

## THIRTEENTH DAY.

BISMARCK, *Monday, July 29, 1889.*

The Commission met at 10 o'clock a. m., but as the Chairmen were not ready to report, no session was had.

The Commission met at 2 o'clock p. m., but as the Chairmen were not ready to report the Commission adjourned to meet at 10 o'clock a. m., July 30th.

## FOURTEENTH DAY.

BISMARCK, *Tuesday, July 30, 1889.*

The Commission was called to order at 10:30 a. m., with Mr. KELLAM in the Chair.

Mr. KELLAM. Gentlemen you will come to order.

The Clerk will call the roll.

All members were present except Messrs. Spalding, Purcell and Scott of the North Dakota Commission. All members of the South Dakota Commission were present.

Mr. KELLAM. Gentlemen, my recollection is that the business of the Commission stands about in this shape: There is a pending resolution—a resolution adopted by the Commission, asking the Committee on Records to make a report, and it was also referred by the Commission to Mr. CAMP and myself to prepare an outline of the agreement, so far as the work of the Commission had progressed, which shall be taken up. If there is no objection we will hear the agreement so far as it is made, read.

Mr. CALDWELL. I suppose any member who, during the read-

ing, discovers anything that is not precisely clear to him, it will be in order to interrogate in regard to it.

Mr. KELLAM. I think that is proper. Mr. CAMP, will you read it.

Mr. PRICE. It seems to me we will not make any headway reading this over. It is prepared, and each member can read it for himself. It will have to be submitted again when the other members come, I suppose.

Mr. ELLIOTT. Yes, I don't see what headway we can make now.

Mr. BROTT. I think we can better dispose of the records now.

Mr. KELLAM. Two copies are made of this agreement; we can pass it around. Our members have not seen it, except two or three. Each man can read it, or read it in groups.

Mr. ELLIOTT. I think it would be better so. Get a better understanding of it.

Mr. KELLAM. Gentlemen, as many as are not in favor of now presenting and reading the Agreement will manifest it by saying aye. Motion is lost. As many as are in favor of now hearing the report of the committee appointed to make a list of records, will say aye. Contrary, no. Motion is carried, and report of such committee will be the order of business.

Mr. CALDWELL then read the following report:

BISMARCK, D. T., July 29, 1889.

*Gentlemen of the Joint Commission:*

Your sub-committee to whom was referred the duty of making a list of such records in the several Territorial offices as in its judgment were necessary for the respective States to have in their possession, in order that the officers thereof could commence business, beg leave to report as follows:

In our judgment the records referred to, are to be found in the offices of the Auditor and the Treasurer.

In the Auditor's office there is the Current Appropriation Ledger, which contains not only the appropriations made by the last Legislature, but also the balances of previous appropriations, and it therefore shows the condition of every account up to date. There is also in said office a Warrant Register, in which the more recent warrants, covering a period of probably three years, have been entered in numerical sequence. This book may be said to be the Journal of the financial transactions of the office, and is the book of original entry. In addition to showing the number, date, payee and purpose of each warrant, it shows also its date of cancellation. In the Insurance department of the Auditor's office there is a record showing the names and residences of agents appointed by the several companies in the different judicial districts of the Territory, and, as undoubtedly each State will be required to know who is

authorized to represent any particular company, the transcription of this book would be necessary even though its application can cover only two months of statehood existence, as it expires December 31st. From the same department your committee would also recommend that there be procured a list of Insurance companies entitled to do business in the several judicial districts of the respective States. This information is nowhere collated in such form that transcription would supply the desired information. It is our judgment that copies of the volumes referred to above would enable the Auditor's office of either State to inaugurate business in its several departments.

In the Treasurer's office there are the following records which we would recommend should be transcribed: The Ledger showing the receipts and expenditures of the several bond funds and the general funds of the Territory. Also the ledger showing the charges against the several counties by reason of the assessments made upon property therein during recent years, and showing likewise the payments made by said counties upon such assessments. Also one cash book showing detailed receipts and expenditures during recent years. Also one general bond register, giving the purpose for which bonds have been issued, with their dates, denominations, etc.

HARVEY HARRIS, } Committee.  
E. W. CALDWELL, }

Mr. NEILL. I move the report of the committee be adopted.  
The motion was seconded.

Mr. HARRIS. As that resolution under which this committee was acting merely called for a statement as to the books which were absolutely necessary to be copied to enable the States to begin business, we have stated the books there that would be necessary to be copied.

Mr. KELLAM. What do you mean by the motion to adopt the report?

Mr. NEILL. I thought it meant the recommendation that these especial books be copied, but it does not, so my motion is hardly in order with the report; but I meant, we decide these books should be divided. I move that the books reported by this committee as necessary to the beginning of the respective States be copied preliminary to that time.

Mr. ELLIOTT. You offer that as an amendment to the motion made by Mr. KELLAM at our last meeting; you know there was a motion made to this effect at our last meeting, and in order to vote intelligently upon that motion the committee was reappointed to report to this Commission just what books were necessary.

Mr. KELLAM. My recollection of the matter is as outlined by Mr. ELLIOTT, that the resolution was offered here consisting of part of which was mine and part Mr. CAMP'S, and that the further

consideration of your resolution was postponed to the next session; in the meantime it was referred back to the committee consisting of Messrs. HARRIS and CALDWELL to furnish information that would enable the Commission to decide what action to take on your resolution.

Mr. ELLIOTT. That was the object exactly.

Mr. NEILL. In so far as the report goes the motion just made may be used as an amendment to that report, or by itself.

Mr. CAMP. I suggest, in order to get it before us, that we take the former resolution from the table.

Mr. NEILL. Well, I withdraw my motion.

Mr. KELLAM. The Secretary will read the resolution.

Mr. McCLARREN here read the resolution as follows:

*Resolved*, That the committee be requested to make examination and report such books and records as it will be necessary for each State to have to inaugurate its existence and business as a State, and that provision be made by this Commission for copying such books and records; one State to have original and the other copies, and the expense of copying the same to be borne equally by the two States. All records pertaining exclusively to institutions in South Dakota shall be delivered to South Dakota. All records pertaining exclusively to institutions in North Dakota shall be left in North Dakota. All other records shall be grouped in lots so that the records of no one office shall be divided, and each committee shall select alternately; the right of first selection to be determined by lot. And the first Legislatures of the two States may provide for copying any records to be sent to the other state, and the expense thereof shall be borne by each State equally.

Mr. CAMP. What record is there of the disposition of that?

Mr. KELLAM. My recollection is that some one made a motion that the further consideration be postponed until the next session.

Mr. CAMP. This being the session that takes the place of the Monday morning session, the resolution which is read is now before us for consideration.

Mr. CALDWELL. Mr. CHAIRMAN: I believe it would be better to divide this resolution, and I will read such of it as I will move its adoption. It is this:

*Resolved*, That the committee be requested to make examination, and report such books and records as shall be necessary for each State to have to inaugurate its business as a State, and that provision be made by this Commission for copying such books and records, one State to have the original and the other the copies; the expense to be borne equally by the two States.

I would move the adoption.

Mr. NEILL. Why not add to it the report of this Commission pertaining to the records?

Mr. KELLAM. And that the books and records be as follows:

Mr. NEILL. In so far as that resolution was postponed to get this information, I think now is the time to amend the resolution by incorporating the new matter.

Mr. CALDWELL. I would offer this as a substitute for so much of this resolution that "Provision be made by this Commission for copying such books and records as those which are specified in the report of the sub-committee; one State to have the originals and the other the copies; the expense of copying the same to be borne equally by the two States."

Mr. PRICE. Well, I support that motion.

Mr. KELLAM. Gentlemen, listen to the reading of the motion.

Mr. GOODNER reads: "Provision be made by this Commission for copying such books and records as those which are specified in the report of the sub-committee; one State to have the originals and the other the copies, the expense of copying the same to be borne equally by the two States."

Mr. KELLAM. You move the adoption? If you are sure the Stenographers have that. Gentlemen, Mr. CALDWELL offers as a substitute the resolution just read by the Stenographer, and moves the adoption; Mr. PRICE seconds the motion. Are you ready for the question?

Question; question!

The CHAIRMAN. As many as are of the opinion that the motion should prevail, say aye; contrary, no. Carried. Gentlemen, let us have this record appear. This motion was taken under the roll of the adoption of this motion. The Clerk will call the roll.

Camp, yes; Purcell, absent; Sandager, yes; Kellam, yes; McGillicuddy, yes.

Caldwell, yes; Brott, yes; Price, yes; Spalding, absent; Scott, absent; Elliott, yes; Harris, yes; Griggs, yes.

Mr. KELLAM. Under the rule the motion prevails.

Mr. CALDWELL. Then, Mr. CHAIRMAN, I move the adoption of the second paragraph of this resolution as originally introduced, as follows: "All records pertaining exclusively to institutions in South Dakota shall be delivered to South Dakota. All records pertaining exclusively to institutions in North Dakota shall be left in North Dakota. All other records shall be grouped in lots so the records of no one office shall be divided, (except as

herein provided for) and each committee shall select alternately—the right of first selection to be determined by lot.” I have introduced in there, Mr. CHAIRMAN, the limitation “except as herein provided for,” because the resolution by its own terms provided for division of the records from pertaining specifically to any particular institution.

Mr. NEILL. I second the motion.

Mr. CALDWELL. I would say, Mr. CHAIRMAN, I make that for the purpose of indicating to the Committee on Agreement, the general idea of the Commission and, of course, that it will be modified so as to make it come in as a plank in the agreement.

Mr. KELLAM. That is the thing I was speaking of.

Mr. CALDWELL. It would be better, at least, to have it understood that this sub-committee on preparation of the agreement should have the authority to change any of these documents so as to make them tally.

Mr. KELLAM. That is the understanding. That is the general plan of disposition of the records.

Mr. PRICE. I don't understand this thing yet, I want that read again.

Mr. HARRIS. All records pertaining exclusively to institutions in South Dakota shall be delivered to South Dakota. All records pertaining to institutions in North Dakota shall be left in North Dakota. All other records shall be grouped in lots so the records of no one office shall be divided, and each committee shall select alternately; the right of first selection to be determined by lot.

Mr. PRICE. Then do I understand that the records of the Secretary's office shall be grouped together; all the books and papers, one committee should select one lot. And the Auditor's shall be grouped in one lot?

Mr. CALDWELL. Yes, that can be done. The idea was by arranging in two lots as near equal as could be—

Mr. PRICE. This with reference to miscellaneous matter?

Mr. CALDWELL. Yes, just simply miscellaneous matter—the files.

Mr. HARRIS. Then the question is, if that refers only to miscellaneous stuff, what are you going to do with this list of records and material which we divided the other day—would it be necessary to copy them some time?

Mr. CALDWELL. There is a third plank in this resolution

that refers to that. That will come up for consideration when we consider the third paragraph.

Mr. MCGILLYCUDDY. "Except as hereafter provided."

Mr. ELLIOTT. Then, as I understand that resolution, South Dakota would take the books and records of one office, North Dakota take another, and so on?

Mr. CALDWELL. That is the idea.

Mr. KELLAM. Let me suggest that this is an important matter. Only one of us should talk at a time so the Stenographers can get a report. It might be necessary to refer to this discussion by Mr. CAMP and myself to get the agreement, and these Stenographers can't get any report of the discussion when there are two or three talking at a time.

Mr. HARRIS. Then, if I understand the situation, this part of the resolution does not refer to any such matter as we consider will be necessary to be copied at some future time by action of the Legislators of the respective States. Only to that matter which it will not be necessary to copy any time.

Mr. CALDWELL. Exactly. That is attempted to be covered by that portion of that resolution.

Mr. CAMP. I think the language, then, is too broad.

Mr. PRICE. I think so.

Mr. HARRIS. It says, "All other records shall be grouped in lots——"

Mr. CAMP. Let's see. If you read the third paragraph is it conflicting?

Mr. NEILL. It seems to me there is a certain number of books here that will have to be taken out if we cut on this resolution. Now, the other part of this resolution should be taken up first, it seems to me.

Mr. KELLAM. Mr. HARRIS, will you be kind enough to read the second and third paragraph of that?

Mr. HARRIS. "All records pertaining exclusively to institutions in South Dakota shall be delivered to South Dakota. All records pertaining exclusively to institutions in North Dakota shall be left in North Dakota. All other records shall be grouped in lots so the records of no one office shall be divided, and each committee shall select alternately, the right of first selection to be determined by lot. And the first Legislatures of the two States may provide for copying any records to be sent to the other State, and the expense thereof shall be borne by each State equally."

Now, Mr. CHAIRMAN, in my judgment the meaning of that resolution is just this; that the records not included in the first clause, which we have already passed and approved, shall be divided into lots so no one office shall be divided; and the intention of the resolution would seem to be they shall be taken to the respective States; and then that when the Legislatures of the respective States have made provision for their copying, such records as remain in North Dakota, if the State of South Dakota wishes, copies shall be made in North Dakota; and such records as were South should be copied there.

Mr. KELLAM. That was my understanding.

Mr. ELLIOTT. That is my understanding.

Mr. KELLAM. My understanding was that these records be assorted into two lots; first, those that need to be copied so each State shall have a copy of such records and books as are necessary to inaugurate its State government. This being disposed of, then that all the other records, those in the Secretary's office, those in the Treasurer's office and those in the Auditor's, and all other records, should be disposed of as indicated by that resolution, a part of them going—part remaining in the north and part going south. Then the third provision was that if either Legislature desired copies of the books and records it would so indicate and such copies would be made, each State bearing one-half of the expense. I think that is right. What's your idea Mr. CAMP?

