or a dozen copies. We can't put an injunction upon the Legislature.

Mr. SCOTT. That is correct. Should we get up a provision that the State wanting a copy should pay for it?

Mr. KELLAM. The Legislature could very easily undo it.

Mr. SCOTT. They would not be able to do it.

Mr. KELLAM. From the time this Commission becomes defunct the Legislature is omnipotent.

Mr. PURCELL. I could see an advantage to that in case we had the first selection of the records, but I can't see that it makes any difference.

Mr. SCOTT. I do, because I am very well satisfied that if one of the Legislatures call for a copy the other will also do the same.

Mr. CALDWELL. It is scarcely conceivable that any Legislature would attempt to punish another Legislature by putting an expense upon it when it would have to pay half the expense.

Mr. PURCELL. Equally as great.

Mr. SCOTT. No. If South Dakota had a copy of all the records and we could get that at half the cost to ourselves we would do it.

Mr. GRIGGS. That is it exactly.

Mr. SCOTT. I am in favor of copying them—I am not in favor of adopting this proposition: in case either State desires copies of the records let them have them made and pay for them themselves.

Mr. PURCELL. It may be necessary for us in making this arrangement that we have to pay it all.

Mr. SCOTT. That would be only right on the basis we propose to settle on; settle by drawing lots.

Mr. HARRIS. I believe there is nothing before the House. We decided this morning that copies should be made of certain records in the Treasurer's office and Auditor's office, and it is still undecided as to who has the original and who is to take the copies. That is a matter, I suppose, should come before us now as well as any time.

Mr. CALDWELL. Might be well to defer it until we deter-

mine which side takes the Auditor's and Treasurer's office, and of course, the other party would take the copy.

Mr. PRICE. This is the resolution as I understand it: We shall draw to see who shall take the Auditor's office and the Treasurer's office.

Mr. CALDWELL. Yes.

Mr. ELLIOTT. Why not just as well fix that matter now? Let us draw lots to see who has the first choice.

Mr. PRICE. There is to be two lots. We might draw lots to see who would have the first choice.

Mr. CALDWELL. Yes.

Mr. KELLAM. We could not very well do it until the lots were made.

Mr. PRICE. I don't know why we couldn't if the lots were made.

Mr. PURCELL. You could not draw until the lots were made. Be all right to draw and make the lots up afterwards.

Mr. PRICE. Now, gentlemen, it is necessary to divide the records in some of the offices.

Mr. CALDWELL. Only so far as pertains to public institutions.

Mr. PRICE. Here's the Treasurer's office and the Secretary's office.

Mr. CALDWELL. The Governor's office and the Commissioner of Immigration.

Mr. PRICE. Well, there is nothing in those offices.

Mr. ELLIOTT. Well, if we can't do any more on this we might hear the report of the Committee on Military.

Mr. CALDWELL. They are just consulting.

Mr. CALDWELL. Mr. CHAIRMAN: Your Committee to whom was referred the matter of dividing the several offices of the Territory into lots would report that they would recommend: That lot one shall consist of the records, etc., in the office of the Secretary and the office of the Governor; and that lot two shall embrace the records of all other public offices of the Territory.

Mr. KELLAM. Gentlemen, you have heard the report of the Committee on Division?

Mr. ELLIOTT. Mr. CHAIRMAN: I move the report of the Committee be adopted.

Mr. SCOTT. I move the adoption of the report.

Mr. KELLAM. Gentlemen, the question is upon the adoption

of the report of Mr. CALDWELL and Mr. HARRIS you have just listened to. The Clerk will call the roll.

All the members voted in the affirmative, except Mr. SPALDING, who was absent.

Mr. KELLAM. Gentlemen, under the rule the motion is carried.

Mr. CALDWELL. I would move you now, Mr. CHAIRMAN, that two pieces of paper of the same size, upon one of which shall be marked "One"——

Mr. ELLIOTT. That is all right, go ahead.

Mr. CLADWELL. And upon the other shall be marked "two," shall be put in a hat and that Mr. HAYDEN be blindfolded and draw from said hat one of said papers; and that the number thereupon shall be the selection of North Dakota. That the number shall indicate the order of North Dakota's seclection.

Mr. GRIGGS. Why not make the balance——

Mr. KELLAM. His groups are numbered.

Mr. CALDWELL. This way, upon one of the papers shall be marked "North Dakota" and on one "South Dakota," and whichever number he draws shall indicate the seclection—shall have the first choice.

Mr. PURCELL. I second the motion.

Mr. KELLAM. Gentlemen, you have heard the motion of Mr. CALDWELL. Are you ready for the question?

Question. Question.

Mr. KELLAM. Mr. HAYDEN, there are two pieces of paper, one marked "North Dakota" and one marked "South Dakota," and if he draws "North Dakota," then North Dakota has first choice; if "South Dakota," then South Dakota has first choice.

The Clerk will call the roll.

All the members voted in the affirmative, except Mr. SPALDING, who was absent.

The two papers were placed in a hat by Mr. MCCLARREN, Clerk of the South Dakota Commission and Mr. HAYDEN, blindfolded, drew one paper from the hat, which on examination had "North Dakota" on it, entitling North Dakota to the first choice.

Mr. CAMP. North Dakota chooses lot No. 1, consisting of the records of the Secretary and Governor.

Mr. CALDWELL. Oh! I was in hopes it was the other way.

Mr. KELLAM. What is next?

Mr. HAYDEN. The balance of the resolution, who shall take the copies and who the originals.

Mr. CALDWELL. Copies would be taken by the other side from which takes the originals.

Mr. KELLAM. No, he means these books we divided this forenoon should be copied.

Mr. CALDWELL. Oh, yes. They are all in the Treasurer's and Auditor's offices. By the way, there is one matter I was intending to suggest. There are records that belong to the Auditor's office that are not contained in the Auditor's office—they are in store rooms in the building here—old stuff there—the records of the Auditor's office. It will be necessary that they go with the Auditor's office.

Mr. CAMP. There is one thing I would like to see changed, and that is the Domestic Corporation records—some twenty-seven volumes. They ought to be sent to South Dakota in order to save the expense of copying. We could copy what we want of them.

Mr. CALDWELL. Of course, if you want to do that the records are at your disposal.

Mr. PURCELL. They are in the Secretary's office.

Mr. CALDWELL. Yes, sir; about three-fifths of them belong to South Dakota.

Mr. PRICE. I understood this resolution we already adopted provided that all records relating to South Dakota should go to South Dakota, and you say four-fifths belong to South Dakota. In regard to the militia I would be in favor of giving North Dakota all the colonels.

Mr. PURCELL. We have got the advantage there.

Mr. CAMP. Would it not be well to take up that agreement and read it over?

Mr. SCOTT. Well, let us see who is going to keep the originals and who the copy.

Mr. CALDWELL. That is settled; we take the office and take the originals, and the copies are furnished to the other side.

Mr. SCOTT. We are to have the copies of the Auditor's books.

Mr. CALDWELL. There are only two offices in which there are any books absolutely necessary to be copied. If the matter has proceeded far enough I renew my motion, that the question of records, etc., be referred to the chairmen of the respective delegations for them to formulate and prepare the statement to go into

our report to our respective Conventions in accordance with the action which has been taken by the Commission.

Mr. PURCELL. Do you think it necessary to name the records?

Mr. CALDWELL. No, only those to be copied. I think now by distinguishing them as records of the respective offices that everything in the way of records in the Territory is disposed of.

Mr. CAMP. Only that might raise the question as to what records portain exclusively to North or South Dakota. There might be some question as to what was included in that.

Mr. PRICE. Seems to me it will leave a wide open door.

Mr. CALDWELL. Of course the first report made by this committee apportions those, I believe. Don't it, Mr. HARRIS?

Mr. HARRIS. Yes, sir.

Mr. CAMP. Then you can take that out of the report.

Mr. ELLIOTT. I second Mr. CALDWELL'S motion.

Mr. KELLAM. Gentlemen, what is your pleasure now?

Mr. CALDWELL. I made a motion that the matter be referred now to the President of the—to the Chairman.

Mr. GRIGGS. What referred?

Mr. CALDWELL. This matter of records, refer it now to the President of the respective delegations for them to incorporate into the agreement.

Mr. GRIGGS. I second the motion.

Mr. KELLAM. Gentlemen, the question is upon referring this matter that has just been disposed of to Mr. CAMP and myself to be incorporated in the agreement. Are you ready for the question.

Question. Question.

Mr. KELLAM. As many as are of the opinion the motion should prevail say aye. The motion is carried.

Mr. CAMP. I move we now proceed to consider this agreement that was submitted this morning by the two Chairmen.

Mr. CALDWELL. I second the motion.

Mr. ELLIOTT. There is another committee to report, would it not be better to dispose of what business we have got? The Committee on Military affairs, we should dispose of that.

Mr. CAMP. Well?

Mr. McGILLYCUDDY. I was in hopes of receiving something by to-day's mail. We have not made a report. In fact there is all the report we have to make.

Mr. KELLAM. Isn't it in addition to what you received the other day?

Mr. McGILLYCUDDY. Yes, sir; in addition to that list read the other day. We have the following from the Adjutant General.

Mr. McGILLICUDDY then read the following report:

Invoice of Camp Equipage belonging to Dakota Territory, and issued to Captain I. C. Wade, Commissary of Supply, First Regiment, D. N. G., at Camp Ben Harrison, June 25, 1889, and not returned.

Here follows a list of table ware, kitchen utensils, etc., amounting in the aggregate to $124.56. I think the above or greater part of it is in the hands of companies.

HUSTON.

Invoice of Camp Equipage belonging to the Territory of Dakota, and issued to Captain C. F. Mallahan, Commissary of Supply, Second Regiment, D. N. G., at Camp Ben Harrison, June 25, 1889, and not returned.

Here follows a list of table ware, kitchen utensils, etc., amounting in the aggregate to $114.16. I think the above or greater part of it is in the hands of companies.

HUSTON.

Invoice of Ordnance received at Bismarck, June 8, 1889, and turned over to Col. R. J. Woods, Chief of Ordnance, at Camp Ben Harrison, June 25, 1889:

Nineteen boxes Cartridges, 1,000 each; one box Rifle Bullets, one box Cartridge Primers, one set Reloading Tools, one Can Powder.

At Camp Ben Harrison, July 2, 1889. I received from Col. R. J. Woods, Chief of Ordnance, D. N. G., for storage:

13 Boxes Cartridges, 1,000 each, value, $27 00 each		$ 351 00
1 Box Cartridges, Primers,	"	25 00
1 Set Reloading Tools,	"	2 50
1 Box Rifle Bullets,	"	15 00
1 Can Powder, 125 lbs.,	"	22 50
30 Old Gun Slings		.....
		$416 00

Invoice of Camp Equipage received at Bismarck and issued at Camp Ben Harrison by order of Governor Mellette, July 1, 1889, to Major E. L. Calkins, Commissary of Supply, D. N. G., and stored at Jamestown, D. T.:

2 Wall tents, 14x20 feet, received at Bismarck, valued at $15	$ 30 00
6 Wall tents, 10x12, received at Bismarck, valued at $4	24 00
Total	$ 54 00

What I reported to you as at Bismarck on July 4th.

HUSTON.

Invoice of Camp Equipment stored at Watertown, South Dakota, July 25, 1889.

(Here follows a list of tents, bed-sacks, tools, tableware, kitchen utensils, etc., amounting in the aggregate to $693.06.)

OFFICE OF CHIEF OF SUPPLY, D. N. G.,
WATERTOWN, DAK., July 25, 1889.

I hereby certify that the foregoing statements are true and correct invoices of the public property belonging to Dakota Territory (Camp Equipage and Ordnance) now in my custody and charge and of the whole thereof.

GEO. W. CARPENTER,
Chief of Supply.

I certify that this is a correct copy.

J. S. HUSTON,
Adjutant General.

Mr. McGILLYCUDDY. I find stored here in the Capitol 944 rifles (or rather the committee finds 944 rifles) caliber 50 of the old pattern, and four cases caliber 45. This property General Huston indicates should be divided. There is in the hands of the south 559, and in North Dakota, of organized counties, 377; the other 80 stand are in the Capitol.

Mr. CALDWELL. I suppose the distinction he makes, the 45 caliber rifles were issued to the militia, and the other in possession of the Territory and not intended for use.

Mr. McGILLYCUDDY. Yes, and they are, I suppose, issued to the militia for their use, and the other something the Territory will have to settle for in time. The rifles here are good serviceable guns, only not in use at the present time. Just as good for use as the 45 calibre.

Mr. HARRIS. Is that company at Lisbon one of the nine companies of North Dakota?

Mr. McGILLYCUDDY. Captain W. E. Smith, Co. A.

Mr. CALDWELL. How can there be nine companies in North Dakota? They——

Mr. McGILLYCUDDY. This includes the battery.

Mr. PRICE. Mr. CHAIRMAN: I move you this Committee on Military Affairs be requested to furnish the Chairmen of the respective Commissions with all this battle array, and the Chairmen settle the whole matter remaining.

Mr. GRIGGS. I second the motion.

Mr. CAMP. Your respective Chairmen don't know any more than——

Mr. KELLAM. Let the Commission allow Mr. CAMP to read the article and it may be sufficient now, and if not we will consider it further.

Mr. CAMP reads: "One-half of all the arms, ammunition, quartermaster's and ordnance stores distributed to and now in

possession of militia companies of the Territory of Dakota shall remain in their possession, and all the right, title and interest of the Territory of Dakota in and to such arms, ammunition and stores shall vest in the state in which the armories or headquarters of such companies shall be situated. All 45-Cal. rifles and ammunition of same calibre, stored in the Capitol at Bismarck, and all 45-Cal. rifles heretofore issued to Company 'F' First Regiment at Bismarck, shall be the property of North Dakota."

Mr. CAMP. I have interlined in this article so as to read as follows: "All arms, ammunition, quartermasters's and ordnance stores not distributed to and in possession of military companies —— ." I have added all 45-Cal. rifles and ammunition of the same calibre stored in the Capitol at Bismarck and also the 45-Cal. rifles in the possession of Major Hare.

Mr. McGILLYCUDDY. No, he has no arms in his charge.

Mr. CALDWELL. Bentley.

Mr. CAMP. All 45-Cal. rifles heretofore issued to the Bismarck company.

Mr. McGILLYCUDDY. And there is a stand here in the Capitol.

Mr. CAMP. All 45-calibre rifles and ammunition for the same stored in the Capitol at Bismarck issued to the Governor's Guards, shall be the property of North Dakota.

Mr. PRICE. You get all, North Dakota; under that agreement you have got the cannon.

Mr. CAMP. You have those Napoleon guns somewhere.

Mr. CALDWELL. They never were received.

Mr. PRICE. It looks to me about right.

Mr. CALDWELL. It strikes me as right.

Mr. PRICE. As far as I am personally concerned you can have all of them. I don't think we have much use for a military.

Mr. KELLAM. If this is disposed of, shall we take up the agreement. We will listen to the reading of the agreement as proposed by the Chairman of the Commission, and follow it carefully with the understanding that each gentleman can make any inquiry he chooses.

Mr. CAMP. The preamble was drawn up by Mr. KELLAM.

WHEREAS, By an act of Congress approved February 22, 1889, entitled "An act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana and Washington to form Constitutions and State Governments, and to be admitted into the Union on

an equal footing with the original states, and to make donations of public lands to such States, it was among other things provided that when the Constitutional Convention for North Dakota and the Constitutional Convention for South Dakota, which by said act were duly provided for and authorized, should assemble and organize as in said act provided, it should be and become the duty of said Convention respectively to appoint a Joint Commission to be composed of not less than three members of each Convention, whose duty it should be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota; the disposition of public records, and also, to adjust and agree upon the amount of the debts and liabilities of the Territory, which shall be assumed and paid by each of the proposed States of North Dakota and South Dakota; and,

WHEREAS, The said Constitutional Conventions of North Dakota and South Dakota having been duly elected and assembled and organized in pursuance of and as provided in said act, did, as therein required and provided for the purposes therein specified, appoint a Joint Commission consisting of not less than three members of each Convention, to-wit: Seven of each Convention as follows, to-wit:

E. W. Camp, B. F. Spalding, Alex. Griggs, Andrew Sandager, W. E. Purcell, Harvey Harris and J. W. Scott, appointed by the Convention of North Dakota; and,

A. G. Kellam, V. T. McGillycuddy, Henry Neill, E. W. Caldwell, William Elliott, Charles H. Price and S. F. Brott, appointed by the Convention of South Dakota; and

WHEREAS, The said Joint Commission so appointed and composed having duly assembled at Bismarck, as by said act provided, and being now and here so assembled, and having as such Joint Commission duly and carefully considered the several matters which by said act are referred to them for disposition and agreement, do now adopt and confirm the following agreement, compact and convention, that is to say:

Mr. CALDWELL. You see it is estimated there will be a deficit of $140,000 liability and that would be hereafter distributed —in the Territorial Treasury at the time of the dissolution and under this arrangement South Dakota assumes $46,500 of your share.

Mr. SPALDING. In that article regarding the names there is something——

Mr. CAMP. I think we ought to take it up article by article.

Mr. SCOTT. Have you any provision each State shall assume and pay one-half of all claims existing against the Territory?

Mr. KELLAM. We have an article intended to cover that.

Mr. CAMP. "Article I. This agreement shall take effect and be in force from and after the admission into the Union as one of the United States of America, of either the State of North Dakota or the State or South Dakota."

Mr. KELLAM. Gentlemen, are there any suggestions or changes of any character on the article just read? Will Article I be adopted?

Mr. SCOTT. I move the adoption of Article I.

Mr. NEILL. I second the motion.

Mr. KELLAM. Gentleman, I think if there is no objection to any article it should be considered as adopted.

Mr. ELLIOTT. Yes.

Mr. PURCELL. Yes.

Mr. KELLAM. Gentlemen, the first one is considered as adopted.

Mr. CAMP. Article II. The words "State of North Dakota" wherever used in this agreement, shall be taken to mean the Territory of North Dakota in case the State of South Dakota shall be admitted into the Union prior to the admission into the Union of the State of North Dakota; and the words "State of South Dakota," wherever used in this agreement shall be taken to mean the Territory of South Dakota in case the State of North Dakota shall be admitted into the Union prior to the admission into the Union of the State of South Dakota.

Mr. KELLAM. Are there any objections to Article II?

Mr. SPALDING. There is where a question arises in the names. Does the Enabling Act fix the names as "states"?

Mr. KELLAM. No, sir.

Mr. CAMP. Then we will insert the words "North Dakota" and "South Dakota." And the words South Dakota shall be taken to mean——

Mr. SPALDING. Suppose one adopts the Constitution and the other doesn't, so one remains a Territory; what means have they of forcing that part of this relating to that part of the present Territorial—how can we——

Mr. KELLAM. The only authority for doing anything is the Omnibus Bill, and that provides for just what we have done, to provide for the property of the Territory. I don't see any more objection as to question of power than there is of power of division between the the two States.

Mr. PURCELL. We are doing this work, supposing it will be ratified by the people.

Mr. CAMP. Article III. Upon the taking effect of this agreement all the right, title, claim and interest of the Territory of Dakota in and to any public institutions, grounds or buildings

situate within the limits of the proposed State of North Dakota as such limits are defined in said act of Congress, shall vest in said State of North Dakota; and said state of North Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings, and shall pay all warrants issued under and by virtue of that certain act of the Legislative Assembly of the Territory of Dakota approved March 8, 1889, entitled "An Act to provide for the refunding of outstanding warrants drawn on the Capitol Building Fund."

Mr. KELLAM. Is there any changes suggested with reference to this article? If not we will pass it. Approved.

Mr. CAMP. Article IV. Upon the taking effect of this agreement, all right, title, claim and interest of the Territory of Dakota in and to any public institutions, grounds or buildings, situate within the limits of the proposed State of South Dakota as defined in said act of Congress, shall vest in said State of South Dakota. And said State of South Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings.

Mr. KELLAM. Is there any objection to this article? It stands approved.

Mr. CAMP. Article V.

Mr. CALDWELL. Mr. CHAIRMAN: I suggest the reading of that is a mere matter of figures, and that it be omitted.

Mr. CAMP. The only question is whether everything is included.

Mr. CALDWELL. Mr. HAYDEN and I have examined it.

Mr. KELLAM. Have you examined it since the agreement was framed?

Mr. CALDWELL. Mr. HAYDEN says he has.

Mr. CAMP. Article VI. Each State shall receive all unexpended balances of the bonds which it so assumes, whether such balances have been covered back into the Treasury or not.

Mr. KELLAM. Is there any objection to this article? Pass it.

Mr. CALDWELL. I suppose in case where it has been paid in the Treasury—as the $7,000 of the Bismarck Penitentiary, it becomes a part of the general fund of the Territory. That is, by

the adoption of this we would not, we could not have any power to reinstate it as the fund of that particular institution.

Mr. SPALDING. That is part of the general fund; yes.

Mr. KELLAM. Let's see if we understand it aright.

Mr. PURCELL. That was my idea what Mr. SPALDING said—part of the general fund of North Dakota.

Mr. KELLAM. Yes, of North Dakota.

Mr. CAMP. Article VII. All furniture, fixtures, provisions, appurtenances and appliances, tools, implements and other movable property of the Territory of Dakota situate in or used in connection with any of said public institutions, grounds or buildings, shall become and be the property of the State or Territory in which such grounds, buildings or institutions may be situated, except as herein otherwise specifically provided.

Mr. KELLAM. Are there any objections to this article? If not, we will pass it.

Mr. CAMP. Article VIII. In case of loss in whole or in part of any of the property of the Territory of Dakota prior to the taking effect of this agreement, the State in which such property would have vested if the same had not been destroyed, or in which such property so injured shall vest, shall receive all sums payable upon policies of insurance issued upon such property; and if loss, not covered by insurance occurs on any of such property, would vest on the taking effect of this agreement.

