

TWENTY-FIRST DAY.

Sioux Falls, Dakota, July 24th, 1889.

Two o'clock P. M.

Pursuant to adjournment the Convention was called to order by the President.

Prayer by the Rev. Mr. Willis.

Almighty God, we recognize that by Thy will princes rule and kings decree justice. Assured are we from the lives of men and from history that woe is that nation that makes its plans and directs its efforts without reference to the divine wisdom, and divine providence. Aid, Thou, us in the deliberations of this session; evermore guide and direct the efforts of this new State about to be. for the Redeemer's sake.

AMEN.

The minutes of the preceding day were read by the Clerk and approved.

Mr. Willis: I notice a repetition of the paragraph on the twelfth page before the report of the Committee on Seal and Coat of Arms; repetition of the whole paragraph on the same page.

The President: The Clerk will make the correction.

Mr. Sterling: I notice some clerical errors in the report of the Judiciary Committee. I would like to have the Clerk correct the third line of the first paragraph. * * *

Under the order of business, Presentations of Communications and Petitions, the Clerk read the following communication:

Huron, Dakota, July 22, 1889.

At a mass meeting of the citizens of Huron, Beadle County, on Monday evening, July 22nd, 1889, it was unanimously ordered that the Secretary of the mass meeting be requested to ask the Constitutional Convention, now in session at Sioux Falls, to adopt the Australian system of voting on the first day of October next, as expressed in the attached bill.

SIGNED: L. K. CHURCH,
Chairman.

The President: The Communication will be referred to the Committee on Schedule.

Unfinished business of the previous day.

Reports of Standing Committees.

Mr. Van Tassel: The Congressional and Legislative Apportionment Committee are ready to report as soon as the report is signed.

Mr. Hole: The Committee on Schedule submit our report on the Prohibition clause,—Article XXIV, and also Article XXV—Minority Representation, which were submitted to us.

Mr. Goddard: The Committee on Revenue and Finance report no changes; our report has been compared with the report of the Committee on Errata and no changes were made.

The President: Consideration of reports of Standing Committees.

Reports of Select Committees.

Mr. Jolley; Your Committee on Rules have instructed me to report the following:

Sioux Falls, Dakota. July 24, 1889.

MR. PRESIDENT:—

Your Committee on Rules have instructed me to report that they recommend the two following additional rules for the government of this Convention, to-wit:

RULE 46.

That all claims and accounts against this Convention not paid by the United States, shall at once be presented to the Committee

on Expenses of the Convention, and shall be considered by that Committee and reported to this Convention; and after any claim is allowed by this Convention, a certificate of indebtedness shall be issued and signed by the President and Secretary of this Convention to the person to whom said claim is allowed, in substantially the following form:

Sioux Falls, Dakota,.....1889.

That A. B..... has acted as.....
of the Constitutional Convention held at Sioux Falls, Dakota, in
the year 1889, for.....days, at \$.....per day, and
is entitled to the sum of.....as allowed by said Con-
stitutional Convention.

.....President.
.....Chief Clerk.

RULE 47.

That each member and officer of this Convention shall have a certificate of indebtedness issued to him, as provided by Rule 46, at the same per diem as is allowed by the United States in the Omnibus Bill, for each and every day he attends this Convention, after the appropriation of \$20,000, made by the United States is expended.

JOHN L. JOLLEY,
Chairman.

Mr. Jolley: I move the adoption of these rules.

Which motion prevailed and Rules 46 and 47 were declared adopted.

The President: Presentation of Resolutions and Propositions Relating to the Constitution.

Special orders. The report of the Committee on Education and School Lands.

Judge Corson: I move that that report be laid over until tomorrow.

Which motion was duly seconded.

The President: It is moved that the report of the Committee on School Lands and Education be postponed until tomorrow and made a special order.

The motion prevailed.

The report from the Judiciary Committee was read by the Clerk as follows: (Here insert it.)

Mr. Sterling: I move the adoption of the report
Motion seconded.

Mr. Spooner: I move as a substitute that the report of the Judiciary Committee be adopted with the exception of the proposed division of the Territory included in the Third, Fifth and Sixth Judicial Circuits and that the Territory included in said proposed Circuits containing the following counties namely:

THIRD CIRCUIT: The Counties of Brookings, Deuel, Hamlin, Codrington, Clark, Spink, Grant, Roberts, and all that part of the Whapeton and Sisseton Indian Reservation in this State, except that portion lying in Marshall County.

FIFTH CIRCUIT: The Counties of Kingsbury, Beadle, Hand, Hyde, Hughes, Sully, Potter, Faulk, and Stanley.

SIXTH CIRCUIT: The Counties of Day, Marshall, Brown, McPherson, Edmunds, Walworth, Campbell, and all the territory lying within said state not included in any other judicial circuit. I move this as a substitute. (Motion seconded.)