Mr. CAMP. That is my idea, except with this modification, that records pertaining exclusively to North Dakota—

Mr. KELLAM. Yes. Have you a definite idea, Mr. CALDWELL?

Mr. CALDWELL. No, sir.

Mr. PRICE. I don't see how it can be anything else.

Mr. HARRIS. I think, Mr. PRICE and I agree on one thing, that all necessary to be copied should be copied now, and as I stated last Saturday, that is my view. That being my view I am not in favor, if any of these records that will be necessary to be copied, should leave North Dakota until such copies are made. I am not in favor of dividing these records that it may be necessary to copy and sending them away in different lots. They are here in this building; they are in files there, well taken care of, and I am not in favor of dividing them up and shipping them all over the country until they are copied. I am perfectly willing we should make provision for the copying of these records, and that



either the originals or copies shall go to South Dakota, I am not particular which. But if we don't make provision for the copying of these records which are necessary to be copied, then I want them to remain in this building. North Dakota can act as trustee to South Dakota. As I said this does not seem fair to South Dakota, but I certainly would not be in favor of dividing them up and sending them out before being copied.

Mr. PRICE. It seems to me there is force in what Mr. HARRIS says, that if these records are sent down to South Dakota without being copied, you don't know whether they are going to be placed in a vault or not. Of course, we would have a temporary Capital fight, perhaps, so we will not have a Capitol building for a good while, and no safe place for the preservation of these records. I think this is one of the strongest arguments advanced for having these records copied now. If they are not you have the risk of fire.

Mr. CALDWELL. Mr. CHAIRMAN: The point made by Mr. HARRIS in regard to the difficulty of guaranteeing the preservation of these records, is certainly a very strong one, and it is so strong that it has so modified my views to this extent, that it would seem to me that the desirable way of arranging the matter would be that we shall dispose of these records to the extent that we shall determine here the title of the respective States to particular records: all of them to remain here, however, in the offices of the Capitol until such time as North Dakota may have opportunity to make copies of such of those as we may distribute by lot to South Dakota; and that when this time has expired that South Dakota may send here and take these records to the Capital of South Dakota. That would seem to be fair. Of course, anybody can see what dangers the records might be subjected to.

Mr. HARRIS. No doubt the first Legislature of South Dakota will make provision for taking care of that property.

Mr. PRICE. I take it from Mr. CALDWELL that he admits, practically, that the respective States will desire these records to be copied hereafter.

Mr. CALDWELL. Well, we can't tell.

Mr. PRICE. I take this position: That this Commission is, perhaps, in as good a position to see what records ought to be copied, as 150 new men in the Legislature will—I think a great deal better; and if it is a fact, and that is what I have insisted on all the time, it was only a question of time when we would have to

copy all these records, I can't see any reason for delaying and leaving it to the Legislatures who, perhaps, would make a great deal worse bargain than we. My idea is those records ought not to be divided until—I am not in sympathy with this plan to give one part to one State and the other part of the records to the other. It seems to me they ought to be kept together; and if the gentlemen all agree these records were going to be copied sometime in the future, I don't know why we can't provide now for their being copied.

Mr. CALDWELL. I suppose I am as well acquainted with the character of the records of the Territory as any gentleman of the Commission, both from the fact I have been Auditor, and have made an examination of the records, and I have had more or less to do with it in the previous years, and I could not to-day determine definitely what ought to be copied and what not. There is no line that can be drawn between what would be desirable as the record of a State, and that which would be desirable merely as a matter of curiosity—merely a matter of history, so I would not want at this time to undertake to say for the State of South Dakota what of these records should be copied. It would be impossible to fix any standard which would determine the matter for that reason. It seems to me, so far as the copying is concerned, we should limit this to simply those records which it is absolutely necessary that the respective officers of either State should have in order to commence the business of a State. If we get away from that rule, then it is a matter of individual opinion as to what ought to be copied.

Mr. KELLAM. Gentlemen, if this was a matter no one was interested in but myself, of South Dakota, I would have a very clearly defined notion of what I would do; and the only thing that prevents me expressing myself officially in favor of the plan is the possible criticism that might follow it from our people in South Dakota. My judgment is that a business like way of disposing of this question is to leave all the records here except such as are already disposed of—such as would be necessary to put South Dakota in a position to commence; leave all the records here, where they are properly taken care of, properly classified and in fire-proof vaults, with the understanding and agreement that if a copy should be—I would not limit it to the first Legislature for the very reason that the first Legislature of each State, particularly of South Dakota, have no permanent Capital; we

will not have any proper offices for any of our State departments; we will have no place to put our records for some time to come. Indeed, I would leave all records in the Capitol of North Dakota except as we have already provided for, with the agreement that if at any time within a stated term—I would not limit it to the first Legislature—I don't think that would be fair to South Dakota—

Mr. NEILL. Make it ten years.

Mr. KELLAM. I would make it long enough so in the meantime places would be provided for each office; then South Dakota at any time within a stated time might indicate by legislative action what copies of any or all of the papers it wanted, and that the expense of making copies should be divided equally between the two States. Now, there is this further fact. Of course, we have been talking of large amounts because large amounts were involved; but every \$1,000 that has to be immediately paid by either of these two States increases embarrassment of the States in starting out on their existence. Each State has got to go into State existence without any money and in debt. Now, if we tie each State of North Dakota and South Dakota to the necessity of incurring the expense of copying these records by the first Legislature, then if that Legislature is composed of honest or prudent men, they will be very careful about how many records they order copied. Now, I would extend that time—I would not care for ten years. I want that left for South Dakota to say itself, when it will be in a condition to take care of them; that if it wanted part of the records it could say so; if it wanted the balance in three years from that time it could say so. Now, I say again, I am very much inclined to think that if we make this agreement that there would be numerous people down there who would say, "Why didn't you bring half of those records down here?" and it would be difficult to explain to a great many men. But I believe it is the business way of disposing of this thing, and if the records were mine I would not move anything except what was absolutely necessary to be moved until I had a place to put it, and keep it.

Mr. CALDWELL. Mr. CHAIRMAN. I don't believe that the average citizen of South Dakota would be satisfied to give up entirely all the records of the Territory which have accumulated up to this time. Indeed, the language of section twenty-eight of the Schedule and Ordinance of the Constitution of 1885 shows that the people down there have felt that they, being the older section of

the Territory, were entitled to the possession of the originals; but there, of course, in face of this is the fact of there being no place for the caring of them. So it would seem to me that every feeling of fairness and of sentiment in regard to these matters would be satisfied if it could be said to these people "You have half the original records, but you cannot have possession of them until such time as there is a fixed place for their care and custody." And if it could be arranged with this Commission that while all the original records should be allowed to remain here, yet by an arrangement as may be agreed upon here they may be regarded as the property of South Dakota, that it would then satisfy all these feelings of which I speak.

Mr. KELLAM. I have no objection to that. I think that would be proper.

Mr. CAMP. As a sort of a preliminary motion I suggest something of this kind: This commission shall agree upon a division of the records, but all records which are to go to South Dakota shall remain at the Capital of North Dakota until the Legislature of South Dakota shall demand them, and gives North Dakota reasonable time to copy, if North Dakota chooses to copy.

Mr. CALDWELL. That seems to me to be—

Mr. CAMP. That is those pertaining exclusively to South Dakota shall remain here until the Legislature indicates it is ready to receive them.

Mr. CALDWELL. I think North Dakota should have reasonable time to copy.

Mr. PRICE. There seems to be no provision for payment.

Mr. CAMP. That is merely provisional. We will make provision.

Mr. KELLAM. Mr. HARRIS is preparing something. Let us read that in connection.

Mr. MCGILLYCUDDY. They shall remain here—don't say any particular time.

Mr. CAMP. Mr. HARRIS has drawn a resolution to supplement the preliminary resolution I presented to you a few moments ago; the whole would read like this: "This Commission shall agree upon a division of the records, but all records that are to go to South Dakota shall remain at the Capital of North Dakota until the Legislature of South Dakota demands them and gives North Dakota reasonable time to copy such as North Dakota chooses. All records pertaining exclusively to institutions in South Dakota

shall be the property of South Dakota. All records pertaining exclusively to institutions in North Dakota shall be the property of North Dakota. All other records, vouchers, etc., not divided as above, shall be separated into two lots, so the records of no one office shall be divided, and each State shall have one lot. South Dakota may demand copies of any records which are the property of North Dakota. All expense of copying records shall be borne equally by North Dakota and South Dakota. It shall be decided by lot which State shall have the originals of the records and which this Commission provides for the copying of."

Mr. NEILL. Does that cover the whole ground?

Mr. CAMP. Well, I think so.

Mr. BROTT. I move we do adopt that.

Mr. CALDWELL. I second the motion.

Mr. BROTT. That is in addition to those recommended to be copied.

Mr. CALDWELL. That is what —

Mr. GRIGGS. There is no time specified.

Mr. CAMP. The Legislature may at any time, at a session of the Legislature of South Dakota, may demand them and North Dakota has time to copy, if North Dakota chooses to copy.

Mr. CALDWELL. The Legislature may within ten years demand them.

Mr. KELLAM. Ought we not to put in a definite time?

Mr. CALDWELL. They are to remain here until the Legislature of South Dakota demands them.

Mr. HARRIS. Then giving North Dakota reasonable time to do the work.

Mr. GRIGGS. There is no definite time as when this arrangement would stop.

Mr. CAMP. I suppose we are perfectly willing to keep these records until South Dakota demands them.

Mr. GRIGGS. Certainly, if it is fifty years.

Mr. CAMP. They will probably demand the most of them right away.

Mr. KELLAM. We will have to arrange with North Dakota, as trustee for the two Dakotas.

Mr. CAMP. "All records pertaining exclusively to institutions in South Dakota shall be the property of South Dakota; all records pertaining exclusively to institutions in North Dakota

shall be the property of North Dakota. All other records, vouchers—

Mr. CALDWELL. Make that "all records and files."

Mr. CAMP. "And files." I will just insert that.

Mr. GRIGGS. That is all left to the Legislature.

Mr. KELLAM. Left to the Legislature to make copies; but if any man of South Dakota should want a copy of an article of incorporation he would apply to the Secretary and pay when he gets it.

Mr. PRICE. Suppose some officer elected to the State Government does not want to be compelled to furnish a paper without pay, and under this arrangement we would have to pay North Dakota.

Mr. KELLAM. Suppose it becomes necessary for the Treasurer of South Dakota to have a copy of some record up here, and he should apply to the Treasurer of North Dakota for it, he ought not to be compelled to pay the ordinary fees.

Mr. GRIGGS. They will want fees, and the officers of South Dakota will want copies.

Mr. PRICE. I don't think we could make an agreement to bind an officer in regulating his fees.

Mr. CALDWELL. Furthermore, it is the case, even under the Territorial Government, that public officers, county officers for instance, want records that are made in some Territorial office, and the Territorial officer charges that county officer just the same as he would charge an individual. And it is, also, frequently the case that one officer will want a certified record out of another office; as, for instance, the Auditor may sometimes want copies of the appropriation bill, and it has been the case that the Auditor had to take and procure them from the Secretary and pay out of the contingent fund of the office the same fee.

Mr. KELLAM. They are all in the family, and it don't make any difference, for it was still in the Territorial fund. But the situation with these records is this: The records really belong to South Dakota, and a South Dakota officer having charge of the department in South Dakota wants a copy of some paper up here; that officer, if he had to pay for it, it would come out of South Dakota. I don't know, as PRICE suggested, how we might cover that amount. Now, the records of the Treasurer's office, if they belong to South Dakota—still if some South Dakota man wanted a copy he would apply to the Treasurer of North Dakota and pay for it—

that fee would go to the officer who had this in charge, and it would look to me that the fees would compensate him for making what few records would be required by the officers of the State of South Dakota.

Mr. GRIGGS. Excuse me, I meant if South Dakota officers write to North Dakota officers for any article, then these North Dakota officers would make his charge as a matter of course, and who is going to pay for them? The South Dakota officer would pay it, and then render the account to the Legislature for it.

Mr. PRICE. There was something occurred to me, I don't know whether there is anything in it or not.

Mr. GRIGGS. An officer might object, might refuse to give a copy, and I think there ought to be some provision to compel him.

Mr. CALDWELL. Every officer is compelled to furnish a certified copy of any record in his office.

Mr. GRIGGS. In other words, if we keep these records here, I want South Dakota to have a chance to get any copy she may desire, and we share the expense. I don't want any loop holes.

Mr. PRICE. Well, my suggestion is this: Supposing at the time we close our Territorial existence and these records are allowed to remain in North Dakota, and your section assumes Statehood; and suppose a case is pending in court and I want a certified copy of articles of incorporation, something of that kind; certified to by the Treasurer, or Secretary of North Dakota; would that be legal evidence in the State of South Dakota? You certainly are not the proper custodian of the records of South Dakota.

Mr. GRIGGS. That is my idea.

Mr. CALDWELL. I think it would be if we arrange in regard to the division; we recite in the testimony accompanying the certificate, and it seems to me —

Mr. PRICE. I think it would be no better certificate than any individual would make.

Mr. CALDWELL. It certainly would not be if there was no legal arrangement—one which the courts were required to take judicial notice of; but such an arrangement as this is part of the law of the land. Furthermore, what sort of a certificate could a man make, getting a copy from a transcribed record?

Mr. PRICE. Certified copy.

Mr. CALDWELL. Certainly, a certified copy of a transcription.