Mr. KELLAM. Any objection to this article? If not, we will pass it.

Mr. CAMP. Article IX. Upon the taking effect of this agreement, all unearned premiums of insurance shall vest in the State or Territory in which the property insured thereby shall vest.

Mr. KELLAM. Any objection to this article? No objection.

Mr. CAMP. Article X. The States of North and South Dakota shall pay one-half each of all liability now existing, or hereafter and prior to the taking effect of this agreement incurred, except those heretofore or hereafter incurred on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

Mr. KELLAM. Will you read that again?

Article X was read again.

Mr. PURCELL. That is right—the current indebtedness.

Mr. KELLAM: All right if limited to that, if you add there "except as otherwise herein specifically provided."

Mr. CAMP. Article XI. Each of said States shall succeed to all rights of the Territory of Dakota upon contracts for public works within such State or upon bonds given to secure the performance of such contracts.

Mr. KELLAM. Any objection to this article? If not, we will pass it.

Mr. CAMP. Article XII. All other bonds issued prior to the taking effect of this agreement upon which a cause of action has or shall prior to the taking effect of this agreement accrue to the Territory of Dakota shall be sued upon by the State of ——— Dakota, and it is hereby made the duty of said State to sue thereon, and one-half of the penalties or damages collected by said State thereon shall be paid over to the other State, and the costs of such suit or collection shall be borne equally by said States, save as it may be necessary to apply such proceeds otherwise in order to carry into effect the provisions of Article ——— of this agreement.

Mr. PURCELL. Is that who the trustee shall be?

Mr. CAMP. Yes.

Mr. CALDWELL. I would move the insertion of the word "North" in the blank.

Mr. PURCELL. I second the motion.

Mr. KELLAM. I would state that the special reason I would have in so suggesting such insertion would be that—well I will not state it either, after all. I think the reason that was left blank was the records were not disposed of, and there seems to be a convenience in the party retaining the records and bringing the suits. And it occurred to me whether or not there should be a further provision in their making it obligatory upon the trustee. I think that would be a consideration. The word "may" is provisional.

Mr. CAMP. Why not make it "shall"?

Mr. KELLAM. That was my thought. I don't know whether "shall" will cure it. The only idea I had in making, for instance, North Dakota a trustee for the bringing of these suits, was there would be left no election or option upon the part of North Dakota. There might possibly be circumstances in which favoritism could be extended toward some defaulting officer.

Mr. CALDWELL. "And it is hereby made the duty of."

Mr. SCOTT. I don't see why that word "shall" would not make it.

Mr. KELLAM. It might be a matter simply of discussion between North Dakota and South Dakota, to be determined by whom the action might be maintained. I prefer "accruing to the Territory of Dakota, may be sued upon by——" Well, with the understanding that something of that sort would be agreeable to the Commission. Mr. CAMP and I could fix that when we come to re-write this.

Mr. CAMP. It is hereby made the duty to bring suit.

Mr. KELLAM. So the blank before the word "Dakota" be filled by inserting the word "North." As many as are of the opinion this should prevail, say aye. Carried.

Mr. CAMP. Article XIII. The furniture, fixtures, appliances and appurtenances used in or about, or pertaining to the public offices of the Territory shall be the property of the State within the proposed limits of which said offices are now kept.

Mr. KELLAM. Any objection to the article? There are some of the appliances I think of, of certain of these offices still here; but the word "pertaining" is inserted with the understanding it covers that.

Mr. PURCELL. What do you mean in Article XII by the words: "Save as it may be necessary to apply such proceeds otherwise in order to carry into effect the provisions of Article ——?"

Mr. CAMP. For this reason. In looking over Article XXI, it is numbered XXI in the printed agreement, you will find there is a final adjustment of accounts, and North Dakota is to be credited with the amount received. There might be some default in which some funds that were going to South Dakota would be missing, and it was in order to cover that.

Mr. KELLAM. They could be retained in North Dakota.

Mr. CAMP. Article XIV. The Territorial Library, including such books and volumes as may be added thereto prior to the taking effect of this agreement, shall be the property of the State of South Dakota.

Mr. KELLAM. No objection to that.

Mr. CAMP. Article XV. One-half of all the Compiled Laws of the Territory of Dakota, Revised Codes, and of all Session Laws, printed Journals of the House and Council of the Legislative Assembly of said Territory (except those composing a part

of said library), remaining undisturbed or undisposed of, according to law at the taking effect of this agreement, shall be delivered on demand to the proper authorities of the State of South Dakota.

Mr. CALDWELL. Now, the Federal reports of officers and things of that kind for the general public.

Mr. KELLAM. I think this largely refers to the Compiled Laws.

Mr. CALDWELL. They being distributed to the general public——

Mr. SCOTT. When sold the money is turned into the Treasury.

Mr. KELLAM. Would it be an improvement to say "equally divided?"

Mr. CALDWELL. It is provided for them to be equally divided. Some of them were left down there for the convenience of parties in South Dakota.

Mr. KELLAM. In law they are here?

Mr. CALDWELL. Yes, sir.

Mr. KELLAM. If there is no objection to the article we will pass it.

Mr. CAMP. Article XVI. All other arms, ammunition, quartermaster's and ordnance stores shall be equally divided between the States of South Dakota and North Dakota. I suggest that Articles XVI and XVII be put in the other order. Article XVI. All arms, ammunition, quartermaster's and ordnance stores distributed to and now in possession of militia companies of the Territory of Dakota shall remain in their possession, and all the right, title and interest of the Territory of Dakota in and to such arms, ammunition and stores shall vest in the State in which the armories or headquarters of such companies shall be situated. All 45-Cal. rifles and ammunition of same calibre stored in the Capitol at Bismarck, and all 45-Cal. rifles heretofore issued to Company F, First Regiment at Bismarck, shall be the property of North Dakota.

Mr. SPALDING. I think these are not rifles, they are muskets.

Mr. CALDWELL. Mr. McGILLYGUDDY thinks they are all rifles.

Mr. McGILLYCUDDY. All rifles, yes. In contradistinction to carbines.

Mr. CALDWELL. That article all right then?

Mr. CAMP. My idea was to transpose one-half of all other arms, ammunition and ordnance stores——

Mr. KELLAM. The first section provides for such as have been distributed.

Mr. CAMP. Yes.

Mr. KELLAM. If there is no objection to the article we will pass it.

Mr. CAMP. Article XVIII. All other items of personal property and miscellaneous effects belonging to the Territory, except the Territorial Library, and the Territorial Records and Archives, shall be divided as nearly equally as possible between North and South Dakota.

Mr. CAMP. I don't know what other——

Mr. CALDWELL. Neither do I. It leaves nothing hanging in the air.

No objection.

Mr. CAMP. Article XIX. The State of South Dakota shall pay to the State of North Dakota $46,500, on account of the excess of Territorial appropriations for the permanent improvement of Territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the Territorial Library, and full settlement of unbalanced accounts, and of all claims against the Territory, of whatever nature, legal or equitable arising out of the alleged erroneous or unlawful taxation of Northern Pacific Railroad lands, and the payment of said amounts shall discharge and exempt the State of South Dakota from all liability for or on account of the several matters hereinbefore referred to, nor shall either State be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the Territory of Dakota had such Territory remained in existence, and which liability shall grow out of matters connected with any public institution, grounds or buildings of the Territory situated or located within the boundaries of the other State.

Mr. KELLAM. Any objection?

Mr. KELLAM. That includes the liability of North Dakota on the Capitol lots which have been sold, and I presume all of our members understand that.

Mr. SCOTT. Yes, we don't want any liability on that account if we can get out of it.

Mr. KELLAM. If there is no objection to the article we will pass it.

Mr. CAMP. Article XX. Neither State shall pay any portion of liability of the Territory arising out of erroneous taxation of property in the other State.

Article XXI. A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds and buildings located within its boundaries on account of the current appropriations since March 8, 1889, and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each State shall be charged with one-half of all other expenses of the Territorial Government during the same time. All moneys paid into the Treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed State of North Dakota shall be credited to North Dakota; and all such sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed State of South Dakota shall be credited to the State of South Dakota; except that any and all sums on gross earnings paid into said treasury by railroad corporations since the 8th day of March, 1889, based upon the earnings of years prior to 1888, under and by virtue of the Act of the Legislative Assembly of the Territory of Dakota, approved March 7, 1889, and entitled "An Act providing for the levy and collection of taxes upon the property of railroad companies in this Territory," being Chapter 107 of the Session Laws of 1889 (that is, the part of such sum going to the Territory), shall be equally divided between the States of North Dakota and South Dakota; and all taxes heretofore or hereafter paid into the treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except so much thereof as goes to the Territorial Treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by the railroads within the limits

of the proposed State of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota. Each State shall be credited, also, with all balances of appropriations made by the Seventeenth Legislative Assembly of the Territory of Dakota, for the account of the public institutions, grounds or buildings located within its limits remaining unexpended on March 8, 1889. If there shall be any indebtednes except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each State shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of public institutions, grounds or buildings of such State in excess of receipts from counties, municipalities, railroad corporations or persons within the limits of said State as provided in this article; and if there shall be a surplus at the time of such final adjustment, each State shall be entitled to the amount received from counties, municipalities, railroad corporations or persons within its limits, over and above the amount charged to it.

Mr. SCOTT. Right there ——

Mr. HARRIS. Mr. CALDWELL, I believe it was, called the particular attention of this Commission to that question as to whether the agreement submitted by Messrs. KELLAM and CAMP should cover the gross earnings tax paid in 1888, or whether it referred only to 1889, and it was fully discussed and decided that it meant the tax on the gross earnings of 1888. Half of that tax has been paid, and under the article as we have it, it need not be distributed as under the agreement which we pass. It is intended that half which has already been paid in on the gross earnings of 1888 should be distributed the same as the other half which is due in August.

Mr. PURCELL. How was it to be distributed?

Mr. HARRIS. The same as the tax coming from counties, persons or municipalities. That which comes in from North Dakota shall be credited to North Dakota; that coming in from South Dakota shall be credited to South Dakota. The same as the last half of the tax comes due in August will be distributed.

Mr. KELLAM. I don't really——

Mr. PURCELL. Will you read that again after "except"?

The article was re-read.

Mr. CALDWELL. Mr. CHAIRMAN: The point which is raised

by the gentleman may be better understood from this statement: At the time of the first semi-annual payment by the railroads, they paid all arrearages. At the second semi-annual payment they pay nearly half of what has become due within that year. That is to say, that the first of April, I believe, was the date of payment, they paid some of the delinquencies for 1886, some of them for 1886, 1887 and 1888.

Mr. CAMP. It was due the 1st of February.

Mr. CALDWELL. Yes, the 15th of February. You see this gross earnings tax is estimated for any particular year upon the previous year's earnings. The 1889 tax is levied upon the gross earnings of 1888. The 1888 tax was levied upon the gross earnings of 1887. The 1887 tax was levied upon the gross earnings of 1886. Now, they didn't pay all in 1886 and 1887 which became due, the 1886 tax in 1887, and the 1887 tax in 1888; but under this new law these arrearges were all paid in a lump on or about the first day of April, 1889, and there is only one-half of the tax due upon the gross earnings of 1888; and it was my original idea they were to pay in simply half of the 1888 tax, and likewise half of the arrearages in the first payment of this year; but I understand they paid all their arrearages. That being the case, as I understand it, why the point made by the gentleman is correct and there ought to be a distinction made in this between the taxes which are delinquent, and taxes which were merely due. The tax of 1888 was paid without any delinquency whatever. The tax of 1887 and 1886, and I believe some of 1855——

Mr. HARRIS. This question was fully discussed and the question Mr. CALDWELL brought up I guess we understand. The taxes of 1886 and 1887 should be divided equally, and that this half of the taxes which was paid of the 1888 gross earnings should be distributed according to locality from which it came. That is, what was paid in from North Dakota should be credited to North Dakota, and what was paid in from South Dakota should be credited to South Dakota. Our agreement we have here does not properly——

Mr. PURCELL. This explanation—"except any and all taxes of gross earnings paid into said treasury by railroad corporations since the 8th day of March, 1888, based upon the earnings of the years prior to 1888."

Mr. HARRIS. Yes, the 1888 tax was due but not delinquent.

Mr. PURCELL. Here it is: "Except any and all sums paid

into the said treasury since the 8th day of March, 1889, and prior to the date of this agreement, under and by virtue, etc., etc."

Mr. KELLAM. That would not do because it would include the arrearages.

Mr. PURCELL. Except any and all sums of arrearage taxes.

Mr. CALDWELL. In this agreement we called it the railroad tax of 1889, that which accrued upon the gross earnings of 1888.

Mr. HARRIS. Well, it is a tax due in 1889.

Mr. HARRIS. Part in February and part in August.

Mr. CALDWELL, Yes, and that was to be divided according to the source from which it came.

Mr. HARRIS. Mr. KELLAM and Mr. CAMP can put it in shape, since their attention is called to it.

Mr. KELLAM. I don't get the understanding——

Mr. CAMP. I suggest that instead of "any and all sums paid into the treasury," we read, "save the gross earnings tax based upon the earnings of the year 1888, under and by virtue of the Act of the Legislative Assembly of the Territory of Dakota, approved March 7, 1889, and entitled "An act providing for the levy and collection of taxes upon property of railroad companies in this Territory," shall be equally divided between the States of North Dakota and South Dakota; and all taxes heretofore or hereafter paid into the treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the Territorial Treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroad companies within the limits of the proposed State of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota."

Mr. KELLAM. What's the object of reciting this act of March 7, 1889? Why is it not covered by making all taxes on gross earnings for the years they became due prior to the year 1889, divided equally, and all subsequently paid?

Mr. CAMP. Because the Supreme Court of the Territory of Dakota has declared it never became due.

Mr. CALDWELL. It didn't become due until 1889 and that was by arrangement.

Mr. KELLAM. Became due by act of the Legislature.

Mr. CAMP. The Supreme Court stated it never became due.

Mr. KELLAM. I don't mean by the term "due" in the legal sense. "All taxes on gross earnings paid into the treasury on business prior to the year 1889." I don't care anything about the phraseology, only make it broad enough.

Mr. CAMP. The object of putting in that act was in order to show precisely what was intended. It was payment made under that new law, not under the 1883 law.

Mr. SPALDING. Why not pass that and leave it to the two Chairmen to fix up with the other?

Mr. PRICE. Yes, if they have got the idea.

Mr. SPALDING. I think they have.

Mr. CALDWELL. *Provided*, That such railroad tax paid upon the gross earnings, made prior to 1888, and which were delinquent at the time of such payment, shall be equally divided between the two States; and such taxes as were not due upon earnings of the year 1888 or subsequent thereto, shall accrue to the State within which the road paying the same shall be located.

Mr. KELLAM. Is that right?

Mr. CALDWELL, In the Treasurer's office the name of the tax is the year of the gross earning upon which it is levied; so, when, in the Treasurer's office they say "tax of 1888" they mean the tax levied upon the gross earnings of 1888, although it is not due until 1889.

Mr. CAMP. How will this do: Except any and all taxes on gross earnings based upon the years prior to the year 1888, under and by virtue of the act of the Legislative Assembly, shall be divided equally between the two States; and all taxes heretofore or hereafter paid into the treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except so much thereof as goes to the Territorial Treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed State of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota.

Mr. KELLAM. Now, I don't see why that does not cover the idea.

Mr. CAMP. Except any and all taxes paid into said treasury by railroad corporations since March, 1889, prior to the date of this agreement, based upon the earnings prior to 1888 under and

by virtue of an act of the Legislative Assembly of the Territory of Dakota approved March 7, 1889, "An Act providing for the levy and collection of taxes upon property of railroad companies in this Territory." (being Chapter 107 of the Session Laws of 1889) that is, the part of such sum going to the Territory, shall be equally divided between the States of North Dakota and South Dakota; and all taxes heretofore or hereafter paid into said treasury based on the gross earnings of the year 1888 shall be distributed as already provided by law, except that so much thereof as goes to the Territorial Treasury, shall go as follows: North Dakota shall have so much thereof as has been paid by railroad companies within the limits of the proposed State of North Dakota; and South Dakota so much thereof as has been paid by railroads within the limits of South Dakota.

Mr. KELLAM. All taxes based upon the gross earnings prior to 1888 divided equally, and taxes upon the gross earnings of 1888, they are to be divided according to the source from which they come.

Mf. HARRIS. Yes, that is the agreement expressed the other day.

Mr. CALDWELL. That was my understanding of it.

Mr. KELLAM. I think we have the same understanding, and we can take a little time to express it.

Mr. CAMP. Article XXII. The payment from South Dakota to North Dakota shall be made as much as possible, by South Dakota's assuming North Dakota's share of current liabilities at the time of final adjustment, to the extent of South Dakota's indebtedness under this agreement to North Dakota; and if any balance shall remain due to North Dakota from South Dakota, payment of said balance shall be provided for by the first Legislature of South Dakota.

Mr. CAMP. Referring back to Article XXI. Are there any balances running farther back than last March?

Mr. SCOTT. There was an item of the Sioux Falls Penitentiary, and it may be an unexpended appropriation.

Mr. PURCELL. This restricts it to the XVII Legislative Assembly.

Mr. HAYDEN. We found they had carried a balance forward. At the end of last year there was a balance carried forward.

Mr. PRICE. How is that $10,000, SCOTT; inquired about?

Mr. HAYDEN. That was not included.

Mr. KELLAM. Is there any unexpended balances?

Mr. CALDWELL. No. I inquired about them—there is nothing there. I enquired this morning. There are certain—what are called "running appropriations," two hundred for the care of the library. But if that is not all used in any one year it is not available.

Mr. KELLAM. Then that covers it.

Mr. CAMP. Article XXIII. Upon the taking effect of this agreement all claims for taxes due the Territory of Dakota shall become the property of and may be collected by the state or territory within the limits whereof the counties are situate against which such taxes stand charged upon the Territorial Treasurer's books. But this article shall not be held to refer to or govern the disposal of any taxes to be paid by railroad companies which are specifically provided for by Article XXI hereof.

Mr. CALDWELL. This is quite a conflicting provision, and I believe this is what was meant by the provision as provided by Mr. HAYDEN, to which reference was made in the original agreement, and I would ask if this is something like the understanding. Suppose now, that of the total payments which are made into the Territorial Treasury, South Dakota pays 55 per cent. thereof and North Dakota 45 per cent., and that then of the appropriations drawn out South Dakota draws out say 55 per cent. of the whole and North Dakota draws out the 45 per cent., it would be a stand-off. I would ask Mr. HAYDEN about it.

Mr. HAYDEN. I can explain it perhaps more—my understanding was it should be treated the same as though it was a partnership, each one having an equal amount in, a balance on hand, and each one pays in from the 8th day of March down to the separation and draws out.

Mr. KELLAM. That is my idea; South Dakota pays so much money, and North Dakota so many dollars; there has been paid on account of South Dakota institutions so many dollars, and each one takes his balance.

Mr. SCOTT. That is my understanding.

Mr. HAYDEN. The expense is divided equally.

Mr. SCOTT. The running expenses.

Mr. PURCELL. If there should be a surplus, each would be entitled to the amount received from the counties within the limits of its boundaries.

Mr. KELLAM. That is what we are talking about now.

Mr. CALDWELL. Well, I guess that is all right.

Mr. CAMP. Article XXVI. All other claims and demands of the Territory of Dakota outstanding when this agreement shall take effect, the collection whereof is not hereinbefore provided for, shall be sued upon and collected by the State of North Dakota, and the costs of suits so brought and the amounts collected shall be divided equally between the two States of North Dakota and South Dakota.

Mr. SCOTT. Referring to Article XXII. Should not we go on and state how the balance should be paid, if it is not paid in that way? I presume it would——

Mr. PURCELL. Why not let us fix it? For instance, let us pay for our own copying; why make that a charge against South Dakota?

Mr. KELLAM. That was made at Mr. CAMP'S suggestion.

Mr. SCOTT. It will not amount to much.

Mr. CAMP. I am perfectly willing to leave it out.

Mr. PURCELL. The question of refunding warrants——

Mr. CAMP. Why would it not be better to have it in cash, and let South Dakota negotiate her bonds?

Mr. PRICE. Just as well.

Mr. KELLAM. I don't like to put that in cash.

Mr. CAMP. Payment of the balance shall be provided by the Legislature of South Dakota.

Mr. KELLAM. Yes, that is one way it could be done. Of course, we all understand that the assumption of one-half of North Dakota's indebtedness will a good deal more than cover the $46,000. I don't want to put it in cash.

Mr. ELLIOTT. We know we should not have to pay it in cash.

Mr. KELLAM. Might hold this Commission.

Mr. PRICE. Well, how is that suggestion "payment shall be provided for by the Legislature?"

Mr. CALDWELL. Yes.

Mr. KELLAM. Any balance remaining unpaid, if any, shall be provided for by the first Legislature of South Dakota.

Mr. CALDWELL. The first session of the Legislative Assembly of South Dakota.

Mr. KELLAM. We call it, Legislature. Where is that Long's Hand Book?

Mr. SCOTT. That is what we call our Legislature.

Mr. CAMP. Legislative Assembly, General Assembly.

Mr. CALDWELL. Shall be vested in the Legislature.

Mr. KELLAM. Just read that again.

Mr. CAMP. Payment from South Dakota shall be made by South Dakota as much as possible——

Mr. PURCELL. "As much as possible." Let that be out.

Mr. ELLIOTT. I don't see the necessity of that either.

Mr. PRICE. The Legislature can provide at any time.

Mr. SCOTT. I think it is perfectly proper.

Mr. PURCELL. Liable to the extent of the indebtedness; which indebtedness?