Mr. Dickinson: In behalf of Day County, I also wish to second the substitute.

Mr. Sterling: I desire to say upon this question, simply, that this matter was very fully discussed by the Committee on Judiciary. That at least three days were given to the discussion of the question of apportionment of these Districts. And that in addition to the three days' discussion in Committee, the matter has been freely discussed ever since the Convention met, by individual members of the Convention. That in addition to the views presented by the different members of the Committee before the Committee, there were the views presented by the different members of the Convention, who are not members of the Committee; and that a full and fair hearing was given to every one who had any adverse views to offer to the circuits as finally apportioned. I think Mr. Chairman, that no one can say but what there was the fullest and freest discussion and that this Committee went to work in earnest with the desire to do what was best for the entire State in the apportionment of these Judicial Circuits. And after all this discussion, after this thought upon the matter they have presented to you this report as the very best that could be done. There are somewhat different views in regard to this. Some counties are not wholly satisfied. It is no wonder to us that there may be two

or three counties among all these counties which, taking into consideration the matter of accessibility, are objecting, in that they are not joined to counties that they would desire to be joined to; it is no wonder that they should not be perfectly satisfied. Yet, taking the whole number of Circuits,—taking the population comprised within the different circuits, I do not think that a more satisfactory solution of this question can be presented than the one presented in this report.

Mr. Couchman: I rise briefly to say that I see a serious difficulty with the report. I come before this Convention with confidence, believing they are a fair body and men that want to do justice to all parts of South Dakota. Therefore, I speak with confidence when I come before you expecting that you will act upon that basis. I know that after the Committee had agreed upon this majority report in talking with the members of this Convention on they said to me, (and no doubt to others) "Had we fully understood the matter as we now understand it, a different report would have been presented to the Convention". As the Chairman of that Committee has stated, we all had a hearing before that Committee. Yes, we went before that Committee, but before we were permitted to go before that Committee, what was done? They had met and had agreed to a certain report (Shall I say it!) had sworn to stand by it, even pledged to it, and that pledge was so strong that there was no breaking through it. Argument was unnecessary, reason was unavailing, they were bound on that report, and our meeting with them and objecting repeatedly and presenting our case was of no effect whatever. Then what could we do? Nothing; more or less than come before this Convention, which we believe and hope will seek to do justice to all portions of South Dakota. We are assembled for Constitutional purposes; it is not a political body, thank God. If it was that kind of a body, we would expect just about the same proceedings that have been gone through with by that Committee in making up the circuits for the Judicial Districts of this State. But we believe that in making up these circuits it should be done fairly; not an attempt by portions of the districts to arrange for the benefit of any particular man, nor set of men, or of some county. After the circuits are formed and any particular circuit is for a man they desire to come before the circuit, let him come, but do not let him be brought into prominence directly by a circuit formed for that express purpose. Now

believing gentlemen, that you are a fair-minded body, I want to show you where we are placed in this judicial(?) shuffle. And say if it is fair,—and say if it is right,—and say if it is just,—and say if it is honorable. Gentlemen, we are in the northwest corner of South Dakota, that is of the populous portion of the State; but one county lying north of us upon the river; the County of Campbell lies north of us. We are placed in a Judicial Circuit lying down the river; there are counties that would have over one hundred miles to ride down a wagon road, across prairie to the place where the heft of our business shall be done if this judicial circuit is formed. Over one hundred miles through the bluffs, down one bluff, through the ravines, and then up and down another and so on through three counties, down to where our business will be done. If we don't like this road we can go through Aberdeen, from Aberdeen to Huron, and from there we can go to Pierre. And in doing that, gentlemen, pass through a number of circuits before we get to our place of business. Gentlemen, is it fair, is it right? Do you want us to do it when we can have a judicial circuit here that we are all satisfied with, and pleased with, and anxious to have adopted? There is a tier of counties along the northern boundaries of this State that we believe every gentleman in the Convention are unanimous in forming into one judicial circuit. Here we have a road running by or through every county. We can go to that road, then go east, stopping off at Roscoe, Ipswich, Aberdeen, or wherever business and return the same day; shall we go to all this trouble, all of this expense and expense of time that will be necessary to do business in that Judicial Circuit that is there formed in this report? Gentlemen, I believe you will say no. Let me say further, when that country was settled up, we came to Aberdeen and then passed westerly towards the river, forming acquaintances as we went. Let us have a judicial circuit composed of men who are acquainted with each other, who like the ways of each other in business transactions, in judicial transactions and whatever relations they have, who are pleased with each other. We would like to remain together. We are not afraid of being swallowed by Aberdeen because it is a larger county than ours, not by any means; we go to Aberdeen, it is a large place to be sure and in Conventions, of course, they outnumber us three to one; they outnumber us in this Convention, but what do we care so long as they are honorable with us as they have always been. A better class of men