Mr. CAMP. There is a way I can suggest to meet the question Capt. GRIGGS raises, and the gentlemen on the other side. This is what I would suggest: That South Dakota may designate one or more individuals, men, who shall have access to all records in the Capitol here, which belong to South Dakota, and make his own copies of them.

Mr. PRICE. My understanding is that any citizen has access to the public records.

Mr. CAMP. Well, not quite —

Mr. PRICE. That is so long as he doesn't interfere with the officer he may.

Mr. CAMP. He cannot get in to make copies.

Mr. PRICE. Indeed he can.

Mr. CAMP. They should designate the men who should make the copy.

Mr. GRIGGS. The men designated should make a reasonable charge.

Mr. CALDWELL. Let me ask this question: As a matter of law can the Constitution give any, or the Schedule and Ordinance of the Constitution go on and declare that a certain thing would be evidence, different from that which the State declares to be evidence of that fact? This Schedule and Ordinance could declare that certified copies of the Territorial records made by the State officers who succeeded to their custody should be considered as the same as similar certificates made by the Territorial officers now required to make them under the statutes of the Territory; but to incorporate such a provision as that into the Schedule and Ordinance—of course the courts of the Territory would have to take judicial cognizance of it. Even if the certificate should show a copy made from a transcription of the record instead of the original, would seem to be competent evidence.

Mr. CAMP. No doubt.

Mr. HARRIS. I think Mr. KELLAM and Mr. CAMP could put that in shape.

Mr. CALDWELL. It would raise the point made by Mr. PRICE.

Mr. PRICE. Yes.

Mr. CAMP. Perhaps we better put this over until afternoon.

Mr. KELLAM. I don't want to do anything unless we know what we are doing. There seems to be a sort of miscellaneous confusion of ideas on this motion.



Mr. CALDWELL. It would, according to my——

Mr. BROTT. I move we leave this to the two chairmen.

Mr. KELLAM. How would it do to let this go over until the afternoon session? It looks to me that there is a little lack of harmony in the South Dakota Commission.

Mr. HARRIS. My idea is that we know what it relates to; if we pass this, you and Mr. CAMP in drawing the agreement can put in——

Mr. KELLAM. I think, Mr. CAMP, we should agree upon some definite plan, and then if the language of the resolution needs changing, we would perhaps take the responsibility of that.

Mr. CAMP. The Commission must decide first what particular record is going to a particular place.

Mr. CALDWELL. Yes, that is true.

Mr. KELLAM. We have got to go to work and actually determine what belongs to South Dakota before you and I can get to work.

Mr. CAMP. Perhaps, Mr. KELLAM, you can make some suggestion that would harmonize them.

Mr. KELLAM. Yes—well, I can't just now.

Mr. GRIGGS. Well, it is now dinner time.

Mr. KELLAM. Then there ought to be—as you suggest—suppose in the division of these records the records of the Secretary should become the property of South Dakota; of all the corporations, probably four-fifths of them are South Dakota corporations. When North Dakota wants its copy it would only desire to copy, perhaps, such records as regarded institutions in the north, or it might prefer to distribute the records. On the other hand, suppose they go to the State of North Dakota; now North Dakota really has no interest in five-sixths of those articles of incorporations, but South Dakota would probably want a transcript, and North Dakota might say, we don't want to pay half.

Mr. ELLIOTT. Is it necessary that we at this time determine what records go to South Dakota and what remain in North Dakota?

Mr. PRICE. I think we should leave it to the Legislature.

Mr. CALDWELL. No, we are required to make disposition of the records.

Mr. CAMP. Agree upon a disposition.

Mr. CALDWELL. Yes—the matter of transcription left to the Legislature, but the——

Mr. MCGILLYCUDDY. Disposition of the originals?

Mr. CALDWELL. Yes.

Mr. PRICE. How would this be: We have decided just what books and papers—how would it be to leave the whole, the rest, to the Legislature; to the Legislature and let them appoint a joint commission to determine what they will want and give them full power to settle the thing. They will have to appoint a commission to come here.

Mr. MCGILLYCUDDY. What are we here for?

Mr. PRICE. That is what I have been trying to find out.

Mr. NEILL. I came here to make disposition of these records and we want to finish it up.

Mr. PRICE. That was my idea from the start, we ought to make disposition of the records, and provide for copies for the new State.

Mr. CALDWELL. Providing copies is not part of the disposition.

Mr. PRICE. I don't think the people of South Dakota will smile upon us very much if we make North Dakota the trustee for us.

Mr. CAMP. Let them be here subject to your call—the Legislature can call for them at any time.

Mr. NEILL. As soon as you get a house to put them in.

Mr. MCGILLYCUDDY. The bill says they shall remain here, and just as soon as South Dakota indicates they have a place for the records they can take them.

Mr. PRICE. The Legislature will undoubtedly provide for copies, and have to send a Commission here, and probably would be at a larger expense than at this time.

Mr. ELLIOTT. The question is as to who shall saddle the responsibility.

Mr. PRICE. I am willing to take one-fourth part of it.

Mr. CAMP. One-fourteenth perhaps.

Mr. PRICE. Yes, one-fourteenth.

Mr. MCGILLYCUDDY. It strikes me there will be a vault provided in South Dakota so South Dakota may take its share of the records when the State Government opens up, and copies such as South Dakota requires to be made.

Mr. PRICE. What's to interfere about having it done now?

Mr. MCGILLYCUDDY. Copying a large amount of records is a question to great many minds as to whether it will be necessary;

whether the Legislature will approve our action and pay for the work. I would not take the contract and pay for these records. They ought to get five times as much as it was worth. I would not take the responsibility.

Mr. PRICE. I guess there would be no one afraid to take the contract.

Mr. MCGILLYCUDDY. Want a large margin on it.

Mr. PRICE. I would take my chances at ten cents a folio, and take the chances of getting the money out of the Legislature.

Mr. MCGILLYCUDDY. There isn't anything in the Omnibus Bill that provides for this Commission incurring any expense.

Mr. PRICE. If that is true we have no right to have these copies made at all.

Mr. MCGILLYCUDDY. There isn't any provision for it, but as it is we will provide for it.

Mr. PRICE. There are some things we have got to have.

Mr. MCGILLYCUDDY. It is a question whether a copy of all the other papers are necessary.

Mr. KELLAM. This seems to me to cover about the ground. Read this; take it and adjust it: "This Commission shall agree upon a division of all records, papers, files and books not already provided to be copied, in manner following, to-wit: All records and files pertaining exclusively to institutions in South Dakota shall be the property of South Dakota, and all records and files pertaining exclusively to institutions in North Dakota shall be the property of North Dakota. All other records, etc., not provided to be copied or divided as above shall be divided and grouped into two lots, as nearly of equal importance and value as possible, but so that the records of no office shall be divided by such grouping. Each State to have one of such two groups, to be determined by lot by this Commission. All records shall remain at the Capital of North Dakota. South Dakota may at any time take possession of such of the records, files, etc., as under this agreement becomes the property of South Dakota, giving North Dakota reasonable time to make copies or abstracts thereof. If either State requires copies or abstracts of the records which under this agreement go to the other State, the expense thereof shall be borne equally by the two States. It shall also be determined by lot which State shall take the originals and which the copies of such records as are arranged by this Commission to be copied." Does that omit anything?

Mr. CALDWELL. I don't believe it does. I believe that covers everything. Just to show how our ideas had followed along on the same plan after such discussion has been had, I will read such part of my resolution as I had prepared.

*Resolved*, That the Territorial records, the transcription of which has not been provided for by this Commission, shall be disposed of as follows: Such records and files as belong to either State particularly shall be allotted to such State; and such records as are of general application to the Territory at large shall be grouped in two lots to be determined by this Commission. But the records which are thus disposed of shall remain at the Capital of North Dakota, the successors of the office now in charge, with the power of trustee of the State of South Dakota, so far as the records are concerned.

That is merely preliminary. I would move the adoption of the plan suggested by Major KELLAM, just read.

Mr. GRIGGS. I move we adjourn until 3 o'clock.

Mr. PRICE. I second the motion.

Mr. ELLIOTT. 2 o'clock; make it 2 o'clock.

Mr. KELLAM. Will there probably be a convention of your men this afternoon.

Mr. CAMP. Well, there ought to be.

Mr. KELLAM. What is your judgment as to time? There is no use adjourning until 2 o'clock if you are sure you could not get here.

Mr. CAMP. We have got to be here.

Mr. KELLAM. I suppose we understand, while we have got it in our mind, we can dispose of it.

Mr. GRIGGS. I guess we better adjourn to 2 o'clock.

Mr. CAMP. I guess we better let everything else go.

Mr. KELLAM. I am sure we can dispose of that matter in a very few minutes—we have had it on our minds.

The motion to adjourn was seconded and carried, and the Commission adjourned until 2 o'clock p. m.

#### A F T E R N O O N S E S S I O N .

The Commission was called to order at 2 o'clock with Mr. KELLAM in the Chair.

All members of the Joint Commission were present.

Mr. KELLAM. When we adjourned the matter of public records was before the Commission.

Mr. SCOTT. What progress have you made?

Mr. KELLAM. It is very difficult to tell.

Mr. CAMP. Might have the resolution read.

Mr. KELLAM. Perhaps it would be well to state that we discussed the matter in a general way through the forenoon, and finally the proposition which is now being called for, was written as covering, I think, the drift of the sentiment. But nothing was determined. The Clerk will read. It is not in the form of a resolution, but a memorandum.

The Clerk read the resolution.

Mr. KELLAM. That, perhaps, needs this explanation to such of you as were not here. The matter was left to a committee consisting of Messrs. HARRIS and CALDWELL to report to this Commission the books that seemed to be necessary and indispensable for the two States to initiate their State existence, and they reported such books as were necessary; and this Commission then agreed that we would provide for the copying of those books, one State to have the original and one the copy. Then we have this proposition for disposition of the balance of the records.

Mr. CAMP. This provides that South Dakota may have copies of records left in North Dakota.

Mr. KELLAM. No, I think not, only that if either State requires copies of records—

Mr. CAMP. It leaves it implied.

Mr. KELLAM. I think the proposition reads something like this: If either State requires records it may go to the other State and have them, giving them time to copy—each State paying one-half of the expense. Gentlemen, there is really nothing pending before the Commission, that is not in the form of a resolution.

Mr. SCOTT. Two lots been made?

Mr. CALDWELL. Mr. HARRIS and myself were to make up the lots.

Mr. SCOTT. Under this resolution one State can require the other to make complete record of anything that remains in its possession. Then it is not at all probable that either State would desire copies of records pertaining exclusively to institutions in the other State.

Mr. CALDWELL. No.

Mr. GRIGGS. If they should at any time want any particular articles, they could send and get them.

Mr. KELLAM. The thought is to leave that to the States themselves, hereafter.

Mr. GRIGGS. That seems to be very fair; the records remain

here until such time as North Dakota has time to make a copy of them.

Mr. KELLAM. It has seemed to us from the South that while there is no real tangible advantage to North Dakota in such a disposition, the apparent advantage is to North Dakota. But it is a fact we have no place in South Dakota where the records, even those coming to us, would be as safely kept as here.

Mr. SCOTT. Then there is no provision made; we keep every one of the records contained in the lots.

Mr. KELLAM. Those are divided; part going as the property of one State, and the other of the other.

Mr. SCOTT. I think that is proper because it would be an enormous amount of work to copy everything. Now this resolution provides just as I thought it did, that is that the State of South Dakota can ask North Dakota to make copies of everything included in that lot and shall pay half of the expense; and the State of North Dakota can ask South Dakota to make copies of everything they have in that lot and they shall pay half the expense. I don't believe—I don't think that anything should be provided for the copying of any of these records that are not considered of enough importance to divide.

Mr. CAMP. They are divided.

Mr. KELLAM. How would you prefer to have each one take the records?

Mr. SCOTT. Let them pay for them, because it may be possible that some one of the Legislatures, one of the two States, may ask for a complete copy of all these records. That is going to cost \$20,000 or \$30,000 to do it. I don't believe we should leave such a thing as that open.

Mr. CAMP. Our Legislature is just as liable to do it as theirs.

Mr. SCOTT. I know if one does, the other will come in.

Mr. KELLAM. Do you think we could make any provision here that would preclude the Legislatures —

Mr. SCOTT. No; but if our Legislature saw fit to make a copy of what you have got, let them pay for it. And if your Legislature asks for copies let them pay for it.

Mr. PURCELL. It may be necessary, Mr. SCOTT—these records are put in files or lots, and it may be some very important record is in the lot going to South Dakota that we might need, and it may be necessary for us to have a copy of that; the chances are just as much in our favor as in South Dakota. My view was

to copy the whole thing now in lieu of making lots, each party paying half the expenses.

Mr. GRIGGS. Mr. SCOTT's amendment would be all right; it might save some expense. If each party pays what they ask for, it is just as fair for the one as the other.

Mr. KELLAM. That proposition, it seems to me, would result in injustice to one side or the other. In this other case, as Mr. PURCELL says, it is just as fair for one as the other.

Mr. PURCELL. It may be some very important matter goes to South Dakota. We may have to copy all—they may not need to copy.

Mr. SCOTT. We want to determine what we pay for if we copy.

Mr. CALDWELL. The other side would be very careful what they copied when they pay half the expense. If the proposition were that one side should make a selection with regard to copying, and the other pay the whole thing, you would see the force of Mr. SCOTT's observation.

Mr. PURCELL. Then the liability is as great on one side as the other, and it is fair to presume that as much caution would be used on one side as the other.