Mr. CAMP. If there is any balance it shall be provided for by the first Legislature.

Mr. PURCELL. The payment of South Dakota to North Dakota shall be made by South Dakota's assuming North Dakota's share of current liabilities to the extent of the indebtedness of South Dakota to North Dakota; and in case any balance remains payment thereof shall be provided for by the Legislature.

Mr. CALDWELL. By the first Legislature of the State of South Dakota.

Mr. SCOTT. Well, is there anything further to be done to-day?

Mr. PURCELL. "The payment from South Dakota to North Dakota shall be made by South Dakota's assuming North Dakota's share of current liabilities at the time of final adjustment, to the extent of South Dakota's indebtedness under this agreement to North Dakota; and if any balance shall remain due to North Dakota from South Dakota, payment of said balance shall be provided for by the first Legislature of South Dakota."

Mr. KELLAM. Gentleman, is that article satisfactory now? If there is no objection it will be passed.

Mr. CAMP. There is another question I want the Commission to decide before we start in on this record agreement. Our powers in regard to the records are, perhaps, distinct from our duties with regard to the other property of the Territory. If we make our agreement as to the records separate, and provide for a recommendation to the Conventions as was provided for, I think, by a resolution introduced, then either agreement will stand alone.

Mr. CALDWELL. I think it is a very wise suggestion.

Mr. PRICE. I can see no harm in making two.

Mr. PURCELL. There could be no objection to that part of our report which the court would hold we had a right to make, and, of course, if we exceeded our authority the court would hold that part in excess of our authority to be illegal. So far as I am concerned, I think we are a unit as to our power, to make that agreement we have.

Mr. PURCELL. This agreement as to the records amounts simply to a recommendation, and this is absolute.

Mr. CALDWELL. The disposition of the records—there is no question about our having the power tc do it and it has been entirely within our power except recognizing the emergency of those to be transcribed for immediate use.

Mr. CAMP. Yes, but our power in that respect is subject to ratification by the States in some way.

Mr. CALDWELL. I think it would have to be in the Schedule and Ordinance.

Mr. CAMP. Probably.

Mr. SCOTT. In accordance, say, with the agreement.

Mr. CAMP. I think so.

Mr. PRICE. I think our agreement is final.

Mr. SCOTT. I don't see how you come to that conclusion.

Mr. PURCELL. It says it shall be incorporated in and made a part of the Constitution—as to the property and indebtedness.

Mr. CAMP. Now, it don't say in express terms as to records unless it is by inference.

Mr. SCOTT. Then our power to dispose of the records cannot be final, because it has got to be ratified by the people?

Mr. PURCELL. It does not have to be ratified separate and apart from the Constitution; it becomes a part of it.

Mr. CALDWELL. The reason for the difference in treatment prescribed for the disposition of the debts and liabilities, and that prescribed for disposition of the records, arises from the fact that interest of third parties comes in.

Mr. PURCELL. My idea would be, whatever report we make with reference to the records be attached to that with reference to the property, and that it be incorporated in the Constitution.

Mr. SCOTT. "I think the whole thing had better be incorporated.

Mr. CAMP. "But the archives, records and books shall remain at Bismarck until an agreement in referencethere to is reached by said States." Now, we have already adopted a resolution defining

our powers to be that we shall recommend an article to be adopted by each State, which article, ratified by each State, will be the act of the State in regard to the archives, records and books. That agreement is to be—of ours—is to be offered to the two Conventions for adoption as a part of the Constitution, but this agreement we have already made will, as I understand it, form no part of the Schedule of the Constitution of either State.

Mr. CALDWELL. Yes. It says, "And the agreement reached respecting the Territorial debts and liabilities shall be incorporated in the respective Constitutions."

Mr. PURCELL. Not as a part of the Schedule.

Mr. CAMP. That the Schedule will state that this State agrees to pay and assume that portion of the debt of the Territory of Dakota as provided for by the Joint Commission.

Mr. CALDWELL. Of course it is just as binding as the Constitution itself, the only difference being that it relates to temporary matters, while the Constitution declares permanent principles.

Mr. CAMP. I mean this agreement will not form any part of the Constitution. The Ordinance will say this State assumes such debts and liabilities, and your Constitution will say——

Mr. CALDWELL. The identical language of this agreement will be used.

Mr. CAMP. It might be they will use the identical language of this article, that is to say, the State of North Dakota shall assume——

Mr. CALDWELL. "And the agreement reached respecting the Territorial debts shall be incorporated in the Constitution."

Mr. PURCELL. Every word of that agreement will have to go into the Constitution.

Mr. CAMP. Are we to go on and incorporate this article as to the property? Simply debts and liabilities of the Territory—agreement reached respecting the debts and liabilities——

Mr. NEILL. What part of that would it be?

Mr. CAMP. This article.

Mr. SCOTT. Pretty hard to fix it.

Mr. CAMP. This Article No. 5 and Article No. 10.

Mr. SCOTT. We put that $42,500 of South Dakota——

Mr. CAMP. That is not a debt of the Territory.

Mr. SCOTT. No, but an agreement respecting the debts of individual parties of the Territory.

Mr. NEILL. You make your suggestion as a motion and I will second it.

Mr. CAMP. Then I will move that—I don't care to make that motion myself—but my suggestion was, when this agreement is drawn up it be in form of an article to be recommended for adoption by the two Conventions as part of the Ordinance respecting the archives, etc.

Mr. GRIGGS. Then you think the whole of that article should be embraced?

Mr. CAMP. I mean as to archives and records.

Mr. PRICE. You see if it was incorporated in the main part of that you have already drawn they could hardly fail to ratify it.

Mr. CAMP. We cannot force the Convention to do anything the law don't allow.

Mr. KELLAM. A resolution was adopted here that when an agreement was reached in reference to the records that it be reported to the Conventions to be put in the Schedule of the respective Constitutions?

Mr. CAMP. I think so.

Mr. KELLAM. Why don't that dispose of that question so far as the records are concerned?

Mr. CAMP. Except so far as the minds of the members of the Commission seem to change from day to day.

Mr. KELLAM. We adopted a resolution that when we reach an agreement it should be reported to the respective Conventions to go into the Schedules of the Constitutions, and now we have reached an agreement.

Mr. CAMP. Then your idea is, we draw an article for adoption.

Mr. KELLAM. I had no other thought. Now, go right on, make it and attach it right to the end of this part, not as an inseparable part, but as an independant part of this agreement. "And this Commission being so assembled do make the following agreement with reference to the records and archives of the Territory," and recommend that the same be by the respective Constitutional Conventions incorporated in the Schedule of the Cinstitution and submitted for ratification.

Mr. CAMP. That will be all right—that is exactly my idea.

Mr. KELLAM. Has any gentleman a different idea?

Mr. CALDWELL. It was my original idea that this agree-

ment in its entirety be incorporated in the Schedule and Ordinance.

Mr. KELLAM. We have three distinct duties here that are entirely independent, which are expected to be discharged by the same Commission: First. We are to make disposition of the public records. Second. We are to agree upon the amount of the debts and liabilities of the Territory which shall be assumed by each of the proposed States of North and South Dakota. And the agreement reached respecting the Territorial debts and liabilbilities shall be incorporated in the respective Constitutions. Now, my idea is that the only thing that will go into and form a part of the Constitution of each State under the provisions of this Enabling Act, is the disposition we make of the debts and liabilities of the Territory. Now, by virtue of the resolution we have passed we report the agreement we have made with reference to the records, and recommend to each Convention that it put it in the Schedule of the Constitution to be voted upon by the people.

Mr. PURCELL. What do you do with the division of the property?

Mr. KELLAM. We only do that by virtue of the action of our Commission, determined that when we reach an agreement it should be referred to the Conventions for incorporation in the Schedule of the Constitution. I don't think it is obligatory upon us. So far as the disposition of the records is concerned we have done all the Enabling Act sent us here to do. We have adopted a resolution that when we reach an agreement we put it in the Schedule of the Constitution.

Mr. CALDWELL. Do I understand your suggestion, that your conception of our powers pertaining to public debts and liabilities are to result in a section which shall be inserted that shall be in lieu of No. 5? In this Constitution of 1885 that section five is as follows: "Consent is given that Congress may make such provision for the payment by this State of the existing indebtedness of the Territory of Dakota as it shall deem just and equitable, and this State shall assume and pay so much thereof as Congress may provide."

Mr. KELLAM. Without any deliberation I should say by Act of Congress the Commission appointed by the respective Conventions have met at Bismarck as therein provided, to adjust and agree upon the amount of the debts and liabilities of the Terri-

tory which South Dakota should assume. Then follows the article that South Dakota assumes such and such of the Territorial debt and obligates itself, as recited here, to pay the same.

Mr. PURCELL. Put in the Constitution?

Mr. KELLAM. Yes, that is the only thing the Enabling Act suggests—to incorporate it in the Constitution.

Mr. CALDWELL. Then the provision in the South Dakota Constitution could not be accepted as the counterpart.

Mr. KELLAM. No, sir; because North Dakota assumes such and such indebtedness. North Dakota would put in her Constitution a recital of the indebtedness she assumes, and South Dakota would put in its Constitution a recital of the Territorial debts she assumes and undertakes to pay. By the terms of the agreement, it is simply a recitation of what we would undertake and assume, respectively, North Dakota and South Dakota, according to the terms. It would be based upon the agreement made here, and it is the only part of the agreement I understand will go into the Constitution by virtue of the Enabling Act. We have gone a step further to incorporate it in the Schedule of the Constitution, the disposition we make of the public records; and I would simply go on with this agreement and perhaps recite, "and the said Commission being so assembled as before recited, do hereby make the following agreement with reference to the public records and archives of the Territory of Dakota, and recommend that the same be incorporated in the Schedules of the respective Constitutions." Then recite our agreement or recommendation. This is a matter I have not deliberated upon, but it is just the way it strikes me.

Mr. PURCELL. But you keep out what we have already passed here, just those portions which refer to debts and liabilities.

Mr. KELLAM. Have you that all on one paper.

Mr. HARRIS. Mr. CHAIRMAN: Perhaps my head may be a little thick, but I don't know what we have been doing, Here for the past three weeks we have been trying to make disposition of this property and these records. Still, technically, we may not have the power, perhaps, under the Omnibus Bill to do this; but it certainly does seem to me the intention of that bill was that we should not only agree as to the debts and liabilities of each of these States, but that we should make a disposition of these records, and that we should submit it to our respective Constitu-

tional Conventions, and that it should be submitted to the people and ratified by them.

Mr. KELLAM. Suppose we make an agreement as to the debts and liabilities of this Territory which the Conventions did not endorse. What would be the effect of it? Do you understand these Conventions have got to adopt our report?

Mr. PURCELL. Not as to the debts and liabilities.

Mr. SCOTT. They certainly have, without regard to debts and liabilities.

Mr. KELLAM. They cannot change it in one particular.

Mr. SCOTT. They can refuse to put it in the Constitution.

Mr. CALDWELL. No, they can't refuse to put it in the Constitution.

Mr. HARRIS. My proposition is that the agreement with reference to this property, and records and archives should be put in the Schedule to be voted on by the people.

Mr. PURCELL. That is what the Major says.

Mr. KELLAM. No, I think it should go in because we have passed that resolution. I don't think we are under any obligations to put any part of this agreement with reference to the distribution of the records into the Schedule of the Constitution. I think we came here as a Joint Commission under the authority of Congress of the United States, with power to do whatever is imposed on us by this Enabling Act, and nobody can question but that we have done that. Now, Mr. CAMP suggests that we should put this agreement with reference to the disposition of the archives and records into the Schedule of the Constitution. This has been adopted and we are bound by it. I don't think there is any reason why the disposition of the property we agree upon should go in on the Constitution. That is, I don't think there is anything in the Enabling Act that requires us to do it. I think Congress has made our Commission to absolutely and finally determine these matters. There is no appeal from the work of this Commission upon any of these questions.

Mr. HARRIS. To whom shall we report?

Mr. KELLAM. To the Constitutional Conventions. There is no supervisory power over the act of this Commission, it seems to me.

Mr. SCOTT. Your opinion and Mr. CAMP'S differ. Mr. CAMP thinks we have no power whatever to do anything with the records.

Mr. KELLAM. Just excuse me—I think Mr. CAMP'S suggestion was inspired by this fact; but he can state for himself. When we commenced to regard the question there was a question arose as to the extent of our power with the records. The prevailing opinion seemed to be when this resolution was adopted that we should provide for copying the entire records. There was a great want of harmony in the Commission in regard to our power. Mr. CAMP thought we exceeded our power, the power that is conferred upon us by this Enabling Act if we copied these records; that we needed to copy the records; and that in order to have what we did indorsed by the people, it should be put in the Schedule. If there is any question but what we had been fully authorized by the Enabling Act to do just what we did, then I doubt whether Mr. CAMP would think it best to put it in the Schedule. It seems to me clear that so long as we confine ourselves within the power given us by this Enabling Act, we are absolutely independent of the Convention. We have not to answer to the Convention for anything we do, but because there was a liability for our going beyond what a strict construction of that statute would authorize us to do he thought it best to recommend the adoption in the Schedule of the Constitution.

Mr. CAMP. My idea was there was a good deal of a question whether the action of this Commission with regard to the records are final. My idea had been perhaps the action of the Commission with regard to the records was not final. My idea being based upon the language of section five, and in order to cover that carefully I thought it would be well to have the agreement we reached with reference to the records recommended to the Conventions for adoption; and then, when the Constitutions were ratified by the people, that agreement with respect to the records would become the action of the two States and close up any question of the power of the Commission. With regard to the property of the Territory I don't see why our powers are not absolute. We are to make an equitable division of the property, and that it is not necessary to go into any Constitution or to be ratified by any person.

Mr. KELLAM. I think so. There was some doubt as to just how far the power of this Commission went over these records without settling them by the action of the people. Now if your Commission reports to your Convention the disposition you have made with reference to the property of the Territory, as you sug-

gest, and they take a vote upon the adoption of that report, and the vote is against the adoption of that, they cannot make another Commission to make a different disposition. Their powers are limited and the power of this Commission is exhausted.

Mr. SCOTT. We must report to somebody.

Mr. KELLAM. We must return to the Conventions because the Convention needs part of it; they must incorporate so much as they are required to make a part of the Constitution.

Mr. CAMP. We shall have to report and reccommend two articles, under the resolution. Recommend an article for insertion in the Schedule with regard to the Territorial debts and liabilities, that is North Dakota's share of it, and one with regard to the Territorial records.

Mr. KELLAM. Because our own acts require it.

Mr. PRICE. Then, of course, there can be no difference of opinion. I understand you to say the Convention had nothing to do with this. If this is true, to carry the argument a little further, what need is there of reporting anything to the Convention. I did not understand the last statement that this must be presented to the Convention and incorporated in the Constitution.

Mr. KELLAM. This Commission cannot submit a proposition to the people of North Dakota. The Convention must have the material, and the material comes from this Commission.

Mr. PURCELL. There is no question but what the Enabling Act requires us to make a report, and that it shall be incorporated in and form a part of the Constitution—that is, the debts and liabilities, and division of the property.

Mr. CAMP. There is another question suggested to me, whether it would not be well for us here as a Joint Commission, to agree upon the two articles which we shall report to each Convention with regard to the Territorial debts and liabilities.

Mr. CALDWELL. That ought to be.

Mr. KELLAM. That of course would be very likely the proper thing to do. At the same time the Convention may make its own article.

Mr. CAMP. I suggest that Mr. CALDWELL and Mr. PURCELL be a sub-committee to draf two articles which we shall agree upon—two articles which we shall report, one to each Convention, with regard to the Territorial debts and liabilities which the respective States shall assume.

Mr. KELLAM. I think that is a very good suggestion. Gen-

tlemen, we shall consider it as a motion made and seconded. All in favor of drafting the article which this Commission shall recommend with reference to the debts and liabilities, will manifest by saying aye. The motion is carried.

Mr. KELLAM. Now, gentlemen, what further?

Mr. NEILL. I move we adjourn until 9.30 o'clock.

Mr. PURCELL. What remains undone is the report with reference to the records and property.

Mr. KELLAM. If any gentleman thinks of anything else, it would be in justice to ourselves and the Stenographers to have time to make good clean copies.

Mr. PURCELL. This report you have requested us to make; would that be in type writer?

Mr. KELLAM. Just as you say, if you think you can write legibly.

Mr. PRICE. CALDWELL writes pretty good.

Mr. SCOTT. You say you only had in section five.

Mr. CAMP. No, sections five and ten.

Mr. SCOTT. We have an article that North Dakota and South Dakota shall assume half of all the debts and liabilities ——

Mr. PURCELL. No, he referred to the Sioux Falls Constitution of 1885. As I understand it we will take that report, and then we take such part as refers to the debts and liabilities.

Mr. CAMP. Frame two articles, one for North Dakota, one for South Dakota.

Mr. KELLAM. Gentlemen, we have gone through the reports and made such changes in it as seemed to be necessary and desirable. Would it not be well to let the Stenographers commence at once upon a copy of the agreement; going so far as this agreement goes? Then we can make our agreement with reference to the records and report at the first session to-morrow, and then, after it is criticised and finally adopted, they can go on and add that.

Mr. PURCELL. Your report not only includes the records, but division of the property?

Mr. KELLAM. Yes.

Mr. CAMP. Then Mr. CALDWELL and Mr. PURCELL could take the copy of the agreement.

Mr. KELLAM. They can take one copy and the Stenographers the other.

Mr. CALDWELL. It would hardly be worth while, then, to attempt to hold a session to-morrow forenoon.

Mr. SCOTT. Mr. CHAIRMAN: I move we adjourn until to-morrow at 11 o'clock.

Mr. ELLIOTT. I second that motion.

Mr. KELLAM. Gentlemen, if there is no objection we understand the Commission stands adjourned until 11 o'clock to-morrow morning.

FIFTEENTH DAY.

BISMARCK, *Wednesday, July 31, 1889.*

Commission met at 11 o'clock, a. m.

As the Stenographers were still at work on the agreement an informal meeting was had.

Mr. KELLAM introduced the following resolution:

Resolved, That when this Joint Commission adjourns it adjourn to meet at the joint call of the Chairman of the respective committees composing this Joint Commission, the time and place of such meeting to be determined by the said chairmen and announced in the call.

Which resolution was carried unanimously.

The balance of the report of the Chairman as to phraseology of the agreement was read, informally discussed and adopted article by article, and the Commission adjourned to meet at 3:30 o'clock.

AFTERNOON SESSION.

The Commission met at 2:30 o'clock with Mr. CAMP in the chair. All members present.

The final agreement as prepared by the Commission was submitted as follows:

WHEREAS, By an Act of Congress approved February 22, 1889, entitled "An Act to provide for the division of Dakota into two States, and to enable the people of North Dakota, South Dakota, Montana and Washington to form

Constitutions and State governments, and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States," it was among other things provided that when the Constitutional Convention for North Dakota and the Constitutional Convention for South Dakota, which by said act were duly provided for and authorized, should assemble and organize as in said act provided, it should become the duty of said Conventions respectively to appoint a Joint Commission to be composed of not less than three members of each Convention, whose duty it should be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota; the disposition of all public records, and also, to adjust and agree upon the amount of the debts and liabilities of the Territory, which shall be assumed and paid by each of the proposed States of North Dakota and South Dakota; and,

WHEREAS, The said Constitutional Conventions of North Dakota and South Dakota having been duly elected and assembled and organized in pursuance of and as provided in said act, did, as therein required and provided for the purposes therein specefied, appoint a Joint Commission, consisting of not less than three members of each Convention, to-wit:

E. W. CAMP, B. F. SPALDING, ALEX. GRIGGS, ANDREW SANDAGER, W. E. PURCELL, HARVEY HARRIS and J. W. SCOTT appointed by the Convention of North Dakota; and

A. G. KELLAM, V. T. MCGILLYCUDDY, HENRY NEILL, E. W. CALDWELL, WILLIAM ELLIOTT, CHARLES H. PRICE and S. F. BROTT appointed by the Convention of South Dakota; and,

WHEREAS, The said Joint Commission so appointed and composed having duly assembled at Bismarck, as by said act provided, and being now and here so assembled, and having as such Joint Commission duly and carefully considered the several matters which by said act are referred to them for disposition and agreement, do now adopt and confirm the following agreement, compact and convention. That is to say:

I.

This agreement shall take effect and be in force from and after the admission into the Union as one of the United States of America, of either of the State of North Dakota or the State of South Dakota.

II.

The words, "State of North Dakota." wherever used in this agreement, shall be taken to mean the Territory of North Dakota in case the State of South Dakota shall be admitted into the Union prior to the admission into the Union of the State of North Dakota; and the words, "State of South Dakota," wherever used in this agreement, shall be taken to mean the Territory of South Dakota in case the State of North Dakota shall be admitted into the Union prior to the admission into the Union of the State of South Dakota.

III.

Upon the taking effect of this agreement all the right, title, claim and interest of the Territory of Dakota in and to any public institutions, grounds or buildings situate within the limits of the proposed State of North Dakota as

such limits are defined in said act of Congress, shall vest in said State of North Dakota; and said State of North Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings, and shall pay all warrants issued under and by virtue of that certain Act of the Legislative Assembly of the Territory of Dakota, approved March 8, 1889, entitled "An Act to provide for the refunding of outstanding warrants drawn on the Capitol Building Fund."

IV.

Upon the taking effect of this agreement, all right, title, claim and interest of the Territory of Dakota in and to any public institutions, grounds or buildings, situate within the limits of the proposed State of South Dakota, as defined in said act of Congress, shall vest in said State of South Dakota. And said State of South Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings.

V.