does not exist than lives in Aberdeen; when we go there we are treated courteously and kindly; to be sure, we pay our own bills; it is not forced upon us to have our bills paid; we pay our own bills; if in any other county the bills have taken a different course they never ask for them. We have no representative upon that Committee; but let me stop right here and say, and say conscientiously, that not a man from the whole section would have found one word of fault with the President of this Convention because we are not there represented; he supposed as we supposed, it mattered not where the Committee came from, they would be honorable, they would do justice by us, and every part of South Dakota; we did not care who was on the Committee; the Chairman will bear me out in saying that we did not embarrass him to get upon the Committee, not by any means. But when the Committee was formed we asked justice at their hands, but as we have shown you, we will have to leave it to this Convention to say shall we have it. Gentlemen, it lies with you to say whether this outrage shall be committed. Won't you think of this, gentlemen; let me ask you to act as you would have us act.

Mr. Davies: I am from the county adjoining Walworth County; just twenty miles this side of the county seat of Walworth County, where the judicial business of that county will be done. In the first place we do not assume in all human probability that all judicial business in that judicial district will be done in Pierre. Perhaps a few years ago, when we had one term of court every four or five years, it was necessary to go to Pierre up and down that river. We expect that some of this business will be done on the lines of railroad running right through the heart of this Judicial District. If you are not well versed in the geography and prospects of that section, let me say you will find three roads running in to the very center of those counties, and near to the river; and one running to Eureka, in McPherson County; so there are four railroads. And as is well known, others are looking that way; and at no distant day will be extended north and south, east of the river, through this proposed Judicial Circuit. Moreover, I have consulted with gentlemen of this Convention, from Campbell, from Walworth, from McPherson, and Faulk Counties and we find here, men from Walworth, Campbell, Potter and McPherson Counties who want to go right down the river. Compare the north half with the south half of the proposed district and is it for a moment

contended but that the direction of this Judicial business will be down south on the middle line of this District? Then we have better facilities as we are; then running across the whole north tier of counties of the Territory and make Aberdeen the center. I speak advisedly when I say that our people do not want to be joined to the Empire counties east of us. We know that if that is done the big fishes will swallow the little ones. We would be at the mercy of the large populous cities, Mr. President, I think we know positively that the opposition to this question is centered in two or three or four of the larger cities, the centers of wealth, influence, culture and wisdom. There are seventy-five of us scattered all over this Territory, each one of us representing communities whose interests are dear to us. And while we wish God-speed to every large city in this Territory including Sioux Falls, we don't want to surrender ourselves body and soul. What little minds we have, they are our own minds and we propose to stand right up for our rights and to say that it is right for us to have a square, compact judicial district composed of counties which are equal in wealth, influence and power and in cities. We want this show. We want simply what is right; what is just; what is honest between man and man; what is suitable to the judicial business for which we are now preparing. I am not one of that Committee, but I do not think that this Convention will for a moment question the wisdom, ability and honesty of that Committee. I have had the honor to attend one or two of their meetings and everything seemed to be fair and above board as anything could be. I believe there has been such work done by this Committee and so much of it, that any work we could do in this Convention by going at this business, everyone for himself, would not prove anywhere as near satisfactory to ourselves or to the people at large. I do not believe it would be possible for this Convention to prepare anything that would compare with this report. I am certainly in favor of adopting the report of the Committee, not the substitute.

Mr. Dickinson: I think we should all bear in mind as suggested by Mr. Couchman from Walworth County that we are here as a Constitutional body and that we should seek to do fairly and justly by all portions of the Territory, and certainly to give all persons a chance to be heard upon these questions as those upon which there are interested. I think we should bear this in mind also, Mr. President, that it is not merely a bare majority that we

should seek to get so that we could barely carry through the measures we are defending, but it should be unanimous, as near as possible. I wish every measure might be passed unanimously. In the Judiciary Committee there was a majority in favor of the report sent in. Quite a strong minority favored something like the apportionment of the Judicial District in the north part of the Territory and east of the river as outlined in the one suggested here today. I wish to suggest this; that in the apportionment of these three districts, while there may be a number of the counties who are satisfied, there are at least eight counties out of the twenty-three represented in that section that are thoroughly and completely dissatisfied; led to feel that they have been unfairly dealt with, though perhaps not intentionally. I would not be so rash as to accuse that Committee of designedly doing injustice. I think it may be possible, Mr. President, that in a desire to do well by the constituency represented by the gentlemen, they may have overlooked the interests of the constituency represented by us. Their own interests appear so large, ours appear proportionately small. It would be a serious mistake if this Convention should make any apportionment in that section of the State, which would leave eight counties so thoroughly dissatisfied. It would leave for instance, in the district comprising the Counties of Beadle, Spink, Brown and Marshall, which are very important counties, dissatisfied and displeased with the arrangement. When a question is raised in that district, it seems to me that it would not be very pleasant for Spink County for that one county to be placed in,—for the representatives of that county to be placed in and associated in that Judicial District. Those three counties could very consistently blame me for having brought them in that situation. That the three counties should be tied against their will; against their interests; against their convenience, and against their protests here. It seems to me that there can be certainly a more just, fair and reasonable arrangement than that. In the other districts represented by counties towards the east line of the State, the center of which we may call the city of Watertown, there would be two counties that would be thoroughly dissatisfied. One of them, the County of Kingsbury, whose representatives are here and can speak for themselves, and present petitions and letters from their constituents showing what they want, with reference to the main question, I will say when I came here I had no particular care