Mr. SCOTT. No one would throw away money to get even with the other.

Mr. PRICE. I think what ought to be copied, I am in favor of copying now.

Mr. PURCELL. He presumes it may be——

Mr. SPALDING. I think a large number of the records here are of no use to anybody.

Mr. CALDWELL. Never would be.

Mr. SPALDING. Many of no use to any part of the Territory, and it would be of no use for us to copy those records relating to corporations in South Dakota, and South Dakota would have no use for records relating to corporations in North Dakota, and a good many things in the same way.

Mr. GRIGGS. If one Legislature orders copies the opposite Legislature would retaliate.

Mr. PURCELL. It would not be any worse in that case than if we should copy them all, each bearing one-half the expense.

Mr. GRIGGS. I am speaking now of Mr. SCOTT's amendment that each part pay for its own copying.

Mr. SPALDING. That would be all right if these records

were going to be divided exactly; and if separated accordingly to the office they belong to, according to the set of books they belong in so as to preserve the unity of the different sets of records—when we do it this way we make the other do half the work.

Mr. CAMP. I am not sure the Legislature is going to order a full copy of the Legislature's bill books for 1889.

Mr. GRIGGS. You don't know what the Legislature will do.

Mr. SPALDING. They will have it on their own responsibility, not ours.

Mr. KELLAM. We of the south are willing to leave the records here for the reason that we are not prepared to take care of them now. They are safe here, in fire proof vaults. Now, suppose we make the division and we take our records down there this fall; we have no place to put them. We could do it, of course, and such would be regarded as fair, if we wanted to do it. Make an agreement to leave them here for the next five years: Our election this fall is temporarily on the Capital question and it may be two or three, four or five years before we have a permanent Capital.

Mr. SANDAGER. I think we better leave it to the Legislature.

Mr. PURCELL. The necessity may be just as great.

Mr. KELLAM. It doesn't matter to me—it could be an advantage to North Dakota to keep the records here.

Mr. SCOTT. No, I think that it would——

Mr. KELLAM. I think it was a generous proposition on our part.

Mr. CAMP. It strikes me it is impossible for us to speculate upon the future extravagance of the Legislature.

Mr. SPALDING. It may be some years——

Mr. KELLAM. I think it is very doubtful about what number——

Mr. CALDWELL. Mr. CHAIRMAN: I move the adoption of this resolution or memorandum as presented by Mr. KELLAM, and that it be reported to the committee, or Chairmen of the respective delegations, together with such expressions as they have heard here regarding the views of the Commission, and they be requested to incorporate it into a formal agreement regarding the distribution of these records.

Mr. CAMP. Now it strikes me we have not got far enough with such resolution——



Mr. KELLAM. I suggest, Mr. CALDWELL, that you limit your motion to the adoption of the plan outlined here.

Mr. CALDWELL. Very well, I will move the adoption of the memorandum as read.

Mr. ELLIOTT. I second the motion.

Mr. KELLAM. Gentlemen you have heard the motion, are you ready for the question? The Clerk will call the roll.

Camp, yes; Griggs, no; Harris, no; Purcell, yes; Sandager, yes; Scott, no; Spalding, yes; Kellam, yes; McGillicuddy, yes; Caldwell, yes; Brott, yes; Elliott, yes; Price, no.

Mr. PRICE explained his vote as follows: I believe, as has already been decided by this Commission heretofore, that we have an absolute right to provide for the copying of all these records; and, for the further reason that I think these records ought not to be separated, and that the records made during the Territorial existence ought to be kept in one place. And also, for the further reason that I think it is inevitable that copies of all these records or the great majority of them, will be required by the respective States later on, and that they can be provided at this time at less expense to the people of the Territory than to refer it to the Legislatures of the States. And for the further reasons that I believe that this resolution, as a whole, is contrary to the spirit of the Omnibus Bill.

Mr. NEILL voted yes.

Mr. PURCELL. As I understand, this resolution provides the records shall remain here through the Territorial existence.

Mr. PRICE. I think what records have been made during the Territorial existence ought to remain either in South Dakota or North Dakota, and not be separated.

Mr. KELLAM. The Chair understands under the rule that the motion is carried.

Mr. GRIGGS. I think it is a mistake—in some things right.

Mr. PURCELL. We will have to copy—

Mr. GRIGGS. If you refer it to the Legislature you know what they will do—they will copy everything.

Mr. SPALDING. If they want to take the responsibility of it let them do it. But there is copying here amounting to \$15,000 or \$20,000. Let somebody who wants to take the responsibility take it.

Mr. CALDWELL. Let it be done by appropriation to pay for it.

Mr. SCOTT. We have greater responsibility than the Legislature if we have the power to keep the Legislature from doing it.

Mr. KELLAM. I don't understand this Commission can tie the future Legislatures with regard to copying, or anything else. There might not be any necessity for copying; but the Legislature may provide for three or a dozen copies. We can't put an injunction upon the Legislature.

Mr. SCOTT. That is correct. Should we get up a provision that the State wanting a copy should pay for it?

Mr. KELLAM. The Legislature could very easily undo it.

Mr. SCOTT. They would not be able to do it.

Mr. KELLAM. From the time this Commission becomes defunct the Legislature is omnipotent.

Mr. PURCELL. I could see an advantage to that in case we had the first selection of the records, but I can't see that it makes any difference.

Mr. SCOTT. I do, because I am very well satisfied that if one of the Legislatures call for a copy the other will also do the same.

Mr. CALDWELL. It is scarcely conceivable that any Legislature would attempt to punish another Legislature by putting an expense upon it when it would have to pay half the expense.

Mr. PURCELL. Equally as great.

Mr. SCOTT. No. If South Dakota had a copy of all the records and we could get that at half the cost to ourselves we would do it.

Mr. GRIGGS. That is it exactly.

Mr. SCOTT. I am in favor of copying them—I am not in favor of adopting this proposition: in case either State desires copies of the records let them have them made and pay for them themselves.

Mr. PURCELL. It may be necessary for us in making this arrangement that we have to pay it all.

Mr. SCOTT. That would be only right on the basis we propose to settle on; settle by drawing lots.

Mr. HARRIS. I believe there is nothing before the House. We decided this morning that copies should be made of certain records in the Treasurer's office and Auditor's office, and it is still undecided as to who has the original and who is to take the copies. That is a matter, I suppose, should come before us now as well as any time.

Mr. CALDWELL. Might be well to defer it until we deter-

mine which side takes the Auditor's and Treasurer's office, and of course, the other party would take the copy.

Mr. PRICE. This is the resolution as I understand it: We shall draw to see who shall take the Auditor's office and the Treasurer's office.

Mr. CALDWELL. Yes.

Mr. ELLIOTT. Why not just as well fix that matter now? Let us draw lots to see who has the first choice.

Mr. PRICE. There is to be two lots. We might draw lots to see who would have the first choice.

Mr. CALDWELL. Yes.

Mr. KELLAM. We could not very well do it until the lots were made.

Mr. PRICE. I don't know why we couldn't if the lots were made.

Mr. PURCELL. You could not draw until the lots were made. Be all right to draw and make the lots up afterwards.

Mr. PRICE. Now, gentlemen, it is necessary to divide the records in some of the offices.

Mr. CALDWELL. Only so far as pertains to public institutions.

Mr. PRICE. Here's the Treasurer's office and the Secretary's office.

Mr. CALDWELL. The Governor's office and the Commissioner of Immigration.

Mr. PRICE. Well, there is nothing in those offices.

Mr. ELLIOTT. Well, if we can't do any more on this we might hear the report of the Committee on Military.

Mr. CALDWELL. They are just consulting.

Mr. CALDWELL. Mr. CHAIRMAN: Your Committee to whom was referred the matter of dividing the several offices of the Territory into lots would report that they would recommend: That lot one shall consist of the records, etc., in the office of the Secretary and the office of the Governor; and that lot two shall embrace the records of all other public offices of the Territory.

Mr. KELLAM. Gentlemen, you have heard the report of the Committee on Division?

Mr. ELLIOTT. Mr. CHAIRMAN: I move the report of the Committee be adopted.

Mr. SCOTT. I move the adoption of the report.

Mr. KELLAM. Gentlemen, the question is upon the adoption

of the report of Mr. CALDWELL and Mr. HARRIS you have just listened to. The Clerk will call the roll.

All the members voted in the affirmative, except Mr. SPALDING, who was absent.

Mr. KELLAM. Gentlemen, under the rule the motion is carried.

Mr. CALDWELL. I would move you now, Mr. CHAIRMAN, that two pieces of paper of the same size, upon one of which shall be marked "One"—

Mr. ELLIOTT. That is all right, go ahead.

Mr. CALDWELL. And upon the other shall be marked "two," shall be put in a hat and that Mr. HAYDEN be blindfolded and draw from said hat one of said papers; and that the number thereupon shall be the selection of North Dakota. That the number shall indicate the order of North Dakota's selection.

Mr. GRIGGS. Why not make the balance——

Mr. KELLAM. His groups are numbered.

Mr. CALDWELL. This way, upon one of the papers shall be marked "North Dakota" and on one "South Dakota," and whichever number he draws shall indicate the selection—shall have the first choice.

Mr. PURCELL. I second the motion.

Mr. KELLAM. Gentlemen, you have heard the motion of Mr. CALDWELL. Are you ready for the question?

Question. Question.

Mr. KELLAM. Mr. HAYDEN, there are two pieces of paper, one marked "North Dakota" and one marked "South Dakota," and if he draws "North Dakota," then North Dakota has first choice; if "South Dakota," then South Dakota has first choice.

The Clerk will call the roll.

All the members voted in the affirmative, except Mr. SPALDING, who was absent.

The two papers were placed in a hat by Mr. McCLARREN, Clerk of the South Dakota Commission and Mr. HAYDEN, blindfolded, drew one paper from the hat, which on examination had "North Dakota" on it, entitling North Dakota to the first choice.

Mr. CAMP. North Dakota chooses lot No. 1, consisting of the records of the Secretary and Governor.

Mr. CALDWELL. Oh! I was in hopes it was the other way.

Mr. KELLAM. What is next?

Mr. HAYDEN. The balance of the resolution, who shall take the copies and who the originals.

Mr. CALDWELL. Copies would be taken by the other side from which takes the originals.

Mr. KELLAM. No, he means these books we divided this forenoon should be copied.

Mr. CALDWELL. Oh, yes. They are all in the Treasurer's and Auditor's offices. By the way, there is one matter I was intending to suggest. There are records that belong to the Auditor's office that are not contained in the Auditor's office—they are in store rooms in the building here—old stuff there—the records of the Auditor's office. It will be necessary that they go with the Auditor's office.

Mr. CAMP. There is one thing I would like to see changed, and that is the Domestic Corporation records—some twenty-seven volumes. They ought to be sent to South Dakota in order to save the expense of copying. We could copy what we want of them.

Mr. CALDWELL. Of course, if you want to do that the records are at your disposal.

Mr. PURCELL. They are in the Secretary's office.

Mr. CALDWELL. Yes, sir; about three-fifths of them belong to South Dakota.

Mr. PRICE. I understood this resolution we already adopted provided that all records relating to South Dakota should go to South Dakota, and you say four-fifths belong to South Dakota. In regard to the militia I would be in favor of giving North Dakota all the colonels.

Mr. PURCELL. We have got the advantage there.

Mr. CAMP. Would it not be well to take up that agreement and read it over?

Mr. SCOTT. Well, let us see who is going to keep the originals and who the copy.

Mr. CALDWELL. That is settled; we take the office and take the originals, and the copies are furnished to the other side.

Mr. SCOTT. We are to have the copies of the Auditor's books.

Mr. CALDWELL. There are only two offices in which there are any books absolutely necessary to be copied. If the matter has proceeded far enough I renew my motion, that the question of records, etc., be referred to the chairmen of the respective delegations for them to formulate and prepare the statement to go into

our report to our respective Conventions in accordance with the action which has been taken by the Commission.

Mr. PURCELL. Do you think it necessary to name the records?

Mr. CALDWELL. No, only those to be copied. I think now by distinguishing them as records of the respective offices that everything in the way of records in the Territory is disposed of.

Mr. CAMP. Only that might raise the question as to what records pertain exclusively to North or South Dakota. There might be some question as to what was included in that.

Mr. PRICE. Seems to me it will leave a wide open door.

Mr. CALDWELL. Of course the first report made by this committee apportions those, I believe. Don't it, Mr. HARRIS?

Mr. HARRIS. Yes, sir.

Mr. CAMP. Then you can take that out of the report.

Mr. ELLIOTT. I second Mr. CALDWELL's motion.

Mr. KELLAM. Gentlemen, what is your pleasure now?

Mr. CALDWELL. I made a motion that the matter be referred now to the President of the—to the Chairman.

Mr. GRIGGS. What referred?

Mr. CALDWELL. This matter of records, refer it now to the President of the respective delegations for them to incorporate into the agreement.

Mr. GRIGGS. I second the motion.

Mr. KELLAM. Gentlemen, the question is upon referring this matter that has just been disposed of to Mr. CAMP and myself to be incorporated in the agreement. Are you ready for the question.

Question. Question.

Mr. KELLAM. As many as are of the opinion the motion should prevail say aye. The motion is carried.

Mr. CAMP. I move we now proceed to consider this agreement that was submitted this morning by the two Chairmen.

Mr. CALDWELL. I second the motion.

Mr. ELLIOTT. There is another committee to report, would it not be better to dispose of what business we have got? The Committee on Military affairs, we should dispose of that.

Mr. CAMP. Well?