That is to say: The State of North Dakota shall assume and pay the following bonds and indebtedness, to-wit:

Bonds issued on account of the Hospital for Insane at Jamestown, North Dakota, the face aggregate of which is	$266,000 00
Bonds issued on account of the North Dakota University at Grand Forks, North Dakota, the face aggregate of which is	96,700 00
Bonds issued on account of the Penitentiary at Bismarck, North Dakota, the face aggregate of which is	93,600 00
Refunding Capitol Building Warrants dated April 1, 1889	83,507 46

And the State of South Dakota shall assume and pay the following bonds and indebtedness, to-wit:

Bonds issued on account of the Hospital for Insane at Yankton, South Dakota, the face aggregate of which is	210,000 00
Bonds issued on account of the School for Deaf Mutes at Sioux Falls, South Dakota, the face aggregate of which is	51,000 00
Bonds issued on account of the University at Vermillion, South Dakota, the face aggregate of which is	75,000 00
Bonds issued on account of the Penitentiary at Sioux Falls, South Dakota, the face aggregate of which is	94,300 00
Bonds issued on account of the Agricultural College at Brookings, South Dakota, the face aggregate of which is	97,500 00
Bonds issued on account of the Normal School at Madison, South Dakota, the face aggregate of which is	49,400 00
Bonds issued on account of the School of Mines at Rapid City, South Dakota, the face aggregate of which is	33,000 00
Bonds issued on account of the Reform School at Plankinton, South Dakota, the face aggregate of which is	30,000 00
Bonds issued on account of the Normal School at Spearfish, South Dakota, the face aggregate of which is	25,000 00

Bonds issued on account of the Soldiers' Home at Hot Springs, South Dakota, the face aggregate of which is..... 45,000 00

VI.

Each State shall receive all unexpended balances of the proceeds of the bonds which it so assumes, whether such balances have been covered back into the treasury or not.

VII.

All furniture, fixtures, provisions, appurtenances and appliances, tools, implements, and all movable property of the Territory of Dakota situate in or used in connection with any of said public institutions, grounds or buildings shall become and be the property of the State or Territory in which such buildings or institutions may be situated, except as herein otherwise specifically provided.

VIII.

In case of loss in whole or part of any of the property of the Territory of Dakota prior to the taking effect of this agreement the State in which such property would have vested if the same had not been destroyed or in which such property so injured shall vest, shall receive any sums payable upon policies of insurance issued upon such property; and if loss not covered by insurance occurs on any of such property would vest on the taking effect of this agreement.

IX.

Upon the taking effect of this agreement all unearned premiums of insurance shall vest in the State or Territory in which the property insured thereby shall vest.

X.

The States of North Dakota and South Dakota shall pay one-half each of all liability now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore or hereafter incurred on account of public institutions, grounds or buildings except as otherwise herein specifically providid.

XI.

Each of said States shall succeed to all rights of the Territory of Dakota upon contracts for public works, within such State, or upon bonds given to secure the performance of such contracts.

XII.

All other bonds issued prior to the taking effect of this agreement upon which a cause of action shall prior, to the taking effect of this agreement accrue to the Territory of Dakota shall be sued upon by the State of North Dakota, and is hereby made the duty of the said State to sure thereon, and one-half of the penalties or damages collected by said State thereon shall be paid over to the other State, and the costs of such suit or collection shall be borne equally by said States, save as may be necessary to apply such proceeds otherwise in order to carry into effect the provisions of Article XXI of this agreement.

XIII.

The furniture, fixtures, appliances and appurtenances used in and about or pertaining to the public offices of the Territory shall be the property of the State within the proposed limits of which said offices are now kept.

XIV.

The Territorial Library, including such books and volumes as may be added thereto prior to taking effect of this agreement, shall be the property of the State of South Dakota.

XV.

One-half of all the copies of the Compiled Laws of the Territory of Dakota, Revised Codes and of all Session Laws, printed Journals of the House and Council of the Legislative Assembly of the said Territory, and of other printed reports of officers of the Territory (except those composing a part of the said Library), remaining undistributed or undisposed of according to law at the taking effect of this agreement, shall be delivered on demand to the proper authorities of the State of South Dakota.

XVI.

All arms, ammunition, quartermaster's and ordnance stores distributed to, and now in possession of militia companies of the Territory of Dakota shall remain in their possession, and all the right, title and interest of the Territory of Dakota in and to such arms, ammunition and stores shall vest in the State in which the armories or headquarters of such companies shall be situated. All 45-calibre rifles and ammunition of said calibre, stored in the Capitol, at Bismarck, and all 45-calibre rifles heretofore issued to Company "F", First Regiment, at Bismarck, shall be the property of North Dakota.

XVII.

All other arms, ammunition, quartermaster's and ordnance stores shall be equally divided between the States of South Dakota and North Dakota.

XVIII.

All other items of personal and miscellaneous effects belonging to the Territory, except the Territorial Library, and the Territorial Records and archives shall be divided as nearly equally as possible between North and South Dakota

XIX.

The State of South Dakota shall pay to the State of North Dakota, $46,500.00 on account of the excess of Territorial appropriations for the permanent improvement of the Territorial institutions, which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the Territorial Library, and in full settlement of unbalanced accounts, and of all claims against the Territory of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of Northern Pacific Railroad land, and the payment of said amounts shall discharge and exempt the State of South Dakota from all liability for or on account of the several matters heretofore to, nor shall either State be called upon to pay or

answer to any portion of liability hereafter arising or accruing on account of the transactions heretofore had, which liability would be a liability of the Territory of Dakota, had such territory remained in existence, and which liability shall grow out of matters connected with any public institution, grounds or buildings of the Territory situated or located within the boundaries of the other State.

XX.

Neither State shall pay any portion of liability of the Territory arising out of erroneous taxation of property situated in the other State.

XXI.

A final adjustment of accounts shall be made on the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 8, 1889, and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each State shall be charged with one-half of all other expenses of the Territorial government during the same time. All moneys paid into the Treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed State of North Dakota shall be credited to North Dakota; and all such sums paid into such Treasury within the same time by any county, municipality or person within the limits of the proposed State of South Dakota shall be credited to the State of South Dakota; except that any and all taxes on gross earnings paid into said Treasury by railroad corporations since the 8th day of March, 1889, based upon the earnings of years prior to 1888, under and by virtue of the act of the Legislative Assembly of the Territory of Dakota, approved March 7, 1889, and entitled "An Act providing for the levy and collection of taxes upon the property of railroad companies in this Territory," being Chapter 107 of the Session Laws of 1889 (that is, the part of such sum going to the Territory), shall be equally divided between the States of North Dakota and South Dakota, and all taxes heretofore or hereafter paid into the Treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888 shall be distributed as already provided by law, except that so much thereof as goes to the Territorial Treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or have been paid by railroads within the limits of the proposed State of North Dakota, and South Dakota so much thereof as shall be or has been paid by the railroads within the limits of the proposed State of South Dakota. Each State shall be credited, also with all balances of appropriations made by the Seventeenth Legislative Assembly of the Territory of Dakota, for the account of the public institutions, grounds or buildings located within its limits remaining unexpended on March 8, 1889. If there shall be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each State shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such State in excess of the receipts from counties,

municipalities, railroad corporations or persons within the limits of said State as provided in this article; and if there shall be a surplus at the time of such final adjustment each State shall be entitled to the amount received from counties, municipalities, railroad corporations or persons within its limits, over and above the amount charged to it.

XXII.

The payment from South Dakota to North Dakota shall be made by South Dakota's assuming North Dakota's share of current liabilities at the time of final adjustment, to the extent of South Dakota's indebtedness under this agreement, to North Dakota; and if any balance shall remain due to North Dakota from South Dakota, payment of said balance shall be provided for by the first Legislature of South Dakota.

XXIII.

Upon the taking effect of this agreement all claims for taxes due the Territory of Dakota shall become the propery of and may be collected by the State or Territory within the limits whereof the counties are situated, against which such taxes stand charged upon the Territorial Treasurer's books.

But this article shall not be held to refer to or govern the disposal of any taxes to be paid by railroad corporations which are specifically provided for by Article XXI hereof.

XXIV.

All other claims and demands of the Territory of Dakota outstanding when this agreement shall take effect, the collection whereof is not hereinbefore provided for, shall be sued upon and collected by the State of South Dakota, and the costs of suits so brought and the amounts collected shall be divided equally between the two States of North and South Dakota.

And said Commission so assembled and acting under and by virtue of the authority upon it by said act of Congress conferred, further agress as follows:

I.

The following books, records and archives of the Territory of Dakota shall be the property of North Dakota to-wit: All records, books and archives in the office of the Governor and Secretary of the Territory (except records of articles of incorporation of domestic corporations, returns of elections of delegates to the Constitutional Convention of 1889 for South Dakota, returns of elections held under the so-called Local Option Law in counties within the limits of South Dakota, bonds of Notaries Public appointed for counties within the limits of South Dakota, papers relating to the organization of counties situated within the limits of South Dakota, all of which records and archives are a part of the records and archives of said secretary's office; excepting, also, census returns from counties situated within the limits of South Dakota and papers relating to requisitions issued upon the application of officers of counties situated within the limits of South Dakota, all of which are a part of the records and archives of said Governor's office.) And the following records, books and archives shall also be the property of the State of North Dakota to-wit:

Vouchers in the office or in the custody of the Auditor of this Territory relating to the expenditures on account of the public institutions, grounds or buildings situated within the limits of North Dakota. One Warrant Register in the office of the Treasurer of this Territory—being a record of warrants issued under and be virtue of chapter twenty-four of the laws enacted by the Eighteenth Legislative Assembly of Dakota Territory. All letters, receipts and vouchers in the same office now filed by counties and pertaining to counties within the limits of North Dakota. Paid and canceled coupons in the same office representing interest on bonds, which said State of North Dakota is to assume and pay. Reports of gross earnings of the year 1888 in the same office, made by corporations operating lines of railroads situated wholly or mainly within the limits of North Dakota. Records and papers of the office of Public Examiner of the Second District of the Territory. Records and papers of the office of the District Board of Agriculture. Records and papers in the office of the Board of Pharmacy of the District of North Dakota.

All records, books and archives of the Territory of Dakota which it is not herein agreed shall be the property of North Dakota, shall be the property of South Dakota.

The following books shall be copied and the copies shall be the property of North Dakota, and the cost of such copies shall be borne equally by said States of North Dakota and South Dakota. That is to say:

Appropriation Ledger for the years ending November 1888-89—one volume.
The Current Warrant Auditor's Register—one volume.
Insurance Record for 1889—one volume.
Treasurer's Cash Book—"D."
Assessment Ledger—"B."
Dakota Territory Bond Register—one volume.
Treasurer's Current Ledger—one volume.

The originals of the foregoing volumes which are to be copied shall, at any time after such copying shall have been completed, be delivered on demand to the proper authorities of the State of South Dakota.

All other records, books and archives which it is hereby agreed shall be the property of South Dakota, shall remain at the Capitol of North Dakota until demanded by the Legislature of the State of South Dakota, and until the State of North Dakota shall have had a reasonable time after such demand is made, to provide copies or abstracts of such portions thereof as the said State of North Dakota may desire to have copies or abstracts of.

The State of South Dakota may also provide copies of abstracts of such records, books and archives which it is agreed shall be the property of North Dakota as said State of South Dakota shall desire to have copies or abstracts of.

The expense of all copies or abstracts of records, books and archives which it is herein agreed may be made, shall be borne equally by said two States.

II.

And this Commission further agrees that the two committees composing the same shall recommend to their respective Conventions for adoption as a part of the Schedule of the proposed Constitution for the State of North Da-

kota and the State of South Dakota, respectively, the following: That is to say:

"The agreement made by the Joint Commission of the Constitutional Conventions of North and South Dakota is hereby ratified and confirmed, which agreement is in the words following: (And then shall follow the words of the article last above written.)

"In testimony and confirmation whereof, the said Joint Commission now assembled and acting as such, has caused this agreement to be signed and executed by and on its behalf and as its act and deed, and witnessed by the names hereto by each subscribed of the members comprising said Joint Commission as hereinbefore recited.

"Done at Bismarck, Dakota, this 31st day of July, A. D. 1889."

Mr. CAMP. The agreement prepared by the Commission is submitted and examined, and a motion to adopt it will be in order.

Mr. CALDWELL. I move the adoption of the agreement as now prepared and examined.

Mr. ELLIOT. I second the motion.

Mr. CAMP. You have heard the motion—are there any remarks? The Clerk will call the roll.

All members voted in the affirmative.

Mr. CAMP. The motion is unanimously adopted.

Mr. KELLAM. I move, the agreement having been formally adopted, that the members of the Commission now sign the same.

Mr. PRICE. I second the motion.

Mr. CAMP. You have heard the motion; if there are no objections the Clerk will call the roll.

All members voted in the affirmative.

And thereupon said agreement was proplerly signed in duplicate by all the members of said Commission.

Mr. SPALDING. I wish to apologize to the Commission, especially to the North Dakota Commission. I have been unable by reason of sickness to perform my share of the labor during the last ten days.

Mr. CAMP. I don't think sickness needs any apology, Mr. SPALDING, surely. I rather think that you performed your share of the labors.

Mr. CAMP. There is another matter and that is the reading of the Journal and approval of the report of the committee appointed to draw up an article on the Territorial debts and liabilities.

The following report was then read by Mr. HARDEN and Mr. MCCLARREN:

ARTICLE ——.

TERRITORIAL DEBTS AND LIABILITIES.

SECTION 1. In order that payment of the debts and liabilities contracted or incurred by and in behalf of the Territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an act of Congress approved February 22, 1889, entitled "An Act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states," the States of North Dakota and South Dakota, by proceedings of a Joint Commission, duly appointed under said act, the sessions whereof were held in Bismarck, in said State of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the Territory of Dakota, which shall be assumed and paid by each of the States of North Dakota and South Dakota, respectively, to-wit:

1. This agreement shall take effect and be in force from and after the admission into the Union as one of the United States of America, of either the State of North or the State of South Dakota.

2. The words "State of North Dakota," wherever used in this agreement shall be taken to mean the Territory of North Dakota in case the State of South Dakota shall be admitted into the Union prior to the admission into the Union of the State of North Dakota; and the words "State of South Dakota," wherever used in this agreement, shall be taken to mean the Territory of South Dakota in case the State of North Dakota shall be admitted into the Union prior to the admission into the Union of the State of South Dakota.

SEC. 2. The said State of North Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain act of the Legislative Assembly of the Territory of Dakota, approved March 3, 1889, entitled "An Act to provide for refunding of outstanding warrants drawn on the Capitol Building Fund."

SEC. 3. The said State of South Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota.

SEC. 4. That is to say: The State of North Dakota shall assume and pay the following bonds and indebtedness, to-wit:

Bonds issued on account of the Hospital for Insane at Jamestown, North Dakota; the face aggregate of which is $266,000; also, bonds issued on account of the North Dakota University at Grand Forks, North Dakota, the face aggregate of which is $96,700; also, bonds issued on account of the Penitentiary at Bismarck, North Dakota, the face aggregate of which is $93,600; also, refunding Capitol Building warrants dated April 1, 1889, $83,507.46.

And the State of South Dakota shall assume and pay the following bonds and indebtedness, to-wit:

Bonds issued on account of the Hospital for the Insane at Yankton, South Dakota, the face aggregate of which is $210,000; also, bonds issued on account of the School for Deaf Mutes at Sioux Falls, South Dakota, the face aggregate of which is $51,000; also, bonds issued on account of the University at Vermillion, South Dakota, the face aggregate of which is $75,000; also, bonds issued on account of the Penitentiary at Sioux Falls, South Dakota, the face aggregate of which is $94,000; also, bonds issued on account of the Agricultural College at Brookings, South Dakota, the face aggregate of which is $97,500; also, bonds issued on account of the Normal School at Madison, South Dakota, the face aggregate of which is $49,400; also, bonds issued on account of the School of Mines at Rapid City, South Dakota, the face aggregate of which is $33,000; also, bonds issued on account of the Reform School at Plankinton, South Dakota, the face aggregate of which is $30,000; also, bonds issued on account of the Normal School at Spearfish, South Dakota, the face aggregate of which is $25,000; also, bonds issued on account of the Soldiers' Home at Hot Springs, South Dakota, the face aggregate of which is $45,000.

SEC. 5. The States of North Dakota and South Dakota shall pay one-half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore or hereafter incurred on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

SEC. 6. The State of South Dakota shall pay to the State of North Dakota $46,500, on account of the excess of Territorial appropriations for the permanent improvement of Territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the Territorial Library, and in full settlement of unbalanced accounts and of all claims against the Territory of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of Northern Pacific railroad lands; and the payment of such amount shall discharge and exempt the State of South Dakota from all liability for or on account of the several matters hereinbefore referred to; nor shall either state be called upon to answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the Territory of Dakota had such a territory remained in existence, and which liability shall grow out of matters connected with any public institution, grounds or buildings of the Territory situated or located within the boundaries of the orther State.

SEC. 7. A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 8, 1889; and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. All moneys paid into the treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed State of North Dakota shall be credited to the State of North Dakota; and all sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed State of South Dakota shall be credited to the State of South

Dakota; except that any and all taxes on gross earnings paid into said treasury by railroad corporations since the 8th day of March, 1889, based upon earnings of years prior to 1888, under and by virtue of the Act of the Legislative Assembly of the Territory of Dakota, approved March 7, 1889, and entitled "An Act providing for the levy and collection of taxes upon property of railroad companies in this Territory," being Chapter 107 of the Session Laws of 1889 (that is, the part of such sum going to the Territory), shall be equally divided between the States of North Dakota and South Dakota; and all taxes heretofore or hereafter paid into the said treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the Territorial Treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed State of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota; each State shall be credited also with all balances of appropriations made by the Seventeenth Legislative Assembly of the Territory of Dakota for the account of the public institutions, grounds or buildings situated within its limits, remaining unexpended on March 8, 1889. If there shall be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinafter mentioned, each State shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such State in excess of the receipts from counties, municipalities, railroad corporations or persons within the limits of said State as provided in this article; and if there should be a surplus at the time of such final adjustment, each State shall be entitled to the amounts received from counties, municipalities, railroad corporations or persons within its limits, over and above the amount charged to it.

IN WITNESS WHEREOF, The members of said Joint Commission have subscribed thereto, this thirty-first day of July, A. D. 1889, at Bismarck, Dakota.

SEC. 2. And the State of North Dakota hereby obligates itself to pay such part of the debts and liabilities of the Territory of Dakota as is declared by the foregoing agreement to be its proportion thereof, the same as if such proportion had been originally created by said State of North Dakota as its own debt or liability.

SEC. 2. And the State of South Dakota hereby obligates itself to pay such part of the debts and liabilities of the Territory of Dakota as is declared by the foregoing agreement to be its proportion thereof, the same as if such proportion had been originally created by said State of South Dakota as its own debt or liability.

Mr. CAMP. The question is, gentlemen, upon the adoption of the report of the committee appointed to draw up an article concerning the debts and liabilities of the Territory of Dakota, which this Commission recommends the Conventions to incorporate into the Constitutions. Are you ready for the question?

Question. Question!

Mr. CAMP. Call the roll.

All members vosed in the affirmative.

Mr. CAMP. Well, a motion to adjourn is in order.

Mr. GRIGGS. I move we adjourn to meet at the Sheridan House at 9 o'clock to night.

Mr. KELLAM. I second Mr. GRIGGS' motion to adjourn to 9 o'clock tonight.

Mr. GRIGGS. I move to adjourn to meet at the Sheridan House tonight at 9 o'clock.

Mr. CAMP. You have heard the motion, gentlemen; all in favor of the motion say aye. The motion is carried.

EVENING SESSION.

The Commission met at 9:15 p. m. in the parlors of the Sheridan House, pursuant to adjournment.

Mr. CAMP. Gentlemen of the Commission, please come to order. The Clerk will call the roll. All members were present.

Mr. CAMP. Gentlemen, the only business before the Commission, I suppose, is the report of the committee upon the separate article to be recommended for adoption, for adoption in each of the Constitutions.

Mr. CALDWELL. That has been adopted this afternoon.

Mr. NEILL. I move the committee sign the recommendation of the committee.

Mr. ELLIOTT. I second the motion.

Mr. CAMP. You have heard the motion, if there are no remarks the Clerk will call the roll.

All members voted in the affirmative.

The article is now signed by the members.

Mr. CAMP. Gentlemen, I don't know as there is anything but to approve the Journal when it is read.

Mr. CALDWELL. Mr. CHAIRMAN: I desire to introduce the following resolution, and I will read it:

Resolved, That the Thanks of this Joint Commission be and they are hereby extended to the Chairmen of the respective committees, Mr. CAMP and Mr. KELLAM, for their admirable execution of the duties imposed on them; and particularly for their labors in the preparation of the final agreement between the two States.

Resolved, That thanks are likewise extended to the Clerks and Stenographers of the Commission for the manner in which their duties have been performed.

As this is a matter in which the present Chairman may feel some delicacy in presenting it to the Commission, I would assume the temporary chairmanship.

Mr. NEILL. I move the adoption of the resolution.

Mr. ELLIOTT. I second the motion.

Mr. BROTT. Have a rising vote.

Mr. CALDWELL. Are there any remarks.

It is unanimously adopted.

Mr. KELLAM. Gentlemen, you can consider my hat off.

Mr. CAMP. Gentlemen, I thank you heartily for the kind resolution you have passed.

Mr. CALDWELL. Mr. CHAILMAN: I desire, also, an expression of thanks by this Commission to Governor MELLETTE for the use of his rooms for the meetings of the Commission.

Mr. ELLIOTT. I second the motion.

Mr. CAMP. You have heard the motion, gentlemen. If there are no remarks, all in favor say aye. Unanimously adopted, and I hope the Clerk will make proper record that can be presented to the Governor.

