

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. McGillicuddy 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 Dakota 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 would 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 members 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 be 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, McGillicuddy, 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 certified 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 inserted 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 Bismarek, 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