Mr. MCGILLYCUDDY. I was in hopes of receiving something by to-day's mail. We have not made a report. In fact there is all the report we have to make.

Mr. KELLAM. Isn't it in addition to what you received the other day?

Mr. MCGILLYCUDDY. Yes, sir; in addition to that list read the other day. We have the following from the Adjutant General.

Mr. MCGILLICUDDY then read the following report:

Invoice of Camp Equipage belonging to Dakota Territory, and issued to Captatn I. C. Wade, Commissary of Supply, First Regiment, D. N. G., at Camp Ben Harrison, June 25, 1889, and not returned.

Here follows a list of table ware, kitchen utensils, etc., amounting in the aggregate to \$124.56. I think the above or greater part of it is in the hands of companies.

HUSTON.

Invoice of Camp Equipage belonging to the Territory of Dakota, and issued to Captain C. F. Mallahan, Commissary of Supply, Second Regiment, D. N. G., at Camp Ben Harrison, June 25, 1889, and not returned.

Here follows a list of table ware, kitchen utensils, etc., amounting in the aggregate to \$114.16. I think the above or greater part of it is in the hands of companies.

HUSTON.

Invoice of Ordnance received at Bismarck, June 8, 1889, and turned over to Col. R. J. Woods, Chief of Ordnance, at Camp Ben Harrison, June 25, 1889:

Nineteen boxes Cartridges, 1,000 each; one box Rifle Bullets, one box Cartridge Primers, one set Reloading Tools, one Can Powder.

At Camp Ben Harrison, July 2, 1889. I received from Col. R. J. Woods, Chief of Ordnance, D. N. G., for storage:

13 Boxes Cartridges, 1,000 each, value, \$27 00 each.....	\$ 351 00
1 Box Cartridges, Primers, " .....	25 00
1 Set Reloading Tools, " .....	2 50
1 Box Rifle Bullets, " .....	15 00
1 Can Powder, 125 lbs., " .....	22 50
30 Old Gun Slings.....	.....

\$416 00

Invoice of Camp Equipage received at Bismarck and issued at Camp Ben Harrison by order of Governor Mellette, July 1, 1889, to Major E. L. Calkins, Commissary of Supply, D. N. G., and stored at Jamestown, D. T.:

2 Wall tents, 14x20 feet, received at Bismarck, valued at \$15 .....	\$ 30 00
6 Wall tents, 10x12, received at Bismarck, valueà at \$4.....	24 00

Total .....\$ 54 00

What I reported to you as at Bismarck on July 4th.

HUSTON.

Invoice of Camp Equipment stored at Watertown, South Dakota, July 25, 1889.

(Here follows a list of tents, bed-sacks, tools, tableware, kitchen utensils, etc., amounting in the aggregate to \$693.06.)

OFFICE OF CHIEF OF SUPPLY, D. N. G., }  
 WATERTOWN, DAK., July 25, 1889. }

I hereby certify that the foregoing statements are true and correct invoices of the public property belonging to Dakota Territory (Camp Equipage and Ordnance) now in my custody and charge and of the whole thereof.

GEO. W. CARPENTER,  
 Chief of Supply.

I certify that this is a correct copy.

J. S. HUSTON,  
 Adjutant General.

Mr. MCGILLYCUDDY. I find stored here in the Capitol 944 rifles (or rather the committee finds 944 rifles) caliber 50 of the old pattern, and four cases caliber 45. This property General Huston indicates should be divided. There is in the hands of the south 559, and in North Dakota, of organized counties, 377; the other 80 stand are in the Capitol.

Mr. CALDWELL. I suppose the distinction he makes, the 45 caliber rifles were issued to the militia, and the other in possession of the Territory and not intended for use.

Mr. MCGILLYCUDDY. Yes, and they are, I suppose, issued to the militia for their use, and the other something the Territory will have to settle for in time. The rifles here are good serviceable guns, only not in use at the present time. Just as good for use as the 45 calibre.

Mr. HARRIS. Is that company at Lisbon one of the nine companies of North Dakota?

Mr. MCGILLYCUDDY. Captain W. E. Smith, Co. A.

Mr. CALDWELL. How can there be nine companies in North Dakota? They——

Mr. MCGILLYCUDDY. This includes the battery.

Mr. PRICE. Mr. CHAIRMAN: I move you this Committee on Military Affairs be requested to furnish the Chairmen of the respective Commissions with all this battle array, and the Chairmen settle the whole matter remaining.

Mr. GRIGGS. I second the motion.

Mr. CAMP. Your respective Chairmen don't know any more than——

Mr. KELLAM. Let the Commission allow Mr. CAMP to read the article and it may be sufficient now, and if not we will consider it further.

Mr. CAMP reads: "One-half of all the arms, ammunition, quartermaster's and ordnance stores distributed to and now in



possession of militia companies of the Territory of Dakota shall remain in their possession, and all the right, title and interest of the Territory of Dakota in and to such arms, ammunition and stores shall vest in the state in which the armories or headquarters of such companies shall be situated. All 45-Cal. rifles and ammunition of same calibre, stored in the Capitol at Bismarck, and all 45-Cal. rifles heretofore issued to Company 'F' First Regiment at Bismarck, shall be the property of North Dakota."

Mr. CAMP. I have interlined in this article so as to read as follows: "All arms, ammunition, quartermasters's and ordnance stores not distributed to and in possession of military companies — ." I have added all 45-Cal. rifles and ammunition of the same calibre stored in the Capitol at Bismarck and also the 45-Cal. rifles in the possession of Major Hare.

Mr. MCGILLYCUDDY. No, he has no arms in his charge.

Mr. CALDWELL. Bentley.

Mr. CAMP. All 45-Cal. rifles heretofore issued to the Bismarck company.

Mr. MCGILLYCUDDY. And there is a stand here in the Capitol.

Mr. CAMP. All 45-calibre rifles and ammunition for the same stored in the Capitol at Bismarck issued to the Governor's Guards, shall be the property of North Dakota.

Mr. PRICE. You get all, North Dakota; under that agreement you have got the cannon.

Mr. CAMP. You have those Napoleon guns somewhere.

Mr. CALDWELL. They never were received.

Mr. PRICE. It looks to me about right.

Mr. CALDWELL. It strikes me as right.

Mr. PRICE. As far as I am personally concerned you can have all of them. I don't think we have much use for a military.

Mr. KELLAM. If this is disposed of, shall we take up the agreement. We will listen to the reading of the agreement as proposed by the Chairman of the Commission, and follow it carefully with the understanding that each gentleman can make any inquiry he chooses.

Mr. CAMP. The preamble was drawn up by Mr. KELLAM.

WHEREAS, By an act of Congress approved February 22, 1889, entitled "An act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana and Washington to form Constitutions and State Governments, and to be admitted into the Union on

an equal footing with the original states, and to make donations of public lands to such States, it was among other things provided that when the Constitutional Convention for North Dakota and the Constitutional Convention for South Dakota, which by said act were duly provided for and authorized, should assemble and organize as in said act provided, it should be and become the duty of said Convention respectively to appoint a Joint Commission to be composed of not less than three members of each Convention, whose duty it should be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota; the disposition of public records, and also, to adjust and agree upon the amount of the debts and liabilities of the Territory, which shall be assumed and paid by each of the proposed States of North Dakota and South Dakota; and,

WHEREAS, The said Constitutional Conventions of North Dakota and South Dakota having been duly elected and assembled and organized in pursuance of and as provided in said act, did, as therein required and provided for the purposes therein specified, appoint a Joint Commission consisting of not less than three members of each Convention, to-wit: Seven of each Convention as follows, to-wit:

E. W. Camp, B. F. Spalding, Alex. Griggs, Andrew Sandager, W. E. Purcell, Harvey Harris and J. W. Scott, appointed by the Convention of North Dakota; and,

A. G. Kellam, V. T. McGillycuddy, Henry Neill, E. W. Caldwell, William Elliott, Charles H. Price and S. F. Brott, appointed by the Convention of South Dakota; and

WHEREAS, The said Joint Commission so appointed and composed having duly assembled at Bismarck, as by said act provided, and being now and here so assembled, and having as such Joint Commission duly and carefully considered the several matters which by said act are referred to them for disposition and agreement, do now adopt and confirm the following agreement, compact and convention, that is to say:

Mr. CALDWELL. You see it is estimated there will be a deficit of \$140,000 liability and that would be hereafter distributed—in the Territorial Treasury at the time of the dissolution and under this arrangement South Dakota assumes \$46,500 of your share.

Mr. SPALDING. In that article regarding the names there is something—

Mr. CAMP. I think we ought to take it up article by article.

Mr. SCOTT. Have you any provision each State shall assume and pay one-half of all claims existing against the Territory?

Mr. KELLAM. We have an article intended to cover that.

Mr. CAMP. “Article I. This agreement shall take effect and be in force from and after the admission into the Union as one of the United States of America, of either the State of North Dakota or the State or South Dakota.”

Mr. KELLAM. Gentlemen, are there any suggestions or changes of any character on the article just read? Will Article I be adopted?

Mr. SCOTT. I move the adoption of Article I.

Mr. NEILL. I second the motion.

Mr. KELLAM. Gentleman, I think if there is no objection to any article it should be considered as adopted.

Mr. ELLIOTT. Yes.

Mr. PURCELL. Yes.

Mr. KELLAM. Gentlemen, the first one is considered as adopted.

Mr. CAMP. Article II. The words "State of North Dakota" wherever used in this agreement, shall be taken to mean the Territory of North Dakota in case the State of South Dakota shall be admitted into the Union prior to the admission into the Union of the State of North Dakota; and the words "State of South Dakota," wherever used in this agreement shall be taken to mean the Territory of South Dakota in case the State of North Dakota shall be admitted into the Union prior to the admission into the Union of the State of South Dakota.

Mr. KELLAM. Are there any objections to Article II?

Mr. SPALDING. There is where a question arises in the names. Does the Enabling Act fix the names as "states"?

Mr. KELLAM. No, sir.

Mr. CAMP. Then we will insert the words "North Dakota" and "South Dakota." And the words South Dakota shall be taken to mean—

Mr. SPALDING. Suppose one adopts the Constitution and the other doesn't, so one remains a Territory; what means have they of forcing that part of this relating to that part of the present Territorial—how can we—

Mr. KELLAM. The only authority for doing anything is the Omnibus Bill, and that provides for just what we have done, to provide for the property of the Territory. I don't see any more objection as to question of power than there is of power of division between the the two States.

Mr. PURCELL. We are doing this work, supposing it will be ratified by the people.

Mr. CAMP. Article III. Upon the taking effect of this agreement all the right, title, claim and interest of the Territory of Dakota in and to any public institutions, grounds or buildings

situate within the limits of the proposed State of North Dakota as such limits are defined in said act of Congress, shall vest in said State of North Dakota; and said state of North Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings, and shall pay all warrants issued under and by virtue of that certain act of the Legislative Assembly of the Territory of Dakota approved March 8, 1889, entitled "An Act to provide for the refunding of outstanding warrants drawn on the Capitol Building Fund."

Mr. KELLAM. Is there any changes suggested with reference to this article? If not we will pass it. Approved.

Mr. CAMP. Article IV. Upon the taking effect of this agreement, all right, title, claim and interest of the Territory of Dakota in and to any public institutions, grounds or buildings, situate within the limits of the proposed State of South Dakota as defined in said act of Congress, shall vest in said State of South Dakota. And said State of South Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings.

Mr. KELLAM. Is there any objection to this article? It stands approved.

Mr. CAMP. Article V.

Mr. CALDWELL. Mr. CHAIRMAN: I suggest the reading of that is a mere matter of figures, and that it be omitted.

Mr. CAMP. The only question is whether everything is included.

Mr. CALDWELL. Mr. HAYDEN and I have examined it.

Mr. KELLAM. Have you examined it since the agreement was framed?

Mr. CALDWELL. Mr. HAYDEN says he has.

Mr. CAMP. Article VI. Each State shall receive all unexpended balances of the bonds which it so assumes, whether such balances have been covered back into the Treasury or not.

Mr. KELLAM. Is there any objection to this article? Pass it.

Mr. CALDWELL. I suppose in case where it has been paid in the Treasury—as the \$7,000 of the Bismarck Penitentiary, it becomes a part of the general fund of the Territory. That is, by

the adoption of this we would not, we could not have any power to reinstate it as the fund of that particular institution.

Mr. SPALDING. That is part of the general fund; yes.

Mr. KELLAM. Let's see if we understand it aright.

Mr. PURCELL. That was my idea what Mr. SPALDING said—part of the general fund of North Dakota.

Mr. KELLAM. Yes, of North Dakota.

Mr. CAMP. Article VII. All furniture, fixtures, provisions, appurtenances and appliances, tools, implements and other movable property of the Territory of Dakota situate in or used in connection with any of said public institutions, grounds or buildings, shall become and be the property of the State or Territory in which such grounds, buildings or institutions may be situated, except as herein otherwise specifically provided.

Mr. KELLAM. Are there any objections to this article? If not, we will pass it.

Mr. CAMP. Article VIII. In case of loss in whole or in part of any of the property of the Territory of Dakota prior to the taking effect of this agreement, the State in which such property would have vested if the same had not been destroyed, or in which such property so injured shall vest, shall receive all sums payable upon policies of insurance issued upon such property; and if loss, not covered by insurance occurs on any of such property, would vest on the taking effect of this agreement.

Mr. KELLAM. Any objection to this article? If not, we will pass it.

Mr. CAMP. Article IX. Upon the taking effect of this agreement, all unearned premiums of insurance shall vest in the State or Territory in which the property insured thereby shall vest.