Mr. SCOTT. I think it would be eminently proper on this occasion for the North Dakota Commission to express the sentiments which they feel towards the gentlemen of the South in regard to their behavior in the city. For myself, the relations which have existed between the gentlemen and myself, during the whole time we have been connected in the work, have been of the most pleasant nature; and the gentlemen of the South have certainly shown a desire to get at the bottom of the matter and arrive at a settlement with a spirit of fairness which we all admire. And for that reason I would move that a resolution expressing these sentiments be passed by the North Dakota Commission.

Mr. GRIGGS. I second the motion.

Mr. CAMP. Gentlemen, it has been moved that the Committee of North Dakota express their appreciation of the manner in which they have been met by the South Dakota Commission, and I think it would be proper to drink to the Committee of South Dakota; "Here's to the Committee of South Dakota."

Mr. KELLAM. I appoint Mr. PRICE to speak for South Dakota.

Mr. PRICE. GENTLEMEN OF THE JOINT COMMISSION: We stand to-night upon an eminence that at least (of course you expect fireworks in this); I was about to say that we stand tonight

upon an eminence and overlooking about two weeks of toil. (That's pretty good.) We have been working in behalf of a great Territory which, by the action of this Joint Commission, is soon to stand as two imperial States of the greatest republic on earth. And in behalf of the Joint Commission of South Dakota I want to say to you, gentlemen of the North, from whom we are about to separate, that, did we not live in a land where every woman is a queen and every man a king, and did we possess the power I would be glad to place a coronet upon the brow of every citizen of the empire State of North Dakota. [Cheers.] When we left our home with the Commission of the South Dakota Constitutional Convention, we accepted the trust with feelings of embarrassment, perhaps. This was true of myself because I was unacquainted with the gentleman of the North, and we recognized the important trust which had been confided to our care. But, looking over this three weeks of toil I can truthfully say, and I express the sentiments of every member of the Commission from South Dakota, that three weeks were never spent more pleasantly or more harmoniously. You have demonstrated, gentlemen of the North, that you are business men, and I congratulate you and the citizens of North Dakota, and those of South Dakota as well, upon the settlement which has been made by this Joint Commission. It is honorable, alike to North Dakota and South Dakota, and I believe it will be indorsed by the people of both sections of this great Territory. Gentlemen, I thank you. [Cheers.]

Mr. CALDWELL. Mr. PRESIDENT: In pursuance of the remarks which have been made by Mr. PRICE, I would move to the members of the Commission from South Dakota, that they by a rising vote set our seals upon the sentiments which he has expressed.

Mr. NEILL. I second the motion.

Mr. KELLAM. Gentlemen, you have heard the motion expressed by Mr. CALDWELL. As many as are of the opinion the motion should prevail will rise.

All members arose.

Mr. CAMP. Gentlemen, perhaps if it is agreeable, we can interrupt this and proceed with the business. I would ask Mr. McCLARREN to read the Journal.

Mr. McCLARREN then read the Journal of the afternoon's session, which was corrected.

Mr. SCOTT. I move the Journal as read and corrected be approved.

Mr. CALDWELL. I second the motion.

Mr. CAMP. You have heard the motion; all in favor of the motion say aye. It is unanimously adopted.

Mr. CALDWELL. I move this Commission stand adjourned subject to the call of the Chairman.

Seconded.

Mr. CAMP. You have heard the motion; all in favor of the motion say aye. The motion is unanimously carried, and

The Commission stands adjourned.

Constitution of North Dakota—1889.

Constitution of North Dakota—1889.

PREAMBLE.

We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. All men are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

SEC. 3. The State of North Dakota is an inseparable part of the American Union and the Constitution of the United States is the supreme law of the land.

SEC. 4. The free excercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this State, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

SEC. 5. The privilege of the writ of *habeas corpus* shall not be suspended unless, when in case of rebellion or invasion, the public safety may require.

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

Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but a jury in civil cases, in courts not of record may consist of less than twelve men, as may be prescribed by law.

SEC. 8. Until otherwise provided by law, no person shall, for a felony, be proceeded againt criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offences shall be prosecuted criminally by indictment or information. The Legislative Assembly may change, regulate or abolish the grand jury system.

SEC. 9. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments on informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

SEC. 10. The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

SEC. 11. All laws of a general nature shall have a uniform operation.

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be maintained by this State in time of peace, and no soldiers shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

SEC. 13. In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

SEC. 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation, other than municipal, until full compensation therefor be first made in money or ascer-

tained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived.

SEC. 15. No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases of tort: or where there is strong presumption of fraud.

SEC. 16. No bill of attainder, *ex post facto* law, or law impairing the obligations of contracts shall ever be passed.

SEC. 17. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

SEC. 18. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

SEC. 19. Treason against the State shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

SEC. 20. No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the Legislative Assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

SEC. 21. The provisions of this Constitution are mandatory and prohibitory unless, by express words, they are declared to be otherwise.

SEC. 22. All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the State in such manner, in such courts, and in such cases, as the Legislative Assembly may, by law, direct.

SEC. 23. Every citizen of this State shall be free to obtain employment wherever possible, and any person, corporation or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

SEC. 24. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article

is excepted out of the general powers of government and shall forever remain inviolate.

ARTICLE II.

THE LEGISLATIVE DEPARTMENT.

SEC. 25. The Legislative power shall be vested in a Senate and House of Representatives.

SEC. 26. The Senate shall be composed of not less than thirty, nor more than fifty members.

SEC. 27. Senators shall be elected for the term of four years except as hereinafter provided.

SEC. 28. No person shall be a senator who is not a qualified elector in the district in which he may be chosen, and who shall not have attained the age of twenty-five years, and have been a resident of the State or Territory for two years next preceding his election.

SEC. 29. The Legislative Assembly shall fix the number of Senators, and divide the State into as many senatorial districts as there are senators, which districts as nearly as may be, shall be equal to each other in the number of inhabitants entitled to representation. Each district shall be entitled to one Senator and no more, and shall be composed of compact and contiguous territory; and no portion of any county shall be attached to any other county, or part thereof, so as to form a district. The districts as thus ascertained and determined shall continue until changed by law.

SEC. 30. The senatorial districts shall be numbered consecutively from one upwards, according to the number of districts prescribed, and the Senators shall be divided into two classes. Those elected in the districts designated by even numbers shall constitute one class, and those elected in districts designated by odd numbers shall constitute the other class. The Senators of one class, elected in the year 1890, shall hold their office for two years, those of the other class shall hold their office four years, and the determination of the two classes shall be by lot, so that one-half of the Senators, as nearly as practicable, may be elected biennially.

SEC. 31. The Senate, at the beginning and close of each regular session, and at such other times as may be necessary, shall elect one of its members President *pro tempore*, who may take the place of the Lieutenant Governor under rules prescribed by law.

SEC. 32. The House of Representatives shall be composed of not less than sixty, nor more than one hundred and forty members.

SEC. 33. Representatives shall be elected for the term of two years.

SEC. 34. No person shall be a Representative who is not a qualified elector in the district for which he may be chosen, and who shall not have attained the age of twenty-one years, and have been a resident of the State or Territory for two years next preceding his election.

SEC. 35. The members of the House of Representatives shall be apportioned to and elected at large from each senatorial district. The Legislative Assembly shall, in the year 1895, and every tenth year, cause an enumeration to be made of all the inhabitants of this State, and shall at its first regular session after each such enumeration, and also after each federal census, proceed to fix by law the number of Senators, which shall constitute the Senate of North Dakota, and the number of Representatives which shall constitute the House of Representatives of North Dakota, within the limits prescribed by this Constitution, and at the same session shall proceed to reapportion the State into senatorial districts, as prescribed by this Constitution, and to fix the number of members of the House of Representatives, to be elected from the several senatorial districts; *Provided*, That the Legislative Assembly may, at any regular session, redistrict the State into senatorial districts, and apportion the Senators and Representatives respectively.

SEC. 36. The House of Representatives shall elect one of its members as Speaker.

SEC. 37. No judge or clerk of any court, secretary of state, attorney general, register of deeds, sheriff or person holding any office of profit under this State, except in the militia or the office of attorney-at-law, notary public or justice of the peace, and no person holding any office of profit or honor under any foreign government, or under the government of the United States, except postmasters whose annual compensation does not exceed the sum of $300, shall hold any office in either branch of the Legislative Assembly or become a member thereof.

SEC. 38. No member of the Legislative Assembly, expelled for corruption, and no person convicted of bribery, perjury or other infamous crime shall be eligible to the Legislative Assembly, or to any office in either branch thereof.

SEC. 39. No member of the Legislative Assembly shall, during the term for which he was elected, be appointed or elected to any civil office in this State, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected; nor shall any member receive any civil appointment from the Governor, or Governor and Senate, during the term for which he shall have been elected.

SEC. 40. If any person elected to either house of the Legislative Assembly shall offer or promise to give his vote or influence, in favor of, or against any measure or proposition pending or proposed to be introduced into the Legislative Assembly, in con-

sideration, or upon conditions, that any other person elected to the same Legislative Assembly will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced into such Legislative Assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the Legislative Assembly, shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such Legislative Assembly, or offer, promise or assent so to do upon condition that any other member will give, promise or assent to give his vote or influence in favor of or against any other such measure or proposition pending or proposed to be introduced into such Legislative Assembly, or in consideration that any other member hath given his vote or influence, for or against any other measure or proposition in such Legislative Assembly, he shall be deemed guilty of bribery. And any person, member of the Legislative Assembly or person elected thereto, who shall be guilty of either such offenses, shall be expelled, and shall not, thereafter be eligible to the Legislative Assembly, and, on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

SEC. 41. The term of service of the members of the Legislative Assembly shall begin on the first Tuesday in January next, after their election.

SEC. 42. The members of the Legislative Assembly shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to or returning from the same. For words used in any speech or debate in either house, they shall not be questioned in any other place.

SEC. 43. Any member who has a personal or private interest in any measure or bill proposed or pending before the Legislative Assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon without the consent of the house.

SEC. 44. The Governor shall issue writs of election to fill such vacancies as may occur in either house of the Legislative Assembly.

SEC. 45. Each member of the Legislative Assembly shall receive as a compensation for his services for each session, five dollars per day, and ten cents for every mile of necessary travel in going to and returning from the place of the meeting of the Legislative Assembly, on the most usual route.

SEC. 46. A majority of the members of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such a manner, and under such a penalty, as may be prescribed by law.

SEC. 47. Each house shall be the judge of the election returns and qualifications of its own members.

SEC. 48. Each house shall have the power to determine the rules of proceeding, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribes or private solicitation, and with the concurrence of two-thirds, to expel a member; and shall have all other powers necessary and usual in the Legislative Assembly of a free state. But no imprisonment by either house shall continue beyond thirty days. Punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

SEC. 49. Each house shall keep a journal of its proceedings, and the yeas and nays on any question shall be taken and entered on the journal at the request of one-sixth of those present.

SEC. 50. The sessions of each house and of the Committee of the Whole shall be open unless the business is such as ought to be kept secret.

SEC. 51. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting, except in case of epidemic, pestilence or other great danger.

SEC. 52. The Senate and House of Representatives jointly shall be designated as the Legislative Assembly of the State of North Dakota.

SEC. 53. The Legislative Assembly shall meet at the seat of government at 12 o'clock noon on the first Tuesday after the first Monday in January, in the year next following the election of the members thereof.

SEC. 54. In all elections to be made by the Legislative Assembly, or either house thereof, the members shall vote viva voce, and their votes shall be entered in the journal.

SEC. 55. The sessions of the Legislative Assembly shall be biennial, except as otherwise provided in this Constitution.

SEC. 56. No regular sessions of the Legislative Assembly shall exceed sixty days, except in case of impeachment, but the first session of the Legislative Assembly may continue for a period of one hundred and twenty days.

SEC. 57. Any bill may originate in either house of the Legislative Assembly, and a bill passed by one house may be amended by the other.

SEC. 58. No law shall be passed, except by a bill adopted by both houses, and no bill shall be so altered and amended on its passage through either house as to change its original purpose.

SEC. 59. The enacting clause of every law shall be as follows: Be it enacted by the Legislative Assembly of the State of North Dakota.

SEC. 60. No bill for the appropriation of money, except for the expenses of the government, shall be introduced after the fortieth day of the session, except by unanimous consent of the house in which it is sought to be introduced.

SEC. 61. No bill shall embrace more than one subject, which shall be expressed in its title, but a bill which violates this provision shall be invalidated thereby only as to so much thereof as shall not be so expressed.

SEC. 62. The general appropriation bill shall embrace nothing but appropriations for the expenses of the Executive, Legislative and Judicial Departments of the State, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

SEC. 63. Every bill shall be read three several times, but the first and second readings, and those only, may be upon the same day; and the second reading may be by title of the bill unless a reading at length be demanded. The first and third readings shall be at length. No Legislative day shall be shorter than the natural day.

SEC. 64. No bill shall be revised or amended, nor the provisions thereof extended or incorporated in any other bill by reference to its title only, but so much thereof as is revised, amended or extended or so incorporated, shall be re-enacted and published at length.

SEC. 65. No bill shall become a law except by a vote of the majority of all the members elect in each house, nor unless, on its final passage, the vote be taken by yeas and nays, and the names of those voting be entered on the Journal.

SEC. 66. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the Legislative Assembly; immediately before such signing their title shall be publicly read, and the fact of signing shall be at once entered on the Journal.

SEC. 67. No act of the Legislative Assembly shall take effect until July 1st, after the close of the session unless in case of emergency (which shall be expressed in the preamble or body of the act), the Legislative Assembly shall, by a vote of two-thirds of all the members present in each house, otherwise direct.

SEC. 68. The Legislative Assembly shall pass all laws necessary to carry into effect the provisions of this Constitution.

SEC. 69. The Legislative Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

1. For granting divorces.

2. Laying out, opening, altering or working roads or highways, vacating roads, town plats, streets, alleys or public grounds.

3. Locating or changing county seats.

4. Regulating county or township affairs.

5. Regulating the practice of courts of justice.

6. Regulating the jurisdiction and duties of justices of the peace, police magistrates or constables.

7. Changing the rules of evidence in any trial or inquiry.

8. Providing for changes of venue in civil or criminal cases.

9. Declaring any person of age.

10. For limitation of civil actions, or giving effect to informal or invalid deeds.

11. Summoning or impanneling grand or petit juries.

12. Providing for the management of common schools.

13. Regulating the rate of interest on money.

14. The opening or conducting of any election, or designating the place of voting.

15. The sale or mortgage of real estate belonging to minors or others under disability.

16. Chartering or licensing ferries, toll bridges or toll roads.

17. Remitting fines, penalties or forfeitures.

18. Creating, increasing or decreasing fees, percentages or allowances of public officers.

19. Changing the law of descent.

20. Granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever.

21. For the punishment of crimes.

22. Changing the names of persons or places.

23. For the assessment or collection of taxes.

24. Affecting estates of deceased persons, minors or others under legal disabilities.

25. Extending the time for the collection of taxes.

26. Refunding money into the State Treasury.

27. Relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this State, or to any municipal corporation therein.

28. Legalizing, except as against the State, the unauthorized or invalid act of any officer.

29. Exempting property from taxation.

30. Restoring to citizenship persons convicted of infamous crimes.

31. Authorizing the creation, extension or impairing of liens.

32. Creating offices, or prescribing the powers or duties of officers in counties, cities, townships, election or school districts, or authorizing the adoption or legitimation of children.

33. Incorporation of cities, towns or villages, or changing or amending the charter of any town, city or village.

34. Providing for the election of members of the Board of Supervisors in townships, incorporated towns or cities.

35. The protection of game or fish.

SEC. 70. In all other cases where a general law can be made applicable, no special law shall be enacted; nor shall the Legislative Assembly indirectly enact such special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

ARTICLE III.

EXECUTIVE DEPARTMENT.

SEC. 71. The executive power shall be vested in a Governor, who shall reside at the seat of government, and shall hold his office for the term of two years and until his successor is elected and duly qualified.

SEC. 72. A Lieutenant Governor shall be elected at the same time and for the same term as the Governor. In case of the death, impeachment, resignation, failure to qualify, absence from the State, removal from office, or the disability of the Governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability be removed, shall devolve upon the Lieutenant Governor.

SEC. 73. No person shall be eligible to the office of Governor or Lieutenant Governor unless he be a citizen of the United States, and a qualified elector of the State, who shall have attained the age of thirty years, and who shall have resided five years next preceding the election within the State or Territory, nor shall he be eligible to any other office during the term for which he shall have been elected.

SEC. 74. The Governor and Lieutenant Governor shall be elected by the qualified electors of the State at the time and places of choosen members of the Legislative Assembly. The persons having the highest number of votes for Governor and Lieutenant Governor respectively shall be declared elected, but if two or more shall have an equal and highest number of votes for Governor or Lieutenant Governor, the two houses of the Legisla-

tive Assembly at its next regular session shall forthwith, by joint ballot, choose one of such persons for said office. The returns of the election for Governor and Lieutenant Governor shall be made in such manner as shall be prescribed by law.

SEC. 75. The Governor shall be Commander-in-Chief of the military and naval forces of the State, except when they shall be called into the service of the United States, and may call out the same to execute the laws, suppress insurrection and repel invasion. He shall have power to convene the Legislative Assembly on extraordinary occasions. He shall at the commencement of each session communicate to the Legislative Assembly by message, information of the condition of the State, and recommend such measures as he shall deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislative Assembly, and shall take care that the laws be faithfully executed.

SEC. 76. The Governor shall have power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction, for all offences except treason and cases of impeachment; but the Legislative Assembly may by law regulate the manner in in which the remissiom of fines, pardons, commutations and reprieves may be applied for. Upon conviction for treason he shall have power to suspend the execution of sentence until the case shall be reported to the Legislative Assembly at its next regular session, when the Legislative Assembly shall either pardon or commute the sentence, direct the execution of the sentence or grant further reprieve. He shall communicate to the Legislative Assembly at each regular session each case of remission of fine, reprieve, commutation or pardon granted by him, stating the name of the convict, the crime for which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same.

SEC. 77. The Lieutenant Governor shall be President of the Senate, but shall have no vote unless they be equally divided. If, during a vacancy in the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign or die, or from mental or physical disease, or otherwise become incapable of performing the duties of his office, the Secretary of State shall act as Governor until the vacancy shall be filled or the disability removed.

SEC. 78. When any office shall from any cause become vacant, and no mode is provided by the Constitution or law for filling such vacancy, the Governor shall have power to fill such vacancy by appointment.

SEC. 79. Every bill which shall have passed the Legislative Assembly shall, before it becomes a law, be presented to the Governor. If he approve, he shall sigh, but if not, he shall return it

with his objections to the house in which it originated, which shall enter the objections at large upon the Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elect shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members elect, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the Journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the Legislative Assembly by its adjournment, prevent its return, in which case it shall be a law, unless he shall file the same with his objections in the office of the Secretary of State, within fifteen days after such adjournment.

SEC. 80. The Governor shall have power to disapprove of any item or items, or part or parts of any bill making appropriations of money or property embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items, and part or parts disapproved shall be void, unless enacted in the following manner: If the Legislative Assembly be in session he shall transmit to the house in which the bill originated a copy of the item or items, or part or parts thereof disapproved, together with his objections thereto, and the items or parts objected to shall be separately reconsidered, and each item or part shall then take the same course as is prescribed for the passage of bills over the executive veto.

SEC. 81. Any Governor of this State who asks, receives or agrees to receive any bribe upon any understanding that his official opinion, judgment or action shall be influenced thereby, or who gives or offers, or promises his official influence in consideration that any member of the Legislative Assembly shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity, or who menaces any member by the threatened use of his veto power, or who offers or promises any member that he, the said Governor will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of said Legislative Assembly, or who threatens any member that he, the said Governor, will remove any person or persons from office or position with intent in any manner to influence the action of said member, shall be punished in the manner now or that may hereafter be provided by law, and upon conviction thereof shall forfeit all right to hold or exercise any office of trust or honor in this State.

SEC. 82. There shall be chosen by the qualified electors of the State at the times and places of choosing members of the Legislative Assembly, a Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Insurance, three Commissioners of Railroads, one Attorney General and one Commissioner of Agriculture and Labor; who shall have attained the age of twenty-five years, shall be citizens of the United States, and shall have the qualifications of State electors. They shall severally hold their offices at the seat of government, for the term of two years and until their successors are elected and duly qualified, but no person shall be eligible to the office of Treasurer for more than two consecutive terms.

SEC. 83. The powers and duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Insurance, Commissioners of Railroads, Attorney General and Commissioner of Agriculture and Labor, shall be as prescribed by law.

SEC. 84. Until otherwise provided by law, the Governor shall receive an annual salary of three thousand dollars; the Lieutenant Governor shall receive an annual salary of one thousand dollars; the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Insurance, Commissioners of Railroads and Attorney General shall each receive an annual salary of two thousand dollars; the salary of the Commissioner of Agriculture and Labor shall be as prescribed by law, but the salaries of any of the said officers shall not be increased or diminished during the period for which they shall have been elected, and all fees and profits arising from any of the said offices shall be covered into the State treasury.

ARTICLE IV.

JUDICIAL DEPARTMENT.

SEC. 85. The judicial power of the State of North Dakota shall be vested in a supreme court, district courts, county courts, justices of the peace, and in such other courts as may be created by law for cities, incorporated towns and villages.

SEC. 86. The supreme court, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State and shall have a general superintending control over all inferior courts under such regulations and limitations as may be prescribed by law.

SEC. 87. It shall have power to issue writs of *habeas corpus*, *mandamus*, *quo warranto*, *certiorari*, injunction, and such other original and remedial writs as may be necessary to the proper exercise of its jurisdiction, and shall have authority to hear and determine the same; *Provided*, however, that no jury trials shall

be allowed in said supreme court, but in proper cases questions of fact may be sent by said court to a district court for trial.

