

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.

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#### 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 Dakota, 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 understanding 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 Capitol. 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 charge 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.

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F I F T H D A Y.

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 institutions have them—running up I don't believe to exceed \$10,000 or \$12,-