Mr. KELLAM. Any objection to this article? No objection.

Mr. CAMP. Article X. The States of North and South Dakota shall pay one-half each of all liability now existing, or hereafter and prior to the taking effect of this agreement incurred, except those heretofore or hereafter incurred on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

Mr. KELLAM. Will you read that again?

Article X was read again.

Mr. PURCELL. That is right—the current indebtedness.

Mr. KELLAM: All right if limited to that, if you add there "except as otherwise herein specifically provided."

Mr. CAMP. Article XI. Each of said States shall succeed to all rights of the Territory of Dakota upon contracts for public works within such State or upon bonds given to secure the performance of such contracts.

Mr. KELLAM. Any objection to this article? If not, we will pass it.

Mr. CAMP. Article XII. All other bonds issued prior to the taking effect of this agreement upon which a cause of action has or shall prior to the taking effect of this agreement accrue to the Territory of Dakota shall be sued upon by the State of ——— Dakota, and it is hereby made the duty of said State to sue thereon, and one-half of the penalties or damages collected by said State thereon shall be paid over to the other State, and the costs of such suit or collection shall be borne equally by said States, save as it may be necessary to apply such proceeds otherwise in order to carry into effect the provisions of Article ——— of this agreement.

Mr. PURCELL. Is that who the trustee shall be?

Mr. CAMP. Yes.

Mr. CALDWELL. I would move the insertion of the word "North" in the blank.

Mr. PURCELL. I second the motion.

Mr. KELLAM. I would state that the special reason I would have in so suggesting such insertion would be that—well I will not state it either, after all. I think the reason that was left blank was the records were not disposed of, and there seems to be a convenience in the party retaining the records and bringing the suits. And it occurred to me whether or not there should be a further provision in their making it obligatory upon the trustee. I think that would be a consideration. The word "may" is provisional.

Mr. CAMP. Why not make it "shall"?

Mr. KELLAM. That was my thought. I don't know whether "shall" will cure it. The only idea I had in making, for instance, North Dakota a trustee for the bringing of these suits, was there would be left no election or option upon the part of North Dakota. There might possibly be circumstances in which favoritism could be extended toward some defaulting officer.

Mr. CALDWELL. "And it is hereby made the duty of."

Mr. SCOTT. I don't see why that word "shall" would not make it.

Mr. KELLAM. It might be a matter simply of discussion between North Dakota and South Dakota, to be determined by whom the action might be maintained. I prefer "accruing to the Territory of Dakota, may be sued upon by——" Well, with the understanding that something of that sort would be agreeable to the Commission. Mr. CAMP and I could fix that when we come to re-write this.

Mr. CAMP. It is hereby made the duty to bring suit.

Mr. KELLAM. So the blank before the word "Dakota" be filled by inserting the word "North." As many as are of the opinion this should prevail, say aye. Carried.

Mr. CAMP. Article XIII. The furniture, fixtures, appliances and appurtenances used in or about, or pertaining to the public offices of the Territory shall be the property of the State within the proposed limits of which said offices are now kept.

Mr. KELLAM. Any objection to the article? There are some of the appliances I think of, of certain of these offices still here; but the word "pertaining" is inserted with the understanding it covers that.

Mr. PURCELL. What do you mean in Article XII by the words: "Save as it may be necessary to apply such proceeds otherwise in order to carry into effect the provisions of Article \_\_\_\_?"

Mr. CAMP. For this reason. In looking over Article XXI, it is numbered XXI in the printed agreement, you will find there is a final adjustment of accounts, and North Dakota is to be credited with the amount received. There might be some default in which some funds that were going to South Dakota would be missing, and it was in order to cover that.

Mr. KELLAM. They could be retained in North Dakota.

Mr. CAMP. Article XIV. The Territorial Library, including such books and volumes as may be added thereto prior to the taking effect of this agreement, shall be the property of the State of South Dakota.

Mr. KELLAM. No objection to that.

Mr. CAMP. Article XV. One-half of all the Compiled Laws of the Territory of Dakota, Revised Codes, and of all Session Laws, printed Journals of the House and Council of the Legislative Assembly of said Territory (except those composing a part

of said library), remaining undisturbed or undisposed of, according to law at the taking effect of this agreement, shall be delivered on demand to the proper authorities of the State of South Dakota.

Mr. CALDWELL. Now, the Federal reports of officers and things of that kind for the general public.

Mr. KELLAM. I think this largely refers to the Compiled Laws.

Mr. CALDWELL. They being distributed to the general public—

Mr. SCOTT. When sold the money is turned into the Treasury.

Mr. KELLAM. Would it be an improvement to say "equally divided?"

Mr. CALDWELL. It is provided for them to be equally divided. Some of them were left down there for the convenience of parties in South Dakota.

Mr. KELLAM. In law they are here?

Mr. CALDWELL. Yes, sir.

Mr. KELLAM. If there is no objection to the article we will pass it.

Mr. CAMP. Article XVI. All other arms, ammunition, quartermaster's and ordnance stores shall be equally divided between the States of South Dakota and North Dakota. I suggest that Articles XVI and XVII be put in the other order. Article XVI. All arms, ammunition, quartermaster's and ordnance stores distributed to and now in possession of militia companies of the Territory of Dakota shall remain in their possession, and all the right, title and interest of the Territory of Dakota in and to such arms, ammunition and stores shall vest in the State in which the armories or headquarters of such companies shall be situated. All 45-Cal. rifles and ammunition of same calibre stored in the Capitol at Bismarck, and all 45-Cal. rifles heretofore issued to Company F, First Regiment at Bismarck, shall be the property of North Dakota.

Mr. SPALDING. I think these are not rifles, they are muskets.

Mr. CALDWELL. Mr. MCGILLYGUDDY thinks they are all rifles.

Mr. MCGILLYCUDDY. All rifles, yes. In contradistinction to carbines.



Mr. CALDWELL. That article all right then?

Mr. CAMP. My idea was to transpose one-half of all other arms, ammunition and ordnance stores—

Mr. KELLAM. The first section provides for such as have been distributed.

Mr. CAMP. Yes.

Mr. KELLAM. If there is no objection to the article we will pass it.

Mr. CAMP. Article XVIII. All other items of personal property and miscellaneous effects belonging to the Territory, except the Territorial Library, and the Territorial Records and Archives, shall be divided as nearly equally as possible between North and South Dakota.

Mr. CAMP. I don't know what other—

Mr. CALDWELL. Neither do I. It leaves nothing hanging in the air.

No objection.

Mr. CAMP. Article XIX. The State of South Dakota shall pay to the State of North Dakota \$46,500, on account of the excess of Territorial appropriations for the permanent improvement of Territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the Territorial Library, and full settlement of unbalanced accounts, and of all claims against the Territory, of whatever nature, legal or equitable arising out of the alleged erroneous or unlawful taxation of Northern Pacific Railroad lands, and the payment of said amounts shall discharge and exempt the State of South Dakota from all liability for or on account of the several matters hereinbefore referred to, nor shall either State be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the Territory of Dakota had such Territory remained in existence, and which liability shall grow out of matters connected with any public institution, grounds or buildings of the Territory situated or located within the boundaries of the other State.

Mr. KELLAM. Any objection?

Mr. KELLAM. That includes the liability of North Dakota on the Capitol lots which have been sold, and I presume all of our members understand that.

Mr. SCOTT. Yes, we don't want any liability on that account if we can get out of it.

Mr. KELLAM. If there is no objection to the article we will pass it.

Mr. CAMP. Article XX. Neither State shall pay any portion of liability of the Territory arising out of erroneous taxation of property in the other State.

Article XXI. A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds and buildings located within its boundaries on account of the current appropriations since March 8, 1889, and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each State shall be charged with one-half of all other expenses of the Territorial Government during the same time. All moneys paid into the Treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed State of North Dakota shall be credited to North Dakota; and all such sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed State of South Dakota shall be credited to the State of South Dakota; except that any and all sums on gross earnings paid into said treasury by railroad corporations since the 8th day of March, 1889, based upon the earnings of years prior to 1888, under and by virtue of the Act of the Legislative Assembly of the Territory of Dakota, approved March 7, 1889, and entitled "An Act providing for the levy and collection of taxes upon the property of railroad companies in this Territory," being Chapter 107 of the Session Laws of 1889 (that is, the part of such sum going to the Territory), shall be equally divided between the States of North Dakota and South Dakota; and all taxes heretofore or hereafter paid into the treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except so much thereof as goes to the Territorial Treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by the railroads within the limits

of the proposed State of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota. Each State shall be credited, also, with all balances of appropriations made by the Seventeenth Legislative Assembly of the Territory of Dakota, for the account of the public institutions, grounds or buildings located within its limits remaining unexpended on March 8, 1889. If there shall be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each State shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of public institutions, grounds or buildings of such State in excess of receipts from counties, municipalities, railroad corporations or persons within the limits of said State as provided in this article; and if there shall be a surplus at the time of such final adjustment, each State shall be entitled to the amount received from counties, municipalities, railroad corporations or persons within its limits, over and above the amount charged to it.

Mr. SCOTT. Right there —

Mr. HARRIS. Mr. CALDWELL, I believe it was, called the particular attention of this Commission to that question as to whether the agreement submitted by Messrs. KELLAM and CAMP should cover the gross earnings tax paid in 1888, or whether it referred only to 1889, and it was fully discussed and decided that it meant the tax on the gross earnings of 1888. Half of that tax has been paid, and under the article as we have it, it need not be distributed as under the agreement which we pass. It is intended that half which has already been paid in on the gross earnings of 1888 should be distributed the same as the other half which is due in August.

Mr. PURCELL. How was it to be distributed?

Mr. HARRIS. The same as the tax coming from counties, persons or municipalities. That which comes in from North Dakota shall be credited to North Dakota; that coming in from South Dakota shall be credited to South Dakota. The same as the last half of the tax comes due in August will be distributed.

Mr. KELLAM. I don't really —

Mr. PURCELL. Will you read that again after "except"?

The article was re-read.

Mr. CALDWELL. Mr. CHAIRMAN: The point which is raised

by the gentleman may be better understood from this statement: At the time of the first semi-annual payment by the railroads, they paid all arrearages. At the second semi-annual payment they pay nearly half of what has become due within that year. That is to say, that the first of April, I believe, was the date of payment, they paid some of the delinquencies for 1886, some of them for 1886, 1887 and 1888.

Mr. CAMP. It was due the 1st of February.

Mr. CALDWELL. Yes, the 15th of February. You see this gross earnings tax is estimated for any particular year upon the previous year's earnings. The 1889 tax is levied upon the gross earnings of 1888. The 1888 tax was levied upon the gross earnings of 1887. The 1887 tax was levied upon the gross earnings of 1886. Now, they didn't pay all in 1886 and 1887 which became due, the 1886 tax in 1887, and the 1887 tax in 1888; but under this new law these arrearages were all paid in a lump on or about the first day of April, 1889, and there is only one-half of the tax due upon the gross earnings of 1888; and it was my original idea they were to pay in simply half of the 1888 tax, and likewise half of the arrearages in the first payment of this year; but I understand they paid all their arrearages. That being the case, as I understand it, why the point made by the gentleman is correct and there ought to be a distinction made in this between the taxes which are delinquent, and taxes which were merely due. The tax of 1888 was paid without any delinquency whatever. The tax of 1887 and 1886, and I believe some of 1855—

Mr. HARRIS. This question was fully discussed and the question Mr. CALDWELL brought up I guess we understand. The taxes of 1886 and 1887 should be divided equally, and that this half of the taxes which was paid of the 1888 gross earnings should be distributed according to locality from which it came. That is, what was paid in from North Dakota should be credited to North Dakota, and what was paid in from South Dakota should be credited to South Dakota. Our agreement we have here does not properly—

Mr. PURCELL. This explanation—"except any and all taxes of gross earnings paid into said treasury by railroad corporations since the 8th day of March, 1888, based upon the earnings of the years prior to 1888."

Mr. HARRIS. Yes, the 1888 tax was due but not delinquent.

Mr. PURCELL. Here it is: "Except any and all sums paid

into the said treasury since the 8th day of March, 1889, and prior to the date of this agreement, under and by virtue, etc., etc.”

Mr. KELLAM. That would not do because it would include the arrearages.

Mr. PURCELL. Except any and all sums of arrearage taxes.

Mr. CALDWELL. In this agreement we called it the railroad tax of 1889, that which accrued upon the gross earnings of 1888.

Mr. HARRIS. Well, it is a tax due in 1889.

Mr. HARRIS. Part in February and part in August.

Mr. CALDWELL. Yes, and that was to be divided according to the source from which it came.

Mr. HARRIS. Mr. KELLAM and Mr. CAMP can put it in shape, since their attention is called to it.

Mr. KELLAM. I don't get the understanding——

Mr. CAMP. I suggest that instead of “any and all sums paid into the treasury,” we read, “save the gross earnings tax based upon the earnings of the year 1888, under and by virtue of the Act of the Legislative Assembly of the Territory of Dakota, approved March 7, 1889, and entitled “An act providing for the levy and collection of taxes upon property of railroad companies in this Territory,” shall be equally divided between the States of North Dakota and South Dakota; and all taxes heretofore or hereafter paid into the treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the Territorial Treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroad companies within the limits of the proposed State of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota.”

Mr. KELLAM. What's the object of reciting this act of March 7, 1889? Why is it not covered by making all taxes on gross earnings for the years they became due prior to the year 1889, divided equally, and all subsequently paid?