SEC. 88. Until otherwise provided by law three terms of the supreme court shall be held each year, one at the seat of government, one at Fargo, in the county of Cass, and one at Grand Forks, in the county of Grand Forks.

SEC. 89. The supreme court shall consist of three judges, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said judges may adjourn the court from day to day or to a day certain.

SEC. 90. The judges of the supreme court shall be elected by the qualified electors of the State at large, and except as may be otherwise provided herein for the first election for judges under this Constitution, said judges shall be elected at general elections.

SEC. 91. The term of office of the judges of the supreme court, except as in this article otherwise provided, shall be six years, and they shall hold their offices until their successors are duly qualified.

SEC. 92. The judges of the supreme court shall, immediately after the first election under this Constitution, be classified by lot so that one shall hold his office for the term of three years, one for the term of five years and one for the term of seven years from the first Monday in December, A. D. 1889. The lots shall be drawn by the judges who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the Secretary of the Territory and filed in his office unless the Secretary of State of North Dakota shall have entered upon the duties of his office, in which event said certification shall be filed therein. The judge having the shortest term to serve, not holding his office by election or appointment to fill a vacancy, shall be Chief Justice and shall preside at all terms of the supreme court and in case of his absence the judge having in like manner the next shortest term to serve shall preside in his stead.

SEC. 93. There shall be a clerk and also a reporter of the supreme court, who shall be appointed by the judges thereof, and who shall hold their offices during the pleasure of said judges, and whose duties and emoluments shall be prescribed by law and by rules of the supreme court not inconsistent with law. The Legislative Assembly shall make provision for the publication and distribution of the decisions of the supreme court and for the sale of the published volumes thereof.

SEC. 94. No person shall be eligible to the office of judge of the supreme court unless he be learned in the law, be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this State or Territory of Dakota three years next preceding his election.

SEC. 95. Whenever the population of the State of North Dakota shall equal six hundred thousand the Legislative Assembly shall have the power to increase the number of the judges of the supreme court to five, in which event a majority of said court, as thus increased, shall constitute a quorum.

SEC 96. No duties shall be imposed by law upon the supreme court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided.

SEC. 97. The style of all process shall be "The State of North Dakota." All prosecutions shall be carried on in the name and by the authority of the State of North Dakota, and conclude "against the peace and dignity of the State of North Dakota."

SEC. 98. Any vacancy happening by death, resignation or otherwise in the office of judge of the supreme court shall be filled by appointment, by the Governor, which appointment shall continue until the first general election thereafter, when said vacancy shall be filled by election.

SEC. 99. The judges of the supreme and district courts shall receive such compensation for their services as may be prescribed by law, which compensation shall not be increased or diminished during the term for which a judge shall have been elected.

SEC. 100. In case a judge of the supreme court shall be in any way interested in a cause brought before said court, the remaining judges of said court shall call one of the district judges to sit with them on the hearing of said cause.

SEC. 101. When a judgment or decree is reversed or confirmed by the supreme court every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefor shall be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme court and preserved with a record of the case. Any judge dissenting therefrom may give the reasons of his dissent in writing over his signature.

SEC. 102. It shall be the duty of the court to prepare a syllabus of the points adjudicated in each case, which shall be concurred in by a majority of the judges thereof, and it shall be prefixed to the published reports of the case.

DISTRICT COURTS.

SEC. 103. The district court shall have original jurisdiction, except as otherwise provided in this Constitution, of all causes both at law and equity, and such appellate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of *habeas corpus, quo warranto, certiorari,* injunction and other original and remedial writs, with authority to hear and determine the same.

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SEC. 104. The State shall be divided into Six Judicial Districts, in each of which there shall be elected at general elections, by the electors thereof, one judge of the district court therein, whose term of office shall be four years from the first Monday in January succeeding his election and until his successor is duly qualified. This section shall not be construed as governing the first election of district judges under this Constitution.

SEC. 105. Until otherwise provided by law said districts shall be constituted as follows:

District No. One shall consist of the counties of Pembina, Cavalier, Walsh, Nelson and Grand Forks.

District No. Two shall consist of the counties of Ramsey, Towner, Benson, Pierce, Rolette, Bottineau, McHenry, Church, Renville, Ward, Stevens, Mountraille, Garfield, Flannery and Buford.

District No. Three shall consist of the counties of Cass, Steele and Traill.

District No. Four shall consist of the counties of Richland, Ransom, Sargent, Dickey and McIntosh.

District No. Five shall consist of the counties of Logan, LaMoure, Stutsman, Barnes, Wells, Foster, Eddy and Griggs.

District No. Six shall consist of the counties of Burleigh, Emmons, Kidder, Sheridan, McLean, Morton, Oliver, Mercer, Williams, Stark, Hettinger, Bowman, Billings, McKenzie, Dunn, Wallace and Allred, and that portion of the Sioux Indian Reservotion lying north of the Seventh Standard parallel.

SEC. 106. The Legislative Assembly may whenever two-thirds of the members of each house shall concur therein, but not oftener than once in four years, increase the number of said judicial districts and the judges thereof; such districts shall be formed from compact territory and bounded by county lines, but such increase or change in the boundaries of the districts shall not work the removal of any judge from his office during the term for which he may have been elected or appointed.

SEC. 107. No person shall be elegible to the office of district judge, unless he be learned in the law, be at least twenty-five years of age, and a citizen of the United States, nor unless he shall have resided within the State or Territory of Dakota at least two years next preceding his election, nor unless he shall at the time of his election be an elector within the Judicial District for which he is elected.

SEC. 108. There shall be a Clerk of the District Court in each organized county in which a court is holden who shall be elected by the qualified electors of the county, and shall hold his office for the same term as other county officers. He shall receive such compensation for his services as may be prescribed by law.

SEC. 109. Writs of error and appeals may be allowed from the decisions of the district courts to the Supreme Court under such regulations as may be prescribed by law.

COUNTY COURTS.

SEC. 110. There shall be established in each county a county court, which shall be a court of record open at all times and holden by one judge, elected by the electors of the county, and whose term of office shall be two years.

SEC. 111. The County Court shall have exclusive original jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians, the sale of lands by executors, administrators, and guardians, and such other probate jurisdiction as may be conferred by law; *Provided*, That whenever the voters of any county having a population of two thousand or over shall decide by a majority vote that they desire the jurisdiction of said court increased above that limited by this constitution, then said County Courts shall have concurrent jurisdiction with the District Courts in all civil actions where the amount in controversy does not exceed one thousand dollars, and in all criminal actions below the grade of felony, and in case it is decided by the voters of any county to so increase the jurisdiction of said county court, the jurisdiction in cases of misdemeanors arising under State laws which may have been conferred upon police magistrates, shall cease. The qualifications of the judge of the County Court in counties where the jurisdiction of said court shall have been increased shall be the same as those of the district judge, except he shall be a resident of the county at the time of his election, and said county judge shall receive such salary for his services as may be provided by law. In case the voters of any county decide to increase the jurisdiction of said county courts, then such jurisdiction as thus increased shall remain until otherwise provided by law.

JUSTICES OF THE PEACE.

SEC. 112. The Legislative Assembly shall provide by law for the election of justices of the peace in each organized county within the state. But the number of said justices to be elected in each organized county shall be limited by law to such a number as shall be necessary for the proper administration of justice. The justices of the peace herein provided for shall have concurrent jurisdiction with the district court in all civil actions when the amount in controversy, exclusive of costs, does not exceed two hundred dollars, and in counties where no county court with criminal jurisdiction exists they shall have such jurisdiction to hear and determine cases of misdemeanor as may be provided by law, but in no case shall said justices of the peace have jurisdiction when the boundaries of or title to real estate shall come in question. The Legislative Assembly shall have power to abolish the office of justice of the peace and confer that jurisdiction upon judges of county courts, or elsewhere.

POLICE MAGISTRATES.

SEC. 113. The Legislative Assembly shall provide by law for the election of police magistrates in cities, incorporated towns, and villages, who in addition to their jurisdiction of all cases arising under the ordinances of said cities, towns and villages, shall be ex-officio justices of the peace of the county in which said cities, towns and villages may be located. And the Legislative Assembly may confer upon said police magistrates the jurisdiction to hear, try and determine all cases of misdemeanors, and the prosecutions therein shall be by information.

SEC. 114. Appeals shall lie from the county court, final decisions of justices of the peace, and police magistrates in such cases and pursuant to such regulations as may be prescribed by law.

MISCELLANEOUS.

SEC. 115. The time of holding courts in the several counties of a district shall be as prescribed by law, but at least two terms of the district court shall be held annually in each organized county, and the Legislative Asssembly shall make provision for attaching unorganized counties or territories to organized counties for judicial purposes.

SEC. 116. Judges of the district courts may hold court in other districts than their own under such regulations as shall be prescribed by law.

SEC. 117. No judge of the supreme or district court shall act as attorney or counsellor at law.

SEC. 118. Until the Legislative Assembly shall provide by law for fixing the terms of courts the judges of the supreme and district courts shall fix the terms thereof.

SEC. 119. No judge of the supreme or district court shall be elected or appointed to any other than judicial offices or be eligible thereto during the term for which he was elected or appointed such judge. All votes or appointments for either of them for any elective or appointive office except that of judge of the supreme court or district court, given by the Legislative Assembly or the people, shall be void.

SEC. 120. Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law, or the powers and duties of such may be conferred upon other courts of justice; but such tribunals or other courts when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunals or courts.

ARTICLE V.

ELECTIVE FRANCHISE.

SEC. 121. Every male person of the age of twenty-one years or upwards belonging to either of the following classes, who shall have resided in the state one year, in the county six months and in the precinct ninety days next preceding any election, shall be deemed a qualified elector at such election:

First: Citizens of the United States.

Second: Persons of foreign birth who shall have declared their intention to become citizens, one year and not more than six years, prior to such election, conformably to the naturalization laws of the United States.

Third: Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election.

SEC. 122. The Legislative Assembly shall be empowered to make further extensions of suffrage hereafter, at its discretion to all citizens of mature age and sound mind, not convicted of crime, without regard to sex; but no law extending or restricting the right of suffrage shall be enforced until adopted by a majority of the electors of the state voting at a general election.

SEC. 123. Electors shall in all cases except treason, felony, breach of the peace or illegal voting, be privileged from arrest on the days of election during their attendance at, going to and returning from such election, and no elector shall be obliged to perform military duty on the day of election, except in time of war or public danger.

SEC. 124. The general elections of the state shall be biennial, and shall be held on the first Tuesday after the first Monday in November; *Provided*, That the first general election under this Constitution shall be held on the first Tuesday after the first Monday in November, A. D. 1890.

SEC. 125. No elector shall be deemed to have lost his residence in this state by reason of his absence on business of the United States or of this state, or in the military or naval service of the United States.

SEC. 126. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of his being stationed therein.

SEC. 127. No person who is under guardianship, *non compos mentis* or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, unless restored to civil rights.

SEC. 128. Any woman having the qualifications enumerated in section 121 of this article as to age, residence and citizenship, and

including those now qualified by the laws of the territory, may vote for all school officers, and upon all questions pertaining solely to school matters, and be eligible to any school office.

SEC. 129. All elections by the people shall be by secret ballot, subject to such regulations as shall be provided by law.

ARTICLE VI.

MUNICIPAL CORPORATIONS.

SEC. 130. The Legislative Assembly shall provide by general law for the organization of municipal corporations, restricting their powers as to levying taxes and assessments, borrowing money and contracting debts, and money raised by taxation, loan or assessment for any purpose shall not be diverted to any other purpose except by authority of law.

ARTICLE VII.

CORPORATIONS OTHER THAN MUNICIPAL.

SEC. 131. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state; but the Legislative Assembly shall provide by general laws for the organization of all corporations hereafter to be created, and any such law, so passed, shall be subject to future repeal or alteration.

SEC. 132. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith at the time this Constitution takes effect, shall thereafter have no validity.

SEC. 133. The Legislative Assembly shall not remit the forfeiture of the charter to any corporation now existing, nor alter or amend the same, nor pass any other general of special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution.

SEC. 134. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the Legislative Assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of this State shall never be abridged, or so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the State.

SEC. 135. In all elections for directors or managers of a cor-

poration, each member or share-holder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

SEC. 136. No foreign coporation shall do business in this state without having one or more places of business and an authorized agent or agents in the same, upon whom process may be served.

SEC. 137. No corporation shall engage in any business other than that expressly authorized in its charter.

SEC. 138. No corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all ficticious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice given in pursuance of law.

SEC. 139. No law shall be passed by the Legislative Assembly granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied for such purposes.

SEC. 140. Every railroad corporation organized and doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in the state for the transaction of its business, where transfers of its stock shall be made and in which shall be kept for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom, the names of the owners of its stock and the amount owned by them respectively; the amount of stock paid in and by whom, and the transfers of said stock; the amounts of its assets and liabilities and the names and place of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts, or some officer or officers to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the Legislative Assembly shall pass laws enforcing by suitable penalties the provisions of this section. Providing the provisions of this section shall not be so construed as to apply to foreign corporations.

SEC. 141. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section, by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

SEC. 142. Railways heretofore constructed or that may hereafter be constructed in this state are hereby declared public highways, and all railroad, sleeping car, telegraph, telephone and transportation companies of passengers, intelligence and freight, are declared to be common carriers and subject to legislative control; and the Legislative Assembly shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers, intelligence and freight, as such common carriers from one point to another in this State; *Provided*, That appeal may be had to courts of this State from the rate so fixed; but the rates fixed by the Legislative Assembly or Board of Railroad Commissioners shall remain in full force pending the decision of the courts.

SEC. 143. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with the railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other; and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

SEC. 144. The term "corporation," as used in this article, shall not be understood as embracing municipalities or political subdivisions of the State unless otherwise expressly stated, but it shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships.

SEC. 145. If a general banking law be enacted, it shall provide for the registry and countersigning by an officer of the State, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the State Treasurer for the redemption of such notes or bills.

SEC. 146. Any combination between individuals, corporations, associations, or either having for its object or effect the controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended in this state, whenever the owner or owners thereof violate this article shall be deemed annulled and become void.

ARTICLE VIII.

EDUCATION.

SEC. 147. A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of

that government and the prosperity and happiness of the people, the Legislative Assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Sec. 148. The Legislative Assembly shall provide at their first session, after the adoption of this Consitution, for a uniform system of free public schools throughout the state; beginning with the primary and extending through all grades up to and including the normal and collegiate course.

Sec. 149. In all schools instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind.

Sec. 150. A Superintendent of Schools for each county shall be elected every two years, whose qualifications, duties, powers and compensation shall be fixed by law.

Sec. 151. The Legislative Assembly shall take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific and agricultural improvement.

Sec. 152. All colleges, universities and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the State. No money raised for the support of the public schools of the State shall be appropriated to or used for the support of any sectarian school.

ARTICLE IX.

SCHOOL AND PUBLIC LANDS.

Sec. 153. All proceeds of the public lands that have heretofore been, or may hereafter be granted by the United States for the support of the common schools in this state; all such per centum as may be granted by the United States on the sale of public lands; the proceeds or property that shall fall to the state by escheat; the proceeds of all gifts and donations to the state for common schools, or not otherwise appropriated by the terms of the gift, and all other property otherwise acquired for common schools, shall be and remain a perpetual fund for the maintenance of the common schools of the state. It shall be deemed a trust fund, the principal of which shall forever remain inviolate and may be increased but never diminished. The state shall make good all losses thereof.

Sec. 154. The interest and income of this fund together with the net proceeds of all fines for violation of state laws, and all

other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the common schools of the state, and shall be for this purpose apportioned among and between all the several common school corporations of the state in proportion to the number of children in each of school age, as may be fixed by law; and no part of the fund shall ever be diverted, even temporarily, from this purpose or used for any other purpose whatever than the maintenance of common schools for the equal benefit of all the people of the state; *Provided, however*, That if any portion of the interest or income aforesaid be not expended during any year, said portion shall be added to and become a part of the school fund.

SEC. 155. After one year from the assembling of the first Legislative Assembly, the lands granted to the state from the United States for the support of the common schools, may be sold upon the following conditions and no other: No more than one-fourth of all such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one-half of the remainder within ten years after the same become saleable as aforesaid. The residue may be sold at any time after the expiration of said ten years. The Legislative Assembly shall provide for the sale of all school lands subject to the provisions of this article. The coal lands of the State shall never be sold, but the Legislature Assembly may, by general laws, provide for leasing the same. The words "coal lands" shall include lands bearing lignite coal.

SEC. 156. The Superintendent of Public Instruction, Governor, Attorney-General, Secretary of State and State Auditor, shall constitute a Board of Commissioners, which shall be denominated the "Board of University and School Lands," and, subject to the provisions of this article and any law that may be passed by the Legislative Assembly, said board shall have control of the appraisement, sale, rental and disposal of all school and university lands, and shall direct the investment of the funds arising therefrom in the hands of the State Treasurer, under the limitations in section 160 of this article.

SEC. 157. The county superintendent of common schools, the chairman of the county board, and the county auditor shall constitute boards of appraisal and under the authority of the State Board of University and School Lands shall appraise all school lands within their respective counties which they may from time to time recommend for sale at their actual value under the prescribed terms and shall first select and designate for sale the most valuable lands.

SEC. 158. No land shall be sold for less than the appraised value and in no case for less than ten dollars per acre. The purchaser shall pay one-fifth of the price in cash, and the remaining four-fifths as follows: One-fifth in five years, one-fifth in ten

years, one-fifth in fifteen years and one-fifth in twenty years, with interest at the rate of not less than six per centum payable annually in advance. All sales shall be held at the county seat of the county in which the land to be sold is situate and shall be at public auction and to the highest bidder, after sixty days advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of one quarter section, and those so subdivided in the smallest subdivisions. All lands designated for sale and not sold within two years after appraisal shall be reappraised before they are sold. No grant or patent for any such lands shall issue until payment is made for the same; *Provided*, That the lands contracted to be sold by the state, shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then and thereupon the contract of sale for such lands shall become null and void.

SEC. 159. All land, money or other property donated, granted or received from the United States or any other source for a University, School of Mines, Reform School, Agricultural College, Deaf and Dumb Asylum, Normal School or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which together with the rents of all such land as may remain unsold shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the state, and the state shall make good all losses thereof.

SEC. 160. All lands mentioned in the preceding section shall be appraised and sold in the same manner and under the same limitations and subject to all the conditions as to price and sale as provided above for the appraisal and sale of lands for the benefit of common schools; but a distinct and separate account shall be kept by the proper officers of each of said funds; *Provided*, That the limitations as to the time in which school land may be sold shall apply only to lands granted for the support of common schools.

SEC. 161. The Legislative Assembly shall have authority to provide by law for the leasing of lands granted to the state for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years. Said land shall only be leased for pasturage and meadow purposes and at a public auction after notice as heretofore provided in case of sale. *Provided* that all of said school lands now under cultivation may be leased at the discretion and under the control of the Board

of University and School Lands, for other than pasturage and meadow purposes until sold. All rents shall be paid in advance.

SEC. 162. The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations within the state, bonds of the United States, bonds of the state of North Dakota or in first mortgages on farm lands in the state, not exceeding in amount one-third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisers of school lands.

SEC. 163. No law shall ever be passed by the Legislative Assembly granting to any person, corporation or association any privileges by reason of the occupation, cultivation or improvement of any public lands by said person, corporation or association subsequent to the survey thereof by the general government. No claim for the occupation, cultivation or improvement of any public lands shall ever be recognized, nor shall such occupation, cultivation or improvement of any public lands ever be used to diminish either directly or indirectly the purchase price of said lands.

SEC. 164. The Legislative Assembly shall have authority to provide by law for the sale or disposal of all public lands that have been heretofore, or may hereafter be granted by the United States to the state for purposes other than set forth and named in sections 153 and 159 of this article. And the Legislative Assembly in providing for the appraisement, sale, rental and disposal of the same shall not be subject to the provisions and limitations of this article.

SEC. 165. The Legislative Assembly shall pass suitable laws for the safekeeping, transfer and disbursement of the state school funds; and shall require all officers charged with the same or the safe keeping thereof to give ample bonds for all moneys and funds received by them, and if any of said officers shall convert to his own use in any manner or form, or shall loan with or without interest or shall deposit in his own name, or otherwise than in the name of the state of North Dakota or shall deposit in any banks or with any person or persons, or exchange for other funds or property any portion of the school funds aforesaid or purposely allow any portion of the same to remain in his own hands uninvested except in the manner prescribed by law, every such act shall constitute an embezzlement of so much of the aforesaid school funds as shall be thus taken or loaned, or deposited, or exchanged, or withheld and shall be a felony; and any failure to pay over, produce or account for, the state school funds or any part of the same entrusted to any such officer, as by law required or demanded, shall be held and be taken to be *prima facie* evidence of such embezzlement.

ARTICLE X.

COUNTY AND TOWNSHIP ORGANIZATION.

SEC. 166. The several counties in the Territory of Dakota lying

north of the Seventh Standard Parallel, as they now exist, are hereby declared to be counties of the State of North Dakota.

SEC. 167. The Legislative Assembly shall provide by general law for organizing new counties, locating the county seats thereof temporarily, and changing county lines; but no new county shall be organized nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than one thousand *bona fide* inhabitants. And in the organization of new counties and in changing the lines of organized counties and boundaries of congressional townships the natural boundaries shall be observed as nearly as may be.

SEC. 168. All changes in the boundaries of organized counties before taking effect shall be submitted to the electors of the county or counties, to be effected thereby at a general election and be adopted by a majority of all the legal votes cast in each county at such election; and in case any portion of an organized county is stricken off and added to another, the county to which such portion is added shall assume and be holden for an equitable proportion of the indebtedness of the county so reduced.