which way we were assigned, as I am not a lawyer, and —and I never had occasion to go to law. I never wish to do any other kind of courting than that which I did when I won my wife. It is my business, however, to represent my constituents here. I have received a petition signed by every member of the bar, and by the leading business men of our county, saying they wish to go into the district in which they are now under the present Territorial conditions; that is the counties on the north line, Day, Marshall, Brown, Edmunds, McPherson, Campbell and Walworth. There was perfect unanimity in these seven counties that that portion of the State be not disturbed. The day before I came here I wrote up to Judge Crofoot and he said: "We can do no better than endeavor to secure the present arrangement of this Judicial Circuit." Judge Crofoot has no interest in making any such statement as that as he will probably not remain Judge long. It would be for the convenience of those doing business in that district,—the convenience of the district to remain as arranged at present, and as desired by the report of the Minority Committee. The Judge said: "I can leave Aberdeen every morning and reach any part of the district." Suppose he had to do business from Watertown, he must go forty-five miles across the country by stage one way,—or he must go around by Elrod or around by Aberdeen and Redfield,—a rather expensive and thoroughly inconvenient way of doing business. Whereas, in the arrangement proposed by the substitute, we have free access to all parts of the district. I do not think anyone can blame us for desiring very much that arrangement. I wish to call the attention of the Convention to the argument I heard before the Judiciary Committee. I think I have heard nearly all the arguments in favor of the arrangement recommended by the Judiciary Committee. There has been nothing said of the inconvenience of counties. There is an element from outside the community interested, or political aims and ambitions who desire to be cut off from certain counties in order to have a better political field, but there is no political consideration whatever so far as I am aware of, that dictated the arrangement suggested in this substitute motion. We did not take into consideration the fact that anyone has a desire to be county judge, or because any particular city or county desires to be the center. Our's is a convenient arrangement to those interested, to the tax-payers, and I wish everyone here to bear in mind in the studying of their maps, the propo-

sition of the substitute does not place any of the counties in any disadvantageous position. It leaves them all arranged so that they have as easy and ready access by railroad as they have at the present time. If it is not upon the ground of convenience that it is urged by them, on what ground is it? If it is political ground, is it the issue that the Convention has got to get out of the way? And that, too, to the serious disadvantage of eight counties in that portion of the State in order to further the political ambitions of certain localities. I dislike very much, Mr. President, to refer to such things as this, but they are manifest in so many directions in the figuring that appears in these plans that it seems absolutely necessary in order that we make no failure in presenting the Constitution before these counties for adoption. I wish to say further in reference to the main question, after I had presented the opposition that a number of the best men had gone to the members of the Judiciary Committee. I have the assurance that they were satisfied, that they wanted the arrangement proposed to the west, that is Brown County, but they would not press the claim to our county and trusting in the pledge of the members of the Judiciary Committee that that would be the report, we paid no further attention to it until we found that it was too late to do anything towards affecting a change. That the arrangement had been made without my knowledge and without any deference to the wishes of the Representatives from Day County. After that there was nothing left to do but to present our desires before the Convention which we have done in these words.

Mr. Van Buskirk: This is the first office I think I have ever held in this Territory and perhaps the only one I shall hold in the State of South Dakota; therefore, I desire to submit to this Convention some of the considerations which moved the Committee in making this report. And before proceeding to that I desire to allude to two ideas or suggestions that were made prominent by two of our brethren of the Convention. It has been said by my brother, Couchman, that this Committee had got together and under a pledge had sworn (I think was the word) to hold to a particular line of action, with reference to this apportionment. If such a thing existed, it certainly did not come to my knowledge. I do not think any such thing ever did exist, and so far as its being a political question as suggested by Brother Dickinson, certainly I think as one of the members of the Convention, being as I am