Mr. CAMP. Because the Supreme Court of the Territory of Dakota has declared it never became due.

Mr. CALDWELL. It didn't become due until 1889 and that was by arrangement.

Mr. KELLAM. Became due by act of the Legislature.

Mr. CAMP. The Supreme Court stated it never became due.

Mr. KELLAM. I don't mean by the term "due" in the legal sense. "All taxes on gross earnings paid into the treasury on business prior to the year 1889." I don't care anything about the phraseology, only make it broad enough.

Mr. CAMP. The object of putting in that act was in order to show precisely what was intended. It was payment made under that new law, not under the 1883 law.

Mr. SPALDING. Why not pass that and leave it to the two Chairmen to fix up with the other?

Mr. PRICE. Yes, if they have got the idea.

Mr. SPALDING. I think they have.

Mr. CALDWELL. *Provided*, That such railroad tax paid upon the gross earnings, made prior to 1888, and which were delinquent at the time of such payment, shall be equally divided between the two States; and such taxes as were not due upon earnings of the year 1888 or subsequent thereto, shall accrue to the State within which the road paying the same shall be located.

Mr. KELLAM. Is that right?

Mr. CALDWELL. In the Treasurer's office the name of the tax is the year of the gross earning upon which it is levied; so, when, in the Treasurer's office they say "tax of 1888" they mean the tax levied upon the gross earnings of 1888, although it is not due until 1889.

Mr. CAMP. How will this do: Except any and all taxes on gross earnings based upon the years prior to the year 1888, under and by virtue of the act of the Legislative Assembly, shall be divided equally between the two States; and all taxes heretofore or hereafter paid into the treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except so much thereof as goes to the Territorial Treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed State of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed State of South Dakota.

Mr. KELLAM. Now, I don't see why that does not cover the idea.

Mr. CAMP. Except any and all taxes paid into said treasury by railroad corporations since March, 1889, prior to the date of this agreement, based upon the earnings prior to 1888 under and

by virtue of an act of the Legislative Assembly of the Territory of Dakota approved March 7, 1889, "An Act providing for the levy and collection of taxes upon property of railroad companies in this Territory." (being Chapter 107 of the Session Laws of 1889) that is, the part of such sum going to the Territory, shall be equally divided between the States of North Dakota and South Dakota; and all taxes heretofore or hereafter paid into said treasury based on the gross earnings of the year 1888 shall be distributed as already provided by law, except that so much thereof as goes to the Territorial Treasury, shall go as follows: North Dakota shall have so much thereof as has been paid by railroad companies within the limits of the proposed State of North Dakota; and South Dakota so much thereof as has been paid by railroads within the limits of South Dakota.

Mr. KELLAM. All taxes based upon the gross earnings prior to 1888 divided equally, and taxes upon the gross earnings of 1888, they are to be divided according to the source from which they come.

Mr. HARRIS. Yes, that is the agreement expressed the other day.

Mr. CALDWELL. That was my understanding of it.

Mr. KELLAM. I think we have the same understanding, and we can take a little time to express it.

Mr. CAMP. Article XXII. The payment from South Dakota to North Dakota shall be made as much as possible, by South Dakota's assuming North Dakota's share of current liabilities at the time of final adjustment, to the extent of South Dakota's indebtedness under this agreement to North Dakota; and if any balance shall remain due to North Dakota from South Dakota, payment of said balance shall be provided for by the first Legislature of South Dakota.

Mr. CAMP. Referring back to Article XXI. Are there any balances running farther back than last March?

Mr. SCOTT. There was an item of the Sioux Falls Penitentiary, and it may be an unexpended appropriation.

Mr. PURCELL. This restricts it to the XVII Legislative Assembly.

Mr. HAYDEN. We found they had carried a balance forward. At the end of last year there was a balance carried forward.

Mr. PRICE. How is that \$10,000, Scott; inquired about?

Mr. HAYDEN. That was not included.

Mr. KELLAM. Is there any unexpended balances?

Mr. CALDWELL. No. I inquired about them—there is nothing there. I enquired this morning. There are certain—what are called “running appropriations,” two hundred for the care of the library. But if that is not all used in any one year it is not available.

Mr. KELLAM. Then that covers it.

Mr. CAMP. Article XXIII. Upon the taking effect of this agreement all claims for taxes due the Territory of Dakota shall become the property of and may be collected by the state or territory within the limits whereof the counties are situate against which such taxes stand charged upon the Territorial Treasurer's books. But this article shall not be held to refer to or govern the disposal of any taxes to be paid by railroad companies which are specifically provided for by Article XXI hereof.

Mr. CALDWELL. This is quite a conflicting provision, and I believe this is what was meant by the provision as provided by Mr. HAYDEN, to which reference was made in the original agreement, and I would ask if this is something like the understanding. Suppose now, that of the total payments which are made into the Territorial Treasury, South Dakota pays 55 per cent. thereof and North Dakota 45 per cent., and that then of the appropriations drawn out South Dakota draws out say 55 per cent. of the whole and North Dakota draws out the 45 per cent., it would be a stand-off. I would ask Mr. HAYDEN about it.

Mr. HAYDEN. I can explain it perhaps more—my understanding was it should be treated the same as though it was a partnership, each one having an equal amount in, a balance on hand, and each one pays in from the 8th day of March down to the separation and draws out.

Mr. KELLAM. That is my idea; South Dakota pays so much money, and North Dakota so many dollars; there has been paid on account of South Dakota institutions so many dollars, and each one takes his balance.

Mr. SCOTT. That is my understanding.

Mr. HAYDEN. The expense is divided equally.

Mr. SCOTT. The running expenses.

Mr. PURCELL. If there should be a surplus, each would be entitled to the amount received from the counties within the limits of its boundaries.



Mr. KELLAM. That is what we are talking about now.

Mr. CALDWELL. Well, I guess that is all right.

Mr. CAMP. Article XXVI. All other claims and demands of the Territory of Dakota outstanding when this agreement shall take effect, the collection whereof is not hereinbefore provided for, shall be sued upon and collected by the State of North Dakota, and the costs of suits so brought and the amounts collected shall be divided equally between the two States of North Dakota and South Dakota.

Mr. SCOTT. Referring to Article XXII. Should not we go on and state how the balance should be paid, if it is not paid in that way? I presume it would——

Mr. PURCELL. Why not let us fix it? For instance, let us pay for our own copying; why make that a charge against South Dakota?

Mr. KELLAM. That was made at Mr. CAMP's suggestion.

Mr. SCOTT. It will not amount to much.

Mr. CAMP. I am perfectly willing to leave it out.

Mr. PURCELL. The question of refunding warrants——

Mr. CAMP. Why would it not be better to have it in cash, and let South Dakota negotiate her bonds?

Mr. PRICE. Just as well.

Mr. KELLAM. I don't like to put that in cash.

Mr. CAMP. Payment of the balance shall be provided by the Legislature of South Dakota.

Mr. KELLAM. Yes, that is one way it could be done. Of course, we all understand that the assumption of one-half of North Dakota's indebtedness will a good deal more than cover the \$46,000. I don't want to put it in cash.

Mr. ELLIOTT. We know we should not have to pay it in cash.

Mr. KELLAM. Might hold this Commission.

Mr. PRICE. Well, how is that suggestion "payment shall be provided for by the Legislature?"

Mr. CALDWELL. Yes.

Mr. KELLAM. Any balance remaining unpaid, if any, shall be provided for by the first Legislature of South Dakota.

Mr. CALDWELL. The first session of the Legislative Assembly of South Dakota.

Mr. KELLAM. We call it, Legislature. Where is that Long's Hand Book?

Mr. SCOTT. That is what we call our Legislature.

Mr. CAMP. Legislative Assembly, General Assembly.

Mr. CALDWELL. Shall be vested in the Legislature.

Mr. KELLAM. Just read that again.

Mr. CAMP. Payment from South Dakota shall be made by South Dakota as much as possible——

Mr. PURCELL. "As much as possible." Let that be out.

Mr. ELLIOTT. I don't see the necessity of that either.

Mr. PRICE. The Legislature can provide at any time.

Mr. SCOTT. I think it is perfectly proper.

Mr. PURCELL. Liable to the extent of the indebtedness; which indebtedness?

Mr. CAMP. If there is any balance it shall be provided for by the first Legislature.

Mr. PURCELL. The payment of South Dakota to North Dakota shall be made by South Dakota's assuming North Dakota's share of current liabilities to the extent of the indebtedness of South Dakota to North Dakota; and in case any balance remains payment thereof shall be provided for by the Legislature.

Mr. CALDWELL. By the first Legislature of the State of South Dakota.

Mr. SCOTT. Well, is there anything further to be done today?

Mr. PURCELL. "The payment from South Dakota to North Dakota shall be made by South Dakota's assuming North Dakota's share of current liabilities at the time of final adjustment, to the extent of South Dakota's indebtedness under this agreement to North Dakota; and if any balance shall remain due to North Dakota from South Dakota, payment of said balance shall be provided for by the first Legislature of South Dakota."

Mr. KELLAM. Gentleman, is that article satisfactory now? If there is no objection it will be passed.

Mr. CAMP. There is another question I want the Commission to decide before we start in on this record agreement. Our powers in regard to the records are, perhaps, distinct from our duties with regard to the other property of the Territory. If we make our agreement as to the records separate, and provide for a recommendation to the Conventions as was provided for, I think, by a resolution introduced, then either agreement will stand alone.

Mr. CALDWELL. I think it is a very wise suggestion.

Mr. PRICE. I can see no harm in making two.

Mr. PURCELL. There could be no objection to that part of our report which the court would hold we had a right to make, and, of course, if we exceeded our authority the court would hold that part in excess of our authority to be illegal. So far as I am concerned, I think we are a unit as to our power, to make that agreement we have.

Mr. PURCELL. This agreement as to the records amounts simply to a recommendation, and this is absolute.

Mr. CALDWELL. The disposition of the records—there is no question about our having the power to do it and it has been entirely within our power except recognizing the emergency of those to be transcribed for immediate use.

Mr. CAMP. Yes, but our power in that respect is subject to ratification by the States in some way.

Mr. CALDWELL. I think it would have to be in the Schedule and Ordinance.

Mr. CAMP. Probably.

Mr. SCOTT. In accordance, say, with the agreement.

Mr. CAMP. I think so.

Mr. PRICE. I think our agreement is final.

Mr. SCOTT. I don't see how you come to that conclusion.

Mr. PURCELL. It says it shall be incorporated in and made a part of the Constitution—as to the property and indebtedness.

Mr. CAMP. Now, it don't say in express terms as to records unless it is by inference.

Mr. SCOTT. Then our power to dispose of the records cannot be final, because it has got to be ratified by the people?

Mr. PURCELL. It does not have to be ratified separate and apart from the Constitution; it becomes a part of it.

Mr. CALDWELL. The reason for the difference in treatment prescribed for the disposition of the debts and liabilities, and that prescribed for disposition of the records, arises from the fact that interest of third parties comes in.

Mr. PURCELL. My idea would be, whatever report we make with reference to the records be attached to that with reference to the property, and that it be incorporated in the Constitution.

Mr. SCOTT. "I think the whole thing had better be incorporated.

Mr. CAMP. "But the archives, records and books shall remain at Bismarck until an agreement in referencethere to is reached by said States." Now, we have already adopted a resolution defining

our powers to be that we shall recommend an article to be adopted by each State, which article, ratified by each State, will be the act of the State in regard to the archives, records and books. That agreement is to be—of ours—is to be offered to the two Conventions for adoption as a part of the Constitution, but this agreement we have already made will, as I understand it, form no part of the Schedule of the Constitution of either State.

Mr. CALDWELL. Yes. It says, "And the agreement reached respecting the Territorial debts and liabilities shall be incorporated in the respective Constitutions."

Mr. PURCELL. Not as a part of the Schedule.

Mr. CAMP. That the Schedule will state that this State agrees to pay and assume that portion of the debt of the Territory of Dakota as provided for by the Joint Commission.

Mr. CALDWELL. Of course it is just as binding as the Constitution itself, the only difference being that it relates to temporary matters, while the Constitution declares permanent principles.

Mr. CAMP. I mean this agreement will not form any part of the Constitution. The Ordinance will say this State assumes such debts and liabilities, and your Constitution will say—

Mr. CALDWELL. The identical language of this agreement will be used.

Mr. CAMP. It might be they will use the identical language of this article, that is to say, the State of North Dakota shall assume—

Mr. CALDWELL. "And the agreement reached respecting the Territorial debts shall be incorporated in the Constitution."

Mr. PURCELL. Every word of that agreement will have to go into the Constitution.

Mr. CAMP. Are we to go on and incorporate this article as to the property? Simply debts and liabilities of the Territory—agreement reached respecting the debts and liabilities—

Mr. NEILL. What part of that would it be?

Mr. CAMP. This article.

Mr. SCOTT. Pretty hard to fix it.

Mr. CAMP. This Article No. 5 and Article No. 10.

Mr. SCOTT. We put that \$42,500 of South Dakota—

Mr. CAMP. That is not a debt of the Territory.

Mr. SCOTT. No, but an agreement respecting the debts of individual parties of the Territory.

Mr. NEILL. You make your suggestion as a motion and I will second it.

Mr. CAMP. Then I will move that—I don't care to make that motion myself—but my suggestion was, when this agreement is drawn up it be in form of an article to be recommended for adoption by the two Conventions as part of the Ordinance respecting the archives, etc.

Mr. GRIGGS. Then you think the whole of that article should be embraced?

Mr. CAMP. I mean as to archives and records.