SEC. 169. The Legislative Assembly shall provide by general law for changing county seats in organized counties, but it shall have no power to remove the county seat of any organized county.

SEC. 170. The Legislative Assembly shall provide by general law for township organization under which any county may organize whenever a majority of all the legal voters of such county, voting at a general election shall so determine, and whenever any county shall adopt township organization, so much of this Constitution as provides for the management of the fiscal concerns of said county by the board of county commissioners may be dispensed with by a majority vote of the people voting at any general election; and the affairs of said county may be transacted by the chairmen of the several township boards of said county, and such others as may be provided by law for incorporated cities, towns or villages within such county.

SEC. 171. In any county that shall have adopted a system of government by the chairmen of the several township boards, the question of continuing the same may be submitted to the electors of such county at a general election in such a manner as may be provided by law, and if a majority of all the votes cast upon such question shall be against said system of govevnment, then such system shall cease in said county, and the affairs of said county shall then be transacted by a board of county commissioners as is now provided by the laws of the Territory of Dakota.

SEC. 172. Until the system of county government by the chairmen of the several township boards is adopted by any county the fiscal affairs of said county shall be transacted by a board of

county commissioners; said board shall consist of not less than three and not more than five members whose terms of office shall be prescribed by law. Said board shall hold sessions for the transaction of county business as shall be provided by law.

SEC. 173. At the first general election held after the adoption of this Constitution, and every two years thereafter, there shall be elected in each organized county in the State, a county judge, clerk of court, register of deeds, county auditor, treasurer, sheriff and states attorney, who shall be electors of the county in which they are elected and who shall hold their office until their successors are elected and qualified. The Legislative Assembly shall provide by law for such other county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers. The sheriff and treasurer of any county shall not hold their respective offices for more than four years in succession.

ARTICLE XI.

REVENUE AND TAXATION.

SEC. 174. The Legislative Assembly shall provide for raising revenue sufficient to defray the expenses of the state for each year, not to exceed in any one year four (4) mills on the dollar of the assessed valuation of all taxable property in the state, to be ascertained by the last assessment made for state and county purposes, and also a sufficient sum to pay the interest on the state debt.

SEC. 175. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

SEC. 176. Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the state, county and municipal corporations, both real and personal, shall be exempt from taxation, and the Legislative Assembly shall by a general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation; but the Legislative Assembly may, by law, provide for the payment of a per centum of gross earnings of railroad companies to be paid in lieu of all State, county, township and school taxes on property exclusively used in and about the prosecution of the business of such companies as common carriers, but no real estate of said corporations shall be exempted from taxation in the same manner, and on the same basis as other real estate is taxed, except roadbed, right of way, shops and buildings used exclusively in their business as common carriers, and whenever and so long as such law providing for the payment of a per centum on earnings shall be in force, that part of section 179 of this article

relating to assessment of railroad property shall cease to be in force.

SEC. 177. All improvements on land shall be assessed in accordance with section 179, but plowing shall not be considered as an improvement or add to the value of land for the purpose of assessment.

SEC. 178. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State or any county or other municipal corporation shall be a party.

SEC. 179. All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, town, village or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in this state shall be assessed by the state board of equalization at their actual value and such assessed valuation shall be apportioned to the counties, cities, towns, townships and districts in which said roads are located, as a basis for taxation of such property in proportion to the number of miles of railway laid in such counties, cities, towns, townships and districts.

SEC. 180. The Legislative Assembly may provide for the levy, collection and disposition of an annual poll tax of not more than one dollar and fifty cents ($1.50) on every male inhabitant of this state over twenty-one and under fifty years of age, except paupers, idots, insane persons and Indians not taxed.

SEC. 181. The Legislative Assembly shall pass all laws necessary to carry out the provisions of this article.

ARTICLE XII.

PUBLIC DEBT AND PUBLIC WORKS.

SEC. 182. The state may, to meet casual deficits or failure in the revenue, or in case of extraordinary emergencies, contract debts, but such debts shall never in the aggregate exceed the sum of two hundred thousand dollars, exclusive of what may be the debt of North Dakota at the time of the adoption of this Constitution. Every such debt shall be authorized by law for certain purposes to be definitely mentioned therein, and every such law shall provide for levying an annual tax sufficient to pay the interest semi-annually, and the principal within thirty years from the passage of such law, and shall specially appropriate the proceeds of such tax to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax discontinued until such debt, both principal and interest, shall have been fully paid. No debt in excess of the limit named shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war, or to provide for public defense in case of

threatened hostilities; but the issuing of new bonds to refund existing indebtedness, shall not be construed to be any part or portion of said two hundred thousand dollars.

SEC. 183. The debt of any county, township, town, school district or any other political subdivision, shall never exceed five (5) per centum upon the assessed value of the taxable property therein; *Provided*, That any incorporated city may, by a two-thirds vote, increase such indebtedness three (3) per centum on such assessed value beyond said five (5) per cent. limit. In estimating the indebtedness which a city, county, township, school district or any other political subdivision may incur, the entire amount of existing indebtedness, whether contracted prior or subsequent to the adoption of this constitution shall be included; *Provided, further*, That any incorporated city may become indebted in any amount not exceeding four (4) per centum on such assessed value without regard to the existing indebtedness of such city, for the purpose of constructing or purchasing water works for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, and for no other purpose whatever. All bonds or obligations in excess of the amount of indebtedness permitted by this constitution, given by any city, county, township, town, school district, or any other political subdivision, shall be void.

SEC. 184. Any city, county, township, town, school district or any other political subdivision incurring indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrepealable until such debt be paid.

SEC. 185. Neither the State nor any county, city, township, town, school district or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the State engage in any work of internal improvement unless authorized by a two-thirds vote of the people.

SEC. 186. No money shall be paid out of the state treasury except upon appropriation by law and on warrant drawn by the proper officer and no bills, claims, accounts or demands against the state, or any county or other political subdivision, shall be audited, allowed or paid until a full itemized statement in writing shall be filed with the officer or officers, whose duty it may be to audit the same.

SEC. 187. No bond or evidence of indebtedness of the state shall be valid unless the same shall have indorsed thereon a certi-

ficate, signed by the Auditor and Secretary of State showing that the bond or evidence of debt is issued pursuant to and is within the debt limit. No bond or evidence of debt of any county, or bond of any township or other political subdivision shall be valid unless the same have endorsed thereon a certificate signed by the county auditor, or other officer authorized by law to sign such certificate, stating that said bond, or evidence of debt, is issued pursuant to law and is within the debt limit.

ARTICLE XIII.

MILITIA.

SEC. 188. The milita of this State shall consist of all able-bodied male persons residing in the state, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or of this State. Persons whose religious tenets or conscientious scruples forbid them to bear arms shall not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

SEC. 189. The milita shall be enrolled, organized, uniformed, armed and disciplined in such a manner as shall be provided by law, not incompatible with the Constitution or laws of the United States.

SEC. 190. The Legislative Assembly shall provided by law for the establishment of volunteer organizations of the several arms of the service, which shall be classed as active militia; and no other organized body of armed men shall be permitted to perform military duty in this State except the army of the United States without the proclamation of the Governor of the State.

SEC. 191. All militia officers shall be appointed or elected in such a manner as the Legislative Assembly shall provide.

SEC. 192. The commissioned officers of the militia shall be commissioned by the Governor, and no commissioned officer shall be removed from office except by sentence of court martial, pursuant to law.

SEC. 193. The militia forces shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters, parades and elections of officers, and in going to and returning from the same.

ARTICLE XIV.

IMPEACHMENT AND REMOVAL FROM OFFICE.

SEC. 194. The House of Representatives shall have the sole power of impeachment. The concurrence of a majority of all members elected shall be necessary to an impeachment.

SEC. 195. All impeachments shall be tried by the senate. When sitting for that purposes the senators shall be upon oath or

affirmation to do justice according to the law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the Governor or Lieutenant Governor is on trial, the presiding judge of the supreme court shall preside.

SEC. 196. The Governor and other state and judicial officers, except county judges, justices of the peace, and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust, or profit under the state. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

SEC. 197. All officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law.

SEC. 198. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

SEC. 199. On trial of impeachment against the Governor, the Lieutenant Governor shall not act as a member of the court.

SEC. 200. No person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial.

SEC. 201. No person shall be liable to impeachment twice for the same offense.

ARTICLE XV.

FUTURE AMENDMENTS.

SEC. 202. Any amendment or amendments to this Constitution may be proposed in either house of the Legislative Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the Legislative Assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the Legislative Assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislative Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the Legislative Assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislative Assembly voting thereon, such amendment or amendments

shall become a part of the Constitution of this state. If two or more amendments shall be submitted at the same time they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

ARTICLE XVI.

COMPACT WITH THE UNITED STATES.

The following article shall be irrevocable without the consent of the United States and the people of this State.

SEC. 203. First. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

Second. The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without this state shall never be taxed at a higher rate than the lands belonging to residents of this state; that no taxes shall be imposed by this state on lands or property therein, belonging to, or which may hereafter be purchased by, the United States, or reserved for its use. But nothing in this article shall preclude this state from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person, a title thereto, by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any acts of congress containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such an extent, as is, or may be provided in the act of congress granting the same.

Third. In order that payment of the debts and liabilities contracted or incurred by and in behalf of the Territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirments of an act of congress approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states," the states of North Dakota and

South Dakota, by proceedings of a joint commission, duly appointed under said act, the sessions whereof were held at Bismarck in said State of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the Territory of Dakota which shall be assumed and paid by each of the States of North Dakota and South Dakota, respectively, to-wit:

This agreement shall take effect and be in force from and after the admission into the Union, as one of the United States of America, of either the State of North Dakota or the State of South Dakota.

The words "State of North Dakota" wherever used in this agreement, shall be taken to mean the Territory of North Dakota in case the State of South Dakota shall be admitted into the Union prior to the admission into the Union of the State of North Dakota; and the words "State of South Dakota," wherever used in this agreement, shall be taken to mean the Territory of South Dakota in case the State of North Dakota shall be admitted into the Union prior to the admission into the Union of the State of South Dakota.

The said State of North Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain Act of the Legislative Assembly of the Territory of Dakota, approved March 8, 1889, entitled "An Act to provide for the refunding of outstanding warrants drawn on the Capitol Building Fund."

The said State of South Dakota shall assume and pay all bonds issued by the Territory or Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota.

That is to say: The State of North Dakota shall assume and pay the following bonds and indebtedness, to-wit:

Bonds issued on account of the Hospital for Insane at Jamestown, North Dakota, the face aggregate of which is $266,000; also bonds issued on account of the North Dakota University at Grand Forks, North Dakota, the face aggregate of which is $96,700; also, bonds issued on account of the Penitentiary at Bismarck, North Dakota, the face aggregate of which is $93,600; also, refunding Capitol Building warrants dated April 1, 1889, $83,507.46.

And the State of South Dakota shall assume and pay the following bonds and indebtedness, to-wit:

Bonds issued on account of the Hospital for the Insane at Yankton, South Dakota, the face aggregate of which is $210,000; also, bonds issued on account of the School for Deaf Mutes, at

Sioux Falls, South Dakota, the face aggregate of which is $51,000; also, bonds issued on account of the University at Vermillion, South Dakota, the face aggregate of which is $75,000; also, bonds issued on account of the Penitentiary at Sioux Falls, South Dakota, the face aggregate of which is $94,300; also, bonds issued on account of the Agricultural College at Brookings, South Dakota, the face aggregate of which is $97,500; also, bonds issued on account of the Normal School at Madison, South Dakota, the face aggregate of which is $49,400; also, bonds issued on account of the School of Mines at Rapid City, South Dakota, the face aggregate of which is $33,000; also, bonds issued on account of the Reform School at Plankinton, South Dakota, the face aggregate of which is $30,000; also, bonds issued on account of the Normal School at Spearfish, South Dakota, the face aggregate of which is $25,000; also bonds issued on account of the Soldiers' Home at Hot Springs, South Dakota, the face aggregate of which is $45,000.

The States of North Dakota and South Dakota shall pay one-half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore or hereafter incurred on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

The State of South Dakota shall pay to the State of North Dakota $46,500, on account of the excess of Territorial appropriations for the permanent improvement of territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the territorial library, and in full settlement of unbalanced accounts, and of all claims against the territory, of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of Northern Pacific Railroad lands, and the payment of said amount shall discharge and exempt the State of South Dakota from all liability for or on account of the several matters hereinbefore referred to; nor shall either state be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the Territory of Dakota had such territory remained in existence, and which liability shall grow out of matters connected with any public institutions, grounds or buildings of the territory situated or located within the boundaries of the other state.

A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 9, 1889, and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each state shall be charged with one-half of all other

expenses of the territorial government during the same time. All moneys paid into the treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed state of North Dakota, shall be credited to the State of North Dakota; and all sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed State of South Dakota shall be credited to the State of South Dakota; except that any and all taxes on gross earnings paid into said treasury by railroad corporations, since the 8th day of March, 1889, based upon earnings of years prior to 1888, under and by virtue of the act of the Legislative Assembly of the Territory of Dakota, approved March 7, 1889, and entitled "An Act providing for the levy and collection of taxes upon property of railroad companies in this Territory," being Chapter 107 of the Session Laws of 1889, (that is, the part of such sums going to the Territory) shall be equally divided between the States of North Dakota and South Dakota, and all taxes heretofore or hereafter paid into said treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the territorial treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed State of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota; each state shall be credited also with all balances of appropriations made by the Seventeenth Legislative Assembly of the Territory of Dakota for the account of the public institutions, grounds or buildings situated within its limits, remaining unexpended on March 8, 1889. If there shall be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each state shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such state in excess of the receipts from counties, municipalities, railroad corporations or persons within the limits of said state, as provided in this article; and if there should be a surplus at the time of such final adjustment, each state shall be entitled to the amounts received from counties, municipalities, railroad corporations or persons within its limits over and above the amount charged it.

And the State of North Dakota hereby obligates itself to pay such part of the debts and liabilities of the Territory of Dakota as is declared by the foregoing agreement to be its proportion thereof, the same as if such proportion had been originally created by said State of North Dakota as its own debt or liability.

SEC. 204. Jurisdiction is ceded to the United States over the

military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina and Fort Totten, heretofore declared by the President of the United States; *Provided*, Legal process, civil and criminal, of this state, shall extend over such reservations in all cases in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

SEC. 205. The State of North Dakota hereby accepts the several grants of land granted by the United States to the State of North Dakota by an act of congress entitled "An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form Constitutions and state governments, and to be admitted into the Union on equal footing with the original states, and to make donations of public lands to such states," under the conditions and limitations therein mentioned; reserving the right however to apply to congress for modifications of said conditions and limitations in case of necessity.

ARTICLE XVII.

MISCELLANEOUS.

SEC. 206. The name of this state shall be "North Dakota." The State of North Dakota shall consist of all the territory included within the following boundaries, to-wit: Commencing at a point in the main channel of the Red River of the north, where the forty-ninth degree of north latitude crosses the same; thence south up the main channel of the same and along the boundary line of the State of Minnesota to a point where the Seventh Standard parallel intersects the same; thence west along said Seventh Standard parellel produced due west to a point where it intersects the twenty-seventh meridian of longitude west from Washington; thence north on said meridian to a point where it intersects the forty-ninth degree of north latitude; thence east along said line to place of beginning.

SEC. 207. The following described seal is hereby declared to be and hereby constituted the Great Seal of the State of North Dakota, to-wit: A tree in the open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left a bow crossed with three arrows, and an Indian on horseback pursuing a buffalo towards the setting sun; the foliage of the tree arched by a half circle of forty two stars, surrounded by the motto "Liberty and Union now and forever, one and inseparable;" the words "Great Seal" at the top; the words "State of North Dakota" at the bottom; "October 1st" on on the left and "1889" on the right. The seal to be two and one-half inches in diameter.

SEC. 208. The right of the debtor to enjoy the comforts and necessaries of life shall be recognized by wholesome laws, exempt-

ing from forced sale to all heads of families a homestead the value of which shall be limited and defined by law, and a reasonable amount of personal property; the kind and value shall be fixed by law. This section shall not be construed to prevent liens against the homestead for labor done and materials furnished in the improvement thereof, in such manner as may be prescribed by law.

SEC. 209. The labor of children under twelve years of age, shall be prohibited in mines, factories and workshops in this state.

SEC. 210. All flowing streams and natural water courses shall forever remain the property of the State for mining, irrigating and manufacturing purposes.

SEC. 211. Members of the Legislative Assembly and judicial department except such inferior officers as may be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm as the case may be) that I will support the Constitution of the United States and the Constitution of the State of North Dakota; and that I will faithfully discharge the duties of the office of ..... according to the best of my ability, so help me God," (if an oath), (under pains and penalties of perjury), if an affirmation, and no other oath, declaration, or test shall be required as a qualification for any office or public trust.

SEC. 212. The exchange of "black lists" between corporations shall be prohibited.

SEC. 213. The real and personal property of any woman in this State, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property and shall not be liable for the debts of her husband.

ARTICLE XVIII.

CONGRESSIONAL AND LEGISLATIVE APPORTIONMENT.

SEC. 214. Until otherwise provided by law, the member of the House of Representatives of the United States apportioned to this State, shall be elected at large.

Until otherwise provided by law, the Senatorial and Representative Districts shall be formed, and the senators and the representatives shall be apportioned as follows:

The First District shall consist of the townships of Walhalla, St. Joseph, Neche, Pembina, Bathgate, Carlisle, Joliet, Midland, Lincoln and Drayton, in the county of Pembina, and be entitled to one senator and two representatives.

The Second District shall consist of the townships of St. Thomas, Hamilton, Cavalier, Akra, Beauleau, Thingvalla, Gardar,

Park, Crystal, Elora and Lodema, in the county of Pembina, and be entitled to one senator and two representatives.

The Third District shall consist of the townships of Perth, Latona, Adams, Silvesta, Cleveland, Morton, Vesta, Tiber, Medford, Vernon, Golden, Lampton, Eden, Rushford, Kensington, Dundee, Ops, Prairie Center, Fertile, Park River and Glenwood, in the county of Walsh, and be entitled to one senator and two representatives.

The Fourth District shall consist of the townships of Forest River, Walsh Center, Grafton, Farmington, Ardock, Village of Ardock, Harrison, City of Grafton, Oakwood, Martin, Walshville, Pulaski, Ackton, Minto and St. Andrews, in the county of Walsh, and be entitled to one senator and three representatives.

The Fifth District shall consist of the townships of Gilby, Johnstown, Straban, Wheatfield, Hegton, Arvilla, Avon, Northwood, Lind, Grace, Larimore, and the city of Larimore, Elm Grove, Agnes, Inkster, Elkmount, Oakwood, Niagara, Moraine, Logan and Loretta in the county of Grand Forks, and be entitled to one senator and two representatives.

The Sixth District shall consist of the Third, Fourth, Fifth and Sixth wards of the city of Grand Forks, as now constituted, and the townships of Falconer, Harvey, Turtle River, Ferry, Rye, Blooming, Meckinock, Lakeville and Levant in the county of Grand Forks and be entitled to one senator and two representatives.

The Seventh District shall consist of the First and Second wards of the city of Grand Forks, as now constituted, and the townships of Grand Forks, Brenna, Oakville, Chester, Pleasant View, Fairfield, Allendale, Walle, Bentru, Americus, Michigan, Union and Washington, in the county of Grand Forks, and be entitled to one senator and two representatives.

The Eighth District shall consist of the county of Traill and be entitled to one senator and four representatives.

The Ninth District shall consist of the township of Fargo and the City of Fargo in the County of Cass and the fractional township number 139 in range 48, and be entitled to one senator and two representatives.

The Tenth District shall consist of the townships of Noble, Wiser, Harwood, Reed, Barnes, Stanley, Pleasant, Kenyon, Gardner, Berlin, Raymond, Mapleton, Warren, Norman, Elm River, Harmony, Durbin, Addison, Davenport, Casselton and the City of Casselton, in the County of Cass, and be entitled to one senator and three representatives.

The Eleventh District shall consist of the townships of Webster, Rush River, Hunter, Arthur, Amenia, Everest, Maple River, Leonard, Dows, Erie, Empire, Wheatland, Gill, Walburg, Watson, Page, Rich, Ayr, Buffalo, Howes, Eldred, Highland, Rochester,

Lake, Cornell, Tower, Hill, Clifton and Pontiac, in the County of Cass, and be entitled to one senator and three representatives.

The Twelfth District shall consist of the county of Richland and be entitled to one senator and three representatives.

The Thirteenth District shall consist of the county of Sargent and be entitled to one senator and two representatives.

The Fourteenth District shall consist of the county of Ransom and be entitled to one senator and two representatives.

The Fifteenth District shall consist of the county of Barnes and be entitled to one senator and two representatives.

The Sixteenth District shall consist of the counties of Steele and Griggs and be entitled to one senator and two representatives.

The Seventeenth District shall consist of the county of Nelson and be entitled to one senator and one representative.

The Eighteenth District shall consist of the county of Cavalier and be entitled to one senator and two representatives.

The Nineteenth District shall consist of the counties of Towner and Rolette and be entitled to one senator and one representative.

The Twentieth District shall consist of the counties of Benson and Pierce and be entitled to one senator and two representatives.

The Twenty-first District shall consist of the county of Ramsey and be entitled to one senator and two representatives.

The Twenty-second District shall consist of the counties of Eddy, Foster and Wells and be entitled one senator and two representatives.

The Twenty-third District shall consist of the county of Stutsman, and be entitled to one senator and two representatives.

The Twenty-fourth District shall consist of the county of LaMoure, and be entitled to one senator and one representative.

The Twenty-fifth District shall consist of the county of Dickey, and be entitled to one senator and two representatives.