numbered with the majority with no more hope of being elected judge in our district than one of the other members of the minority becoming President of the United States within the next five years, and there is no possibility of that; therefore, I think, so far as I am concerned, the members of the Convention can say at least, I have not been influenced by any political consideration. I believe there is in all three Democratic attorneys in that district which is proposed here. I am one of them and the others are young men, neither of whom aspire to that position. So I think, Mr. President, they will say at least, I have not been influenced by any such considerations in supporting this report. I have no means of judging of the future only by the past, and judging of the future by the past, I see no way for the proper administration of justice only to divide these districts of this Territory up into circuits as we have. It will become necessary to fully understand some of the reasons for this report, to go back a little to the history of the jurisprudence of this Territory. Originally we had three judicial districts. I did not come into the Territory until 1883, after that we had four judicial districts, and that stretched from the Missouri river to the north limit of the proposed State of South Dakota. The judges in these several districts had little penchant for business generally, because they were appointed to stay there as long as the President would let them. We had to hunt them; they did not come into our counties very many times to hold court. Well, in the process of time we got another district in the Fifth District, in which I have always practiced. And that stretches from the Minnesota State line to the Missouri river,—over two hundred miles long and one hundred and fifty miles broad, 120 at least, all in one district. During that time the judges of the court who had to sit in that district, notwithstanding the people of the Territory voted them \$1500 per year for expenses so they might hold their court throughout the various counties, sat down in the city of Huron and we have never seen them but once or twice since the Fifth District has been organized, at least in our county. Some counties near Huron had terms of five and six weeks at a time. We have not had five weeks of court in Codington County since I have been there, and I have lived there six years. Now, when we come to consider the condition of things it is no wonder that this people desire that we should have a Constitution framed here so that they could become organized as a state. I well remember, 'twas about the time I first came here

early in the history of my residence in this Territory, someone remarked: "A poor man cannot get justice without buying it"; and many times I know people do have to buy it. I know in my practice I had a client and all the property that she had in the world was siezed in a chattle mortgage, and she had a good defense. What was the result? I had to go to the county seat of Brown County, or I may say it is now the county seat of Brown County. I got the case transferred to another court for trial. Judge Smith was upon the bench,—I got my order. The mortgagee moved to set aside this order on motion. Mortgagee was a man of wealth, and my client had not a dollar in the world. He served me with a motion to go down to the city of Pierre and we argued there that motion to set aside the order to give him an opportunity to set up a defense. I had to let this poor man lose everything he had, with which to earn his living or put my hand in my own pocket and buy railroad tickets and pay for hotel bills; I did it; I do not regret it today,—I do not expect pay; this is mentioned merely as an illustration of the condition of things which, Gentlemen of this Convention, moved the framers of the Constitution of 1885 to incorporate in the Constitution as adopted a clause that the judicial districts shall be composed of compact territory. And your Committee acted upon that instruction and we arranged the Districts and the connection with a view to an apportionment in such a way that the people might reach the courts and the courts might be near the people. Well, what further? It came to my knowledge before I came here that a combination had been formed to stretch out the districts from the State line of Minnesota to the Missouri river on the north, including the Counties of Grant, Roberts, Day, Marshall, Brown, Faulk, Edmunds, McPherson, Campbell, Walworth and Potter. On the other hand, down somewhere near the south line of this State, not a great ways from the sixth standard parallel, they got together and proposed to stretch out another district two hundred miles long, from the Minnesota State line towards the Missouri river, for some reason satisfactory to themselves. They proposed to let the Territory lying between these two lines take care of itself in the best way and manner that it could. I undertake to say that when they undertook to form a combination stretching out the district in that manner, it was a plain violation of the Constitution under which we are acting and adopted by the people on May last for our guidance and control. Well, the question arose,

what was to be done? A few attorneys, familiar with the legal business of the whole country, when appointed on this Committee, went to work to see how this matter could be divided up the best to accomodate the people and business of this State. It has been said here that it is easy to get from Day county over to Aberdeen. Now, as I said, I had supposed that the purpose and policy of this arrangement of the districts contemplated by the Constitution and which had been agreed upon by the Committee was to strike at the root of this idea that the people of a large section had to go for judicial purposes to Aberdeen or Huron. I supposed that that was the purpose of it. That the object in forming the district this way as my purpose was to fix it so every locality might rest upon its own merits and divide these districts so that we would not be compelled to go to some particular locality. My friend Dickinson from Day County, says it is much easier to go to Aberdeen than come to Watertown and perhaps some other locality. Let us look at it a minute. I do not understand that the county seat of Brown County is in Aberdeen. It is true that temporarily they prevented the moving of the records, as I understand the Supreme Court of the United States has decided that the county seat has never been properly removed from Columbia. Now, if the gentleman wishes to go from his county to Columbia in the morning he can get an early start and can go until four o'clock the next day to get to Columbia. He will have to be gone two days in spite of all he can do and if he does any business,—perhaps three, at a distance of seventy miles. Now again, I don't know any reason that this Convention should assume that the court is going to get down in a particular locality and make everybody go there, in the future as in the past. Suppose an attorney wants an injunction. The Judge should be holding court over in Campbell county on the Missouri river. How long would it take him to go over there to get his injunction and back again? About a week at the best he could do. Suppose the gentleman from Campbell county should conclude his interests were in danger and he wanted an injunction and the Judge happened to be holding court in Marshall county, how long would it take him to go up there? Probably about three days to go up there and back again. Now then, suppose this district shall remain with Day county in it as proposed by this Committee. He can leave his place of residence in the morning, an if court is sitting at Milbank, in Grant county, he can get up the