Mr. PRICE. You see if it was incorporated in the main part of that you have already drawn they could hardly fail to ratify it.

Mr. CAMP. We cannot force the Convention to do anything the law don't allow.

Mr. KELLAM. A resolution was adopted here that when an agreement was reached in reference to the records that it be reported to the Conventions to be put in the Schedule of the respective Constitutions?

Mr. CAMP. I think so.

Mr. KELLAM. Why don't that dispose of that question so far as the records are concerned?

Mr. CAMP. Except so far as the minds of the members of the Commission seem to change from day to day.

Mr. KELLAM. We adopted a resolution that when we reach an agreement it should be reported to the respective Conventions to go into the Schedules of the Constitutions, and now we have reached an agreement.

Mr. CAMP. Then your idea is, we draw an article for adoption.

Mr. KELLAM. I had no other thought. Now, go right on, make it and attach it right to the end of this part, not as an inseparable part, but as an independant part of this agreement. "And this Commission being so assembled do make the following agreement with reference to the records and archives of the Territory," and recommend that the same be by the respective Constitutional Conventions incorporated in the Schedule of the Cinstitution and submitted for ratification.

Mr. CAMP. That will be all right—that is exactly my idea.

Mr. KELLAM. Has any gentleman a different idea?

Mr. CALDWELL. It was my original idea that this agree-

ment in its entirety be incorporated in the Schedule and Ordinance.

Mr. KELLAM. We have three distinct duties here that are entirely independent, which are expected to be discharged by the same Commission: First. We are to make disposition of the public records. Second. We are to agree upon the amount of the debts and liabilities of the Territory which shall be assumed by each of the proposed States of North and South Dakota. And the agreement reached respecting the Territorial debts and liabilities shall be incorporated in the respective Constitutions. Now, my idea is that the only thing that will go into and form a part of the Constitution of each State under the provisions of this Enabling Act, is the disposition we make of the debts and liabilities of the Territory. Now, by virtue of the resolution we have passed we report the agreement we have made with reference to the records, and recommend to each Convention that it put it in the Schedule of the Constitution to be voted upon by the people.

Mr. PURCELL. What do you do with the division of the property?

Mr. KELLAM. We only do that by virtue of the action of our Commission, determined that when we reach an agreement it should be referred to the Conventions for incorporation in the Schedule of the Constitution. I don't think it is obligatory upon us. So far as the disposition of the records is concerned we have done all the Enabling Act sent us here to do. We have adopted a resolution that when we reach an agreement we put it in the Schedule of the Constitution.

Mr. CALDWELL. Do I understand your suggestion, that your conception of our powers pertaining to public debts and liabilities are to result in a section which shall be inserted that shall be in lieu of No. 5? In this Constitution of 1885 that section five is as follows: "Consent is given that Congress may make such provision for the payment by this State of the existing indebtedness of the Territory of Dakota as it shall deem just and equitable, and this State shall assume and pay so much thereof as Congress may provide."

Mr. KELLAM. Without any deliberation I should say by Act of Congress the Commission appointed by the respective Conventions have met at Bismarck as therein provided, to adjust and agree upon the amount of the debts and liabilities of the Terri-

tory which South Dakota should assume. Then follows the article that South Dakota assumes such and such of the Territorial debt and obligates itself, as recited here, to pay the same.

Mr. PURCELL. Put in the Constitution?

Mr. KELLAM. Yes, that is the only thing the Enabling Act suggests—to incorporate it in the Constitution.

Mr. CALDWELL. Then the provision in the South Dakota Constitution could not be accepted as the counterpart.

Mr. KELLAM. No, sir; because North Dakota assumes such and such indebtedness. North Dakota would put in her Constitution a recital of the indebtedness she assumes, and South Dakota would put in its Constitution a recital of the Territorial debts she assumes and undertakes to pay. By the terms of the agreement, it is simply a recitation of what we would undertake and assume, respectively, North Dakota and South Dakota, according to the terms. It would be based upon the agreement made here, and it is the only part of the agreement I understand will go into the Constitution by virtue of the Enabling Act. We have gone a step further to incorporate it in the Schedule of the Constitution, the disposition we make of the public records; and I would simply go on with this agreement and perhaps recite, “and the said Commission being so assembled as before recited, do hereby make the following agreement with reference to the public records and archives of the Territory of Dakota, and recommend that the same be incorporated in the Schedules of the respective Constitutions.” Then recite our agreement or recommendation. This is a matter I have not deliberated upon, but it is just the way it strikes me.

Mr. PURCELL. But you keep out what we have already passed here, just those portions which refer to debts and liabilities.

Mr. KELLAM. Have you that all on one paper.

Mr. HARRIS. Mr. CHAIRMAN: Perhaps my head may be a little thick, but I don't know what we have been doing. Here for the past three weeks we have been trying to make disposition of this property and these records. Still, technically, we may not have the power, perhaps, under the Omnibus Bill to do this; but it certainly does seem to me the intention of that bill was that we should not only agree as to the debts and liabilities of each of these States, but that we should make a disposition of these records, and that we should submit it to our respective Constitu-

tional Conventions, and that it should be submitted to the people and ratified by them.

Mr. KELLAM. Suppose we make an agreement as to the debts and liabilities of this Territory which the Conventions did not endorse. What would be the effect of it? Do you understand these Conventions have got to adopt our report?

Mr. PURCELL. Not as to the debts and liabilities.

Mr. SCOTT. They certainly have, without regard to debts and liabilities.

Mr. KELLAM. They cannot change it in one particular.

Mr. SCOTT. They can refuse to put it in the Constitution.

Mr. CALDWELL. No, they can't refuse to put it in the Constitution.

Mr. HARRIS. My proposition is that the agreement with reference to this property, and records and archives should be put in the Schedule to be voted on by the people.

Mr. PURCELL. That is what the Major says.

Mr. KELLAM. No, I think it should go in because we have passed that resolution. I don't think we are under any obligations to put any part of this agreement with reference to the distribution of the records into the Schedule of the Constitution. I think we came here as a Joint Commission under the authority of Congress of the United States, with power to do whatever is imposed on us by this Enabling Act, and nobody can question but that we have done that. Now, Mr. CAMP suggests that we should put this agreement with reference to the disposition of the archives and records into the Schedule of the Constitution. This has been adopted and we are bound by it. I don't think there is any reason why the disposition of the property we agree upon should go in on the Constitution. That is, I don't think there is anything in the Enabling Act that requires us to do it. I think Congress has made our Commission to absolutely and finally determine these matters. There is no appeal from the work of this Commission upon any of these questions.

Mr. HARRIS. To whom shall we report?

Mr. KELLAM. To the Constitutional Conventions. There is no supervisory power over the act of this Commission, it seems to me.

Mr. SCOTT. Your opinion and Mr. CAMP's differ. Mr. CAMP thinks we have no power whatever to do anything with the records.



Mr. KELLAM. Just excuse me—I think Mr. CAMP's suggestion was inspired by this fact; but he can state for himself. When we commenced to regard the question there was a question arose as to the extent of our power with the records. The prevailing opinion seemed to be when this resolution was adopted that we should provide for copying the entire records. There was a great want of harmony in the Commission in regard to our power. Mr. CAMP thought we exceeded our power, the power that is conferred upon us by this Enabling Act if we copied these records; that we needed to copy the records; and that in order to have what we did indorsed by the people, it should be put in the Schedule. If there is any question but what we had been fully authorized by the Enabling Act to do just what we did, then I doubt whether Mr. CAMP would think it best to put it in the Schedule. It seems to me clear that so long as we confine ourselves within the power given us by this Enabling Act, we are absolutely independent of the Convention. We have not to answer to the Convention for anything we do, but because there was a liability for our going beyond what a strict construction of that statute would authorize us to do he thought it best to recommend the adoption in the Schedule of the Constitution.

Mr. CAMP. My idea was there was a good deal of a question whether the action of this Commission with regard to the records are final. My idea had been perhaps the action of the Commission with regard to the records was not final. My idea being based upon the language of section five, and in order to cover that carefully I thought it would be well to have the agreement we reached with reference to the records recommended to the Conventions for adoption; and then, when the Constitutions were ratified by the people, that agreement with respect to the records would become the action of the two States and close up any question of the power of the Commission. With regard to the property of the Territory I don't see why our powers are not absolute. We are to make an equitable division of the property, and that it is not necessary to go into any Constitution or to be ratified by any person.

Mr. KELLAM. I think so. There was some doubt as to just how far the power of this Commission went over these records without settling them by the action of the people. Now if your Commission reports to your Convention the disposition you have made with reference to the property of the Territory, as you sug-

gest, and they take a vote upon the adoption of that report, and the vote is against the adoption of that, they cannot make another Commission to make a different disposition. Their powers are limited and the power of this Commission is exhausted.

Mr. SCOTT. We must report to somebody.

Mr. KELLAM. We must return to the Conventions because the Convention needs part of it; they must incorporate so much as they are required to make a part of the Constitution.

Mr. CAMP. We shall have to report and recommend two articles, under the resolution. Recommend an article for insertion in the Schedule with regard to the Territorial debts and liabilities, that is North Dakota's share of it, and one with regard to the Territorial records.

Mr. KELLAM. Because our own acts require it.

Mr. PRICE. Then, of course, there can be no difference of opinion. I understand you to say the Convention had nothing to do with this. If this is true, to carry the argument a little further, what need is there of reporting anything to the Convention. I did not understand the last statement that this must be presented to the Convention and incorporated in the Constitution.

Mr. KELLAM. This Commission cannot submit a proposition to the people of North Dakota. The Convention must have the material, and the material comes from this Commission.

Mr. PURCELL. There is no question but what the Enabling Act requires us to make a report, and that it shall be incorporated in and form a part of the Constitution—that is, the debts and liabilities, and division of the property.

Mr. CAMP. There is another question suggested to me, whether it would not be well for us here as a Joint Commission, to agree upon the two articles which we shall report to each Convention with regard to the Territorial debts and liabilities.

Mr. CALDWELL. That ought to be.

Mr. KELLAM. That of course would be very likely the proper thing to do. At the same time the Convention may make its own article.

Mr. CAMP. I suggest that Mr. CALDWELL and Mr. PURCELL be a sub-committee to draft two articles which we shall agree upon—two articles which we shall report, one to each Convention, with regard to the Territorial debts and liabilities which the respective States shall assume.

Mr. KELLAM. I think that is a very good suggestion. Gen-

tlemen, we shall consider it as a motion made and seconded. All in favor of drafting the article which this Commission shall recommend with reference to the debts and liabilities, will manifest by saying aye. The motion is carried.

Mr. KELLAM. Now, gentlemen, what further?

Mr. NEILL. I move we adjourn until 9.30 o'clock.

Mr. PURCELL. What remains undone is the report with reference to the records and property.

Mr. KELLAM. If any gentleman thinks of anything else, it would be in justice to ourselves and the Stenographers to have time to make good clean copies.

Mr. PURCELL. This report you have requested us to make; would that be in type writer?

Mr. KELLAM. Just as you say, if you think you can write legibly.

Mr. PRICE. CALDWELL writes pretty good.

Mr. SCOTT. You say you only had in section five.

Mr. CAMP. No, sections five and ten.

Mr. SCOTT. We have an article that North Dakota and South Dakota shall assume half of all the debts and liabilities —

Mr. PURCELL. No, he referred to the Sioux Falls Constitution of 1885. As I understand it we will take that report, and then we take such part as refers to the debts and liabilities.

Mr. CAMP. Frame two articles, one for North Dakota, one for South Dakota.

Mr. KELLAM. Gentlemen, we have gone through the reports and made such changes in it as seemed to be necessary and desirable. Would it not be well to let the Stenographers commence at once upon a copy of the agreement; going so far as this agreement goes? Then we can make our agreement with reference to the records and report at the first session to-morrow, and then, after it is criticised and finally adopted, they can go on and add that.

Mr. PURCELL. Your report not only includes the records, but division of the property?

Mr. KELLAM. Yes.

Mr. CAMP. Then Mr. CALDWELL and Mr. PURCELL could take the copy of the agreement.

Mr. KELLAM. They can take one copy and the Stenographers the other.

Mr. CALDWELL. It would hardly be worth while, then, to attempt to hold a session to-morrow forenoon.

Mr. SCOTT. Mr. CHAIRMAN: I move we adjourn until to-morrow at 11 o'clock.

Mr. ELLIOTT. I second that motion.

Mr. KELLAM. Gentlemen, if there is no objection we understand the Commission stands adjourned until 11 o'clock to-morrow morning.

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## FIFTEENTH DAY.

BISMARCK, *Wednesday, July 31, 1889.*

Commission met at 11 o'clock, a. m.

As the Stenographers were still at work on the agreement an informal meeting was had.

Mr. KELLAM introduced the following resolution:

*Resolved*, That when this Joint Commission adjourns it adjourn to meet at the joint call of the Chairman of the respective committees composing this Joint Commission, the time and place of such meeting to be determined by the said chairmen and announced in the call.

Which resolution was carried unanimously.

The balance of the report of the Chairman as to phraseology of the agreement was read, informally discussed and adopted article by article, and the Commission adjourned to meet at 3:30 o'clock.

## AFTERNOON SESSION.

The Commission met at 2:30 o'clock with Mr. CAMP in the chair. All members present.

The final agreement as prepared by the Commission was submitted as follows:

WHEREAS, By an Act of Congress approved February 22, 1889, entitled "An Act to provide for the division of Dakota into two States, and to enable the people of North Dakota, South Dakota, Montana and Washington to form