The Twenty-sixth District shall consist of the counties of Emmons, McIntosh, Logan and Kidder, and be entitled to one senator and two representatives.

The Twenty-seventh District shall consist of the county of Burleigh, and be entitled to one senator and two representatives.

The Twenty-eighth District shall consist of the counties of Bottineau and McHenry and be entitled to one senator and one representative.

The Twenty-ninth District shall consist of the counties of Ward, McLean, and all the unorganized counties laying north of the Missouri river, and be entitled to one senator and one representative.

The Thirtieth District shall consist of the counties of Morton and Oliver, and be entitled to one senator and two representatives.

The Thirty-first District shall consist of the counties of Mercer, Stark and Billings and all the unorganized counties lying south of the Missouri river, and be entitled to one senator and one representative.

ARTICLE XIX.

PUBLIC INSTITUTIONS.

SEC. 215. The following public institutions of the State are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States, in the Act of Congress, approved February 22, 1889, to be disposed of and used in such manner as the Legislative Assembly may prescribe, subject to the limitations provided in the article on school and public lands contained in this Constitution.

First. The seat of government at the city of Bismarck in the county of Burleigh.

Second. The State University and the School of Mines at the city of Grand Forks, in the county of Grand Forks.

Third. The Agricultural College at the city of Fargo in the county of Cass.

Fourth. A State Normal School at the city of Valley City, in the county of Barnes; and the Legislative Assembly in apportioning the grant of eighty thousand acres of land for Normal schools made in the Act of Congress referred to shall grant to the said Normal School at Valley City as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.

Fifth. The Deaf and Dumb Asylum at the city of Devils Lake in the county of Ramsey.

Sixth. A State Reform School at the city of Mandan in the county of Morton.

Seventh. A State Normal School at the city of Mayville, in the county of Traill. And the Legislative Assembly in apportioning the grant of lands made by Congress, in the act aforesaid for State Normal Schools, shall assign thirty thousand acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.

Eighth. A State Hospital for the Insane and an Institution for the Feeble-Minded, in connection therewith, at the city of Jamestown in the county of Stutsman. And the Legislative Assembly shall appropriate twenty thousand acres of the grant of lands made by the act of Congress aforesaid for "Other Educational and Charitable Institutions" to the benefit and for the endowment of said institution.

SEC. 216. The following named public institutions are hereby permanently located as hereinafter provided, each to have so much

of the remaining grant of one hundred and seventy thousand acres of land made by the United States for "Other Educational and Charitable Institutions," as is allotted below, viz:

First. A Soldiers' Home, when located, or such other charitable institution as the Legislative Assembly may determine, at Lisbon, in the county of Ransom, with a grant of forty thousand acres of land.

Second. A Blind Asylum, or such other institution as the Legislative Assembly may determine, at such place in the county of Pembina as the qualified electors of said county may determine at an election to be held as prescribed by the Legislative Assembly, with a grant of thirty thousand acres.

Third. An Industrial School and School for Manual Training, or such other educational or charitable institution as the Legislative Assembly may provide, at the town of Ellendale in the county of Dickey, with a grant of forty thousand acres.

Fourth. A School of Forestry or such other institution as the Legislative Assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau, or Rollette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the Legislative Assembly.

Fifth. A scientific school, or such "other educational or charitable institution" as the Legislative Assembly may prescribe, at the city of Wahpeton, county of Richland, with a grant of forty thousand acres; *Provided*, That no other institution of a character similar to any one of those located by this article shall be established or maintained without a revision of this Constitution.

ARTICLE XX.

PROHIBITION.

To be submitted to a separate vote of the people as provided by the schedule and ordinance.

SEC. 217. No person, association or corporation shall within this State, manufacture for sale or gift, any intoxicating liquors and no person, association or corporation shall import any of the same for sale or gift, or keep or sell or offer the same for sale, or gift, barter or trade as a beverage. The Legislative Assembly shall by law prescribe regulations for the enforcement of the provisions of this article and shall thereby provide suitable penalties for the violation thereof.

SCHEDULE.

SECTION 1. That no inconvenience may arise from a change of territorial government to state government, it is declared that all writs, actions, prosecutions, claims and rights of individuals and bodies corporate shall continue as if no change of government had taken place, and all processes which may, before the organization of the judicial department under this Constitution, be

issued under the authority of the Territory of Dakota shall be as valid as if issued in the name of the State.

SEC. 2. All laws now in force in the Territory of Dakota, which are not repugnant to this Constitution, shall remain in force until they expire by their own limitations or be altered or repealed.

SEC. 3. All fines, penalties, forfeitures and escheats accuring to the Territory of Dakota shall accrue to the use of the states of North Dakota and South Dakota and may be sued for and recovered by either of said states as necessity may require.

SEC. 4. All recognizances, bonds, obligations or other undertakings heretofore taken, or which may be taken before the organization of the judicial department under this Constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the state; all bonds, obligations or other undertakings executed to this territory, or to any officer in his official capacity, shall pass over to the proper state authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly; all criminal prosecutions and penal actions which have arisen, or may arise before the organization of the judicial department, under this Constitution, or which shall then be pending, may be prosecuted to judgment and execution in the name of the state.

SEC. 5. All property, real and personal, and credits, claims and choses in action belonging to the Territory of Dakota at the time of the adoption of this Constitution, shall be vested in and become the property of the States of North Dakota and South Dakota.

SEC. 6. Whenever any two of the judges of the Supreme court of the State, elected under the provisions of this Constitution shall have qualified in their offices, the causes then pending in the Supreme court of the Territory on appeal or writ of error from the district courts of any county or subdivision within the limits of this State, and the papers, records and proceedings of said court shall pass into the jurisdiction and possession of the Supreme court of the State, except as otherwise provided in the enabling act of Congress, and until so superseded the Supreme court of the Territory and the judges thereof shall continue, with like powers and jurisdiction, as if this Constitution had not been adopted. Whenever the judge of the district court of any district elected under the provisions of this Constitution shall have qualified in his office, the several causes then pending in the district court of the Territory within any county in such district, and the records, papers and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the district court of the State for such county, except as provided in the enabling act of Congress, and until the district courts of this Territory shall be superseded in the manner aforesaid, the said district courts and the judges thereof shall continue with the same jurisdiction and power to be exercised in the same judicial districts respectively as heretofore constituted under the laws of the Territory.

SEC. 7. Until otherwise provided by law, the seals now in use in the supreme and district courts of this Territory are hereby declared to be the seals of the supreme and district courts respectively of the State.

SEC. 8. Whenever this Constitution shall go into effect, the books, records and papers, and proceedings of the probate court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the jurisdiction and possession of the county court of the same county, and the said county court shall proceed to final decree or judgment, order or other determination in the said several matters and causes as the said probate court might have done if this Constitution had not been adopted. And until the election and qualification of the judges of the county courts provided for in this Constitution, the probate judges shall act as the judges of the county courts within their respective counties, and the seal of the probate court in each county shall be the seal of the county court therein, until the said court shall have procured a proper seal.

SEC. 9. The terms "probate court" or "probate judge" whenever occuring in the statutes of the territory shall, after this Constitution goes into effect, be held to apply to the county court or county judge.

SEC. 10. All territorial, county and precinct officers, who may be in office at the time this Constitution takes effect, whether holding their offices under the authority of the United States or of the Territory, shall hold and exercise their respective offices, and perform the duties thereof as prescribed in this Constitution, until their successors shall be elected and qualified in accordance with the provisions of this Constitution, and official bonds of all such officers shall continue in full force and effect as though this Constitution had not been adopted; and such officers for their term of service, under this Constitution, shall receive the same salaries and compensation as is by this Constitution, or by the laws of the territory, provided for like officers; *Provided*, That the county and precinct officers shall hold their offices for the term for which they were elected. There shall be elected in each organized county in this State, at the election to be held for the ratification of this Constitution, a clerk of the district court, who shall hold his office under said election until his successor is duly elected and qualified. The judges of the district court shall have power to appoint states attorneys in any organized county where no such attorneys have been elected, which appointment shall continue until the general election to be held in 1890, and until his successor is elected and qualified.

SEC. 11. This Constitution shall take effect and be in full force immediately upon the admission of the territory as a state.

SEC. 12. Immediately upon the adjournment of this Convention the Governor of the Territory, or in case of his absence or failure to act, the Secretary of the Territory, or in case of his absence or failure to act, the President of the Constitutional Convention shall issue a proclamation, which shall be published and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election by the people on the first Tuesday in October, 1889, of all the state and district officers created and made elective by this Constitution. This Constitution shall be submitted for adoption or rejection at said election to a vote of the electors qualified by the laws of this territory to vote at all elections. At the election provided for herein the qualified voters shall vote directly for or against this Constitution and for or against the article separately submitted.

SEC. 13. The board of commissioners of the several counties shall thereupon order such election for said day, and shall cause notice thereof to be given "for the period of 20 days in the manner provided by law." Every qualified elector of the territory, at the date of said election, shall be entitled to vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general elections, and the returns for all state and district officers, and members of the Legislative Assembly, shall be made to the canvassing board hereinafter provided for.

SEC. 14. The Governor, Secretary and Chief Justice or a majority of them, shall constitute a board of canvassers to canvass the vote of such election for all state and district officers and members of the Legislative Assembly. The said board shall assemble at the seat of government of the Territory on the fifteenth day after the day of such election (or on the following day if such day falls on Sunday), and proceed to canvass the votes on the adoption of this Constitution and for all State and district officers and members of the Legislative Assembly in the manner provided by the laws of the Territory for canvassing the vote for Delegate to Congress, and they shall issue certificates of election to the persons found to be elected to said offices severally, and shall make and file with the Secretary of the Territory an abstract certified by them, of the number of votes cast for or against the adoption of the Constitution, and for each person for each of said offices and of the total number of votes cast in each county.

SEC. 15. All officers elected at such election shall, within sixty days after the date of the executive proclamation admitting the State of North Dakota

into the Union, take the oath required by this Constitution, and give the same bond required by the law of the Territory to be given in case of like officers of the Territory and districts, and shall thereupon enter upon the duties of their respective offices; but the Legislative Assembly may require by law all such officers to give other or further bonds as a condition of their continuance in office.

SEC. 16. The judges of the district court who shall be elected at the election herein provided for shall hold their offices until the first Monday in January, 1893, and until their successors are elected and qualified. All other state officers, except judges of the supreme court, who shall be elected at the election herein provided for, shall hold their offices until the first Monday in January, 1891, and until their successors are elected and qualified. Until otherwise provided by law the judges of the supreme court shall receive for their services the salary of four thousand dollars per annum, payable quarterly; and the district judges shall receive for their services the salary of three thousand dollars per annum, payable quarterly.

SEC. 17. The Governor-elect of the state immediately upon his qualifying and entering upon the duties of his office shall issue his proclamation convening the Legislative Assembly of the State at the seat of government, on a day to be named in said proclamation, and which shall not be less than fifteen nor more than forty days after the date of such proclamation. And said Legislative Assembly after organizing shall proceed to elect two senators of the United States for the State of North Dakota; and at said election the two persons who shall receive a majority of all the votes cast by the said senators and representatives shall be elected such United States Senators. And the presiding officers of the senate and house of representatives shall each certify the election to the Governor and Secretary of the State of North Dakota; and the Governor and Secretary of State shall certify the elections of such senators as provided by law.

SEC. 18. At the election herein provided for there shall be elected a Representative to the Fifty-first Congress of the United States, by the electors of the state at large.

SEC. 19. It is hereby made the duty of the Legislative Assembly at its first session to provide for the payment of all debts and indebtedness authorized to be incurred by the Constitutional Convention of North Dakota, which shall remain unpaid after the appropriation made by Congress for the same shall have been exhausted.

SEC. 20. There shall be submitted at the same election at which this Constitution is submitted for rejection or adoption, Article 20 entitled "prohibition" and persons who desire to vote for said article shall have written or printed on their ballots "for prohibition," and all persons desiring to vote against said article shall have written or printed on their ballots "against prohibition." If it shall appear according to the returns herein provided for that a majority of all the votes cast at said election for and against prohibition are for prohibition, then said Article 20 shall be and form a part of this Constitution and be in full force and effect as such from the date of the admission of this state into the Union. But if a majority of said votes shall appear according to said returns to be against prohibition, then said Article 20 shall be null and void, and shall not be a part of this Constitution.

SEC. 21. The agreement made by the Joint Commission of the Constitutional Conventions of North Dakota and South Dakota concerning the records, books and archives of the Territory of Dakota, is hereby ratified and confirmed; which agreement is in the words following: That is to say—

The following books, records and archives of the Territory of Dakota shall be the property of North Dakota, to-wit: All records, books and archives in the offices of the Governor and Secretary of the Territory (except records of Articles of Incorporation of Domestic Corporations, returns of election of Delegates to the Constitutional Convention of 1889 for South Dakota, returns of elections held under the so called Local Option Law, in counties within the

limits of South Dakota, bonds of Notaries Public appointed for counties within the limits of South Dakota, papers relating to the organization of counties situate within the limits of South Dakota, all which records and archives are a part of the records and archives of said Secretary's office; excepting also, census returns from counties situate within the limits of South Dakota and papers relating to requisitions issued upon the application of officers of counties situate within the limits of South Dakota, all which are a part of the records and archives of said Governor's office). And the following records, books and archives shall also be the property of the State of North Dakota, to-wit:

Vouchers in the office or custody of the Auditor of this Territory relating to expenditures on account of public institutions, grounds or buildings situate within the limits of North Dakota. One Warrant Register in the office of the Treasurer of this territory—being a record of warrants issued under and by virtue of Chapter 24 of the laws enacted by the Eighteenth Legislative Assembly of Dakota Territory All letters, receipts and vouchers in the same office now filed by counties and pertaining to counties within the limits of North Dakota. Paid and canceled coupons in the same office representing interest on bonds of South Dakota which said State of North Dakota is to assume and pay. Reports of gross earnings of the year 1888 in the same office, made by corporations operating lines of railroads situated wholly or mainly within the limits of North Dakota. Records and papers of the office of the Public Examiner of the Second District of the territory. Records and papers of the office of the District Board of Agriculture. Records and papers in the office of the Board of Pharmacy of the District of North Dakota.

All records, books and archives of the Territory of Dakota which it is not herein agreed shall be the property of North Dakota, shall be the property of South Dakota.

The following books shall be copied and the copies shall be the property of North Dakota and the cost of such copies shall be borne equally by said States of North Dakota and South Dakota. That is to say:

Appropriation Ledger for years ending November 1889-90—one volume.
The Auditor's Current Warrant Register—one volume.
Insurance Record for 1889—one volume.
Treasurer's Cash Book—"D."
Assessment Ledger—"B."
Dakota Territory Bond Register—one volume.
Treasurer's Current Ledger—one volume.

The originals of the foregoing volumes which are to be copied shall at any time after such copying shall have been completed, be delivered on demand to the proper authorities of the State of South Dakota.

All other records, books and archives which it is hereby agreed shall be the property of South Dakota, shall remain at the Capitol of North Dakota until demanded by the Legislature of the State of South Dakota and until the State of North Dakota shall have had a reasonable time after such demand is made to provide copies or abstracts of such portions thereof as the said State of North Dakota may desire to have copies or abstracts of.

The State of South Dakota may also provide copies or abstracts of such records, books and archives, which it is agreed shall be the property of North Dakota, as said State of South Dakota shall desire to have copies or abstracts of.

The expense of all copies or abstracts of records, books and archives which it is herein agreed may be made, shall be borne equally by said two states.

SEC. 22. Should the counties containing lands which form a part of the grant of lands made by Congress to the Northern Pacific railroad company be compelled by law to refund moneys paid for such lands or any of them by purchasers thereof at tax sales thereof, based upon taxes illegally levied upon said lands, then and in that case the State of North Dakota shall appropriate the sum of $25,000, or so much thereof as may be necessary to reimburse said

counties for the amount so received from said illegal tax sales and paid by said counties into the treasury of Dakota Territory.

SEC. 23. This Constitution shall after its enrollment be signed by the President of this Convention and the Chief Clerk thereof and such delegates as desire to sign the same, whereupon it shall be deposited in the office of the Secretary of the Territory, where it may be signed at any time by any delegate who shall be prevented from signing the same for any reasons at the time of the adjournment of this Convention.

SEC. 24. In case the territorial officers of the Territory of Dakota, or any of them who are now required by law to report to the Governor of the Territory, annually or biennially, shall prepare and publish such reports covering the transactions of their offices up to the time of the admission of the State of North Dakota into the Union, the Legislative Assembly shall make sufficient appropriations to pay one-half of the cost of such publication.

SEC. 25. The Governor and Secretary of the Territory are hereby authorized to make arrangements for the meeting of the first Legislative Assembly, and the inauguration of the State government.

SEC. 26. The Legislative Assembly shall provide for the editing, and for the publication, in an independent volume, of this Constitution, as soon as it shall take effect, and whenever it shall be altered or amended, and shall cause to be published in the same volume the Declaration of Independence, the Constitution of the United States and the Enabling Act.

Done at Bismarck, Dakota, in open Convention, this 17th day of August, A. D. 1889.

JOHN G. HAMILTON,
Chief Clerk.

F. B. FANCHER,
President.

STANDING COMMITTEES

OF THE

NORTH DAKOTA CONSTITUTIONAL CONVENTION

Printing—Roger Allin, chairman, Walsh; C. P. Parsons, Rolette; C. V. Brown, Wells; J. B. Gayton, Emmons; W. J. Clapp, Cass.

Reporting and Publication—J. F. Selby, chairman, Traill; Andrew Blewett, Stutsman; J. Wellwood, Barnes; O. G. Meacham, Foster; A. S. Parsons, Morton.

Accounts and Expenses—O. G. Meacham, chairman, Foster; E. W. Paulson, Traill; A. W. Hoyt, Morton; B. R. Glick, Cavalier; M. F. Hegge, Traill; Edward Lohnes, Ramsey; Elmer Elliott, Barnes.

Preamble and Bill of Rights—R. N. Stevens, chairman, Ransom; Elmer Elliott, Barnes; A. D. Flemington, Dickey; S. H. Moer, LaMoure; Joseph Powles, Cavalier; M. V. Linwell, Nelson; J. E. Carland, Burleigh; E. W. Chaffee, Cass; Ezra Turner, Bottineau.

Legislative Department—E. A. Williams, chairman, Burleigh; Roger Allin, Walsh; W. E. Purcell, Richland; Addison Leach, Cass; E. S. Rolfe, Benson; R. B. Richardson, Pembina; R. N. Stevens, Ransom; Andrew Slotten, Richland; J. W. Scott, Barnes; Knud Nomland, Traill; A. F. Appleton, Pembina; William Budge, Grand Forks; W. H. Rowe, Dickey.

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Militia—P. McHugh, chairman, Cavalier; G. H. Fay, McIntosh; John Almen, Walsh; Andrew Blewett, Stutsman; J. H. Mathews, Grand Forks.

County and Township Organizations—A. F. Appleton, chairman, Pembina; T. W. Bean, Nelson; Enos Gray, Cass; E. S. Rolfe, Benson; J. McBride, Cavalier; A. Sandager, Ransom; John Shuman, Sargent; E. W. Chaffee, Cass; M. V. Linwell, Grand Forks.

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Corporations Other than Municipal—M. N. Johnson, chairman, Nelson; W. E. Purcell, Richland; E. D. Wallace, Steele; Jacob Lowell, Cass; L. D. Bartlett, Dickey; S. H. Moer, LaMoure; James Bell, Walsh; J. L. Colton, Ward; A. S. Parsons, Morton.

Miscellaneous Subjects—W. E. Purcell, chairman, Richland; J. E. Carland, Burleigh; A. W. Hoyt, Morton; C. V. Brown, Wells; E. W. Chaffee, Cass; A. P. Haugen, Grand Forks; M. K. Marrinan, Walsh.

Schedule—W. S. Lauder, chairman, Richland; H. F. Miller, Cass; J. B. Gayton, Emmons; John Almen, Walsh; V. B. Noble, Bottineau; E. A. Williams, Burleigh; J. D. McKenzie, Sargent.

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Temperance—A. P. Haugen, chairman, Grand Forks; L. D. Bartlett, Dickey; R. M. Pollock, Cass; A. Blewett, Stutsman; Ezra Turner, Bottineau.

Revision and Adjustment—David Bartlett, chairman, Griggs; O. G. Meacham, Foster; J. E. Carland, Burleigh; E. W. Camp, Stutsman; V. B. Noble, Bottineau.

Impeachment and Rewoval from Office—Ezra Turner, chairman, Bottineau; M. V. Linwell, Nelson; R. B. Richardson, Pembina; E. W. Paulson, Traill; A. D. Flemington, Dickey; C. V. Brown, Wells; J. F. O'Brien, Ramsey.

VOTE ON THE CONSTITUTION.

Counties.	For.	Against.
Barnes	1,673	8
Burleigh	1,083	2
Benson	523	45
Bottineau	450	116
Billings	57	1
Cass	4,049	31
Cavalier	684	269
Dickey	1,471	26
Eddy	381	13
Emmons	462	2
Foster	333	4
Grand Forks	687	1,930
Griggs	351	150
Kidder	340	3
LaMoure	818	11
Logan	90	.....
Morton	924	21
McHenry	257	7
McLean	264	.....
McIntosh	394	.....
Mercer	84	1
Nelson	127	660
Oliver	47	30
Pembina	1,762	830
Pierce	221	1
Richland	1,409	251
Ransom	1,110	23
Ramsey	810	231
Rolette	435	10
Stark	610	.....
Stutsman	1,334	47
Steele	241	361
Sargent	973	177
Traill	1,411	462
Towner	284	93
Walsh	606	2,248
Wells	336	.....
Ward	350	43
Total	27,441	8,107
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