

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.

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,-

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

0. 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 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 transcribing, 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 Dakota, 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 respective 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 rejection.

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 far 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.