and have half a day to attend to business and get home the same day. If the court is sitting in Clark county, he can leave home in the morning and get down to Clark before noon and have some time to transact business between trains, and get back the same day. It is only about forty miles; he could get to Watertown about half past two o'clock in the afternoon, transact business and get back home the next day; and in either place he would not have any more miles of railroad to cover than to Aberdeen. I am bound to do the people of the county a kindness whether they appreciate it or not and vote this amendment down, because they will then have three places they can attend court as conveniently as they can at the county seat of Brown county. Now, what interest Marshall county can have, I do not know. They are there where they can get blockaded in the winter season; that is conceded. I am told that the purpose of this was to place the people in the various districts that are organized so they could get some kind of service. I have no way of judging of the future but by the past, and my past experience in this Territory and the experience that I had before coming to this Territory, for I have been practicing law about twenty-five years constantly, is that these outlying counties will always be neglected where farther removed from the larger counties, that they do not get the same service. It has not only been true here in this Territory, but the matter of observation with me in my practice before coming here, and we have no other means of getting at it only to say that in the future it will be as in the past. Therefore, let us put these counties together, let us put these rich counties lying west and up and down the James in a situation where they can elect their own judge. Then they will have no large counties to control the smaller ones and they will get equal service all through the district. I know of no other way to get at it. These are some of the considerations that have moved the Committee to make this report that has been made here. The attorneys upon this Committee have understood what the situation has been heretofore, and therefore we thought it was right to place these counties that have had no service at all in a situation where they would have a judge themselves and could get the service they have a right to demand, and which they would expect now. Something has been said about the convenience of getting from Kingsbury County to Huron. If the court should happen to be sitting in the district over at Pierre they would not

find it so convenient. It is only about thirty miles over to Brookings, about thirty miles from Clark, and about the same distance from Watertown. So they will have three counties very near by and if the Judge should happen to be over at Pierre, it would not be convenient for them at all. I apprehend that when this Constitution shall go into effect, and our Legislature shall have fixed the time of holding terms of court, I apprehend they will have two terms of court in each of these counties and perhaps a law term. I do not know any particular reason why the gentlemen have got to go out of their own county to attend to their business. I have practiced law for a period of twenty years in the First Judicial District of Wisconsin, with a very large practice. During all that time I never had to go out of my county but twice to argue a motion. I apprehend that when these gentlemen come to get their courts organized so that the judges are responsible to the people, they will never have to go out of their counties to argue their motions. It is merely a fancy based upon the iniquitous system existing in this Territory at the present time. Again, under this Constitution the Legislature may confer the power of Judge of Chambers upon the County Courts. That was done in Wisconsin. There was but one solitary order that the Judge could not grant,—he could not grant a new trial. There was not another motion that the judge had not the power to hear and determine. It was not necessary to go out of the county to argue a motion; and that would be the result here. You would not have to go out of your county to argue your motion. It is entirely a mistaken idea that the people of one county are going to be compelled to go to other judicial districts as heretofore. For instance, a gentleman may want an extension of ten or fifteen days to file a complaint in the case. All he has to do is to step over to the office of the county court and get his order. If he wants to make a complaint more definite and certain he can go before the county court and ask for an order, so if he wants an injunction the Legislature may confer the power here as there, under a similiar Constitution for him to grant injunctions. What would you go away from home for under these conditions? It is just simply a fancy based upon the iniquitous condition of things that is existing in this Territory, and which will not exist any longer than the moment you get a judge that is dependent upon the will of the people for his position.

Mr. Matson: I am not given to speech making yet I ask the

indulgence of the body for a few minutes. If I were anxious for newspaper notoriety and capable of it, there is doubtless material for a first rate speech. If I felt disposed to give full vent to the feeling of indignation with reference to certain matters in this connection, I think now is my opportunity, but I have no disposition to make a speech. I certainly am not disposed to question the purpose of any member of the Judiciary Committee because I know of one instance they were imposed upon. I feel that if I had been a member of that Committee I would resent it. I am not disposed either to speak here against the expressed wishes of people in Dakota—people whom I do not represent. I simply want to make a statement with reference to the feelings of the people I do represent in order that their wishes may be known,—I will allow them to speak for themselves. During the first week of the Convention, in order that I might act intelligently in reference to this matter, I wrote to a gentleman in Kingsbury county asking him to ascertain the wishes of the attorneys in reference to the judicial districts. I received for a reply something like this, in substance: "I have seen some of them but they do not seem to care how the matter goes. Have nothing to suggest." With that reply I rested perfectly easy until the Committee had got well under way, and I saw that the members from the different portions of the State were considerably exercised over their actions. I thought it very strange that our people were so unconcerned so I went to the Chairman of the Committee and asked if a communication had been received from Kingsbury County. He said, "Why, yes, there is a petition." I thought it was a little strange. So I went to the gentleman who had the petition and asked if I might see it. He let me have it and I read a petition signed by two gentlemen who claimed to be the Chairman and Secretary of a meeting. The County Treasurer of our county was upon the grounds at the time and he said, "That thing is a fraud". and "Such a meeting never was held." That was stated, in substance, before the Judiciary Committee. I received a telegram which I will read: "Watson and Schenain were the only persons at pretended meeting of Bar which asked that Kingsbury be attached to Codington. Every other person seen asks to go with Beadle.

JOHN A. OWEN,
J. C. GIBSON, Abstractor,
THOS. H. RUTH, Mayor."

In addition to that they sent a petition of remonstrance which I will read:

TO THE MEMBERS OF THE SIOUX FALLS CONSTITUTIONAL CONVENTION:

The undersigned attorneys and business men of Kingsbury County would respectfully represent that they are opposed to, and earnestly protest against being included in the Third Judicial District for the reason that the railroad facilities of said Circuit, so far as they affect Kingsbury County, are so limited that it would put the people of said county to great inconvenience and expense to reach other counties in said Circuit. And we further represent that we are in favor of a circuit composed of the counties of Kingsbury, Beadle, Hand, Hyde, Hughes and Sully, or a similiar circuit.

B. A. DUNLAP, Merchant,
 THOS. H. RUTH, Cash. Kings. Co. Bank,
 D. H. LOFTUS, Merchant,
 H. J. HAMILTON, Merchant,
 W. E. BROADBENT, Merchant,
 S. B. OWEN, J. P.
 WILL H. RUTH, Asst. Cash King. Co. B.
 J. C. GIBSON, Abstractor,
 R. N. BUNN, Dep. Co. Treas.,
 GEO. C. DURKEE, County Auditor,
 A. C. HANSON, Register of Deeds,
 V. F. DAVIS, Dep. Register of Deeds,
 PHILIP LAWRENCE, Probate Judge,
 A. W. MULLEN, Postmaster,
 E. S. JOHNSON, Atty.,
 A. THOMAS, Atty.
 C. L. DEWEY Clerk Dist Court Kings-
 bury County,
 A. N. WATERS, Attorney,
 G. C. BRADLEY, Druggist,
 F. R. JEWELL, Merchant,
 D. R. WILLISON, Jeweler,
 GEO. B. WILMARTH, Merchant,
 D. W. WILMARTH, Merchant,
 HOPP & McDONALD, Publishers,
 C. H. TIRKHAM, Merchant,
 C. P. INGALLS, Deputy Sheriff.
 R. S. GLEASON, Co. Supt.,
 P. W. MCKELLER, Physician,
 W. L. SEELYE, Insurance,
 J. CARL S——, Abstractor.

It was signed by thirty-one of our people, representing bank-
 ing intstitutions, merchants and people in the vicinity of the city.

We have simply let these documents speak for themselves; we only speak with reference to Kingsbury County. I may not be able to speak intelligently on this question, for the reason that I never practiced law, not even as a client. So far as I am personally concerned, it is absolutely immaterial to me as to how these districts are formed. I do feel in duty bound to represent my people in this matter,—they have put these papers in my hands to be used here, publicly in the Convention. I think in justice, I ought to say further, there are no lawyers in our town in Kingsbury county, the only lawyer who does business in our village resides in Beadle County, just over the line. Our town is in both counties. This lawyer in Beadle County wrote me, but I have given it no consideration for the reason that he is on the Beadle County side of the line and not in the district that I represent. I also have a letter from a gentleman of Iroquois who requested that we do not “shoe-string” these districts, on the basis to have them as compact as possible, of course, his idea was,—to make the matter of expense and time as convenient as possible for the people. He left it to me that they cannot go to Watertown if they had any occasion to go to the legal center and transact business, short of three days. While they can go to Huron and return in one day, and have the whole day to transact business.

Mr. Davies: I do not want to take more than my portion of the time in this matter. I forgot something in the early part of the discussion. I have with me documents from members of the Bar of the northwest counties, interested in this matter which, if necessity compels me, I will bring forward before the Conyention. I do not think they will be at all necessary. I will, however, intimate, they are private communications, but if they become needful I will read them. They are from attorneys,—I am an attorney myself practicing in that district—from ex-Judges and ex-District Attorneys, and from Clerks of Court. I have them with me in my pocket if they are wanted. I do not think it will be necessary to produce these documents to show fully the desires of the people in that particular district. With reference to the convenience of going to Aberdeen, it is not convenient to have to practice law before the Judge at Aberdeen. Judge Crofoot, who is a very able and competent judge, comes to Ipswich to hold court and goes home to sleep nights. If we had our own district and our own judge, who would be on the ground at all times—there are

times when a matter of three minutes or five minutes will enable a man to go home Saturday night with eight or ten witnesses instead of staying at the county seat at great expense. It is not convenient for any other counties but Brown County to come to Aberdeen to do judicial business with the judge residing out of that district and going home to sleep nights, no matter who he is, or how good a judge he is, it is a matter of great inconvenience to all the residents of that district.

Mr. Sherwood: I do not desire to make a speech, but I do desire to call attention to two or three matters in relation to the judicial districts as they are now, or rather as they were, in connection with some things that have been said by those who oppose the report of the majority of the Committee. I will say, that as a member of the Judiciary Committee, I believe it was the honest effort on the part of every member of that Committee, to consider only the interests and welfare of the people interested in the subdivision of this Territory into judicial districts. If there was any effort upon the part of any man to fix a district for any judge or any individual, I am not aware of that effort. If there was any compact or anyone sworn to it, I am not aware of that fact. But, as my friend Van Buskirk, who comes from the Codington County Bar and is in the same judicial circuit as myself, has said, before we left our homes, we understood that a meeting had been held in Aberdeen at which an agreement was made to change our three or four judicial circuits into three circuits, with one center at Aberdeen, and one center at Brookings, and one center somewhere else. Now, as far as Mr. Matson is concerned, I desire to state one thing, that he has stated the matter as I understand it; there is no question about it at the present time. But, one more thing,—when the Committee acted upon the matter they had before them a petition, a copy of which I have in my possession, which was in substance as follows: At a meeting of the Kingsbury County Bar, held at the office of James F. Watson, Mr. Watson was elected Chairman on motion, and the following resolution was adopted: **RESOLVED:** That it is the sense of the Bar of Kingsbury County that no change be made in the Judicial Circuit as fixed in 1885. I also have in my possession a letter to which the gentleman has referred; as he has stated to you when the Committee acted upon this matter,—the Judiciary Committee,—they had before them this letter from a banker of Iroquois and this petition; that was at

that time before them from Kingsbury County, with the exception of the incorporated statement of the County Treasurer of Kingsbury County, who appeared before the Committee, and said it was not the wish of the people of Kingsbury County. So much then, for that. I think I stated it accurately concerning the two parties who represented that Kingsbury County wishes that the Judicial Circuit should remain as it was under the Constitution of 1885. It has been stated that Judge Crofoot says, that the district could not be bettered as it now stands; I desire to say this, that all that country, Roberts, Day, Marshall, and west, Potter, and that Grant and Roberts Counties have sent down petitions which I hold in my hands (a letter from Grant County) signed by every member of their Bar, requesting that they be left in the third district as arranged. It is said by my friend from Day County that should the twenty-three counties comprised in the three or four Judicial Circuits be divided as suggested by the majority of this Committee, that there will be eight counties wholly or diametrically opposed to that apportionment. I say that should the district be apportioned as provided by the substitute there would be fourteen counties diametrically opposed to such apportionment.

Voices: Name them!

Mr. Sherwood: You name yours and I will name mine. It is a question now of whether you will displease the majority or the minority. As I understand it, it becomes our duty to divide these two Territories into circuits as near compact in form as possible. Now, what have they done? They have formed a triangle with four counties at the base and one county at the point of it. What is the object of that? What is the particular reason? Why, of course, no political reason,—not at all. Still I am by taking Aberdeen as the center, that if the two counties on the east should vote with Aberdeen, under the apportionment of delegates made at the last Convention,—if the two counties on the east of Aberdeen vote with Brown County, there is a majority of votes in that Circuit; if with the west, there is a majority of votes in that section. In other words, throwing influence or weight at the center, or Brown County, on either side will carry it in any way they choose. Of course, that is not political. I also observed that in every motion that came before the Judiciary Committee, for the other circuit, that the vote of Beadle County

with the vote of the counties to be, resulted just as they proposed in general. I think that is the case now.

Now, if there is anything political in any of these moves, I see how that circuit whereby one county standing in the center can control the circuit by combining with either end. I do not say that there is any political design for that purpose. I say further that when we first commenced arguing this question, the only argument offered before this Committee was to make the circuit as nearly accessible as possible by means of lines of railroads. But when the proposition was made to put Brown, Spink, Beadle and Miner Counties together,—and it was where two lines of railroads extended into that circuit, then they said: "We do not want that under any circumstances," whatever. If we are to act as we have not acted heretofore, so that they arrange states for the convenience of the cities, instead of the convenience of the people, then the report of the minority should be adopted. If we are to arrange for the people instead of the city of Aberdeen and the city of Huron, then the report of the majority should be adopted.

The President: Is the Convention ready for the question?

Mr. Davies: I ask that the report be read.

Mr. Dickinson: I desire to correct one misapprehension that these gentlemen are laboring under, that is with reference to the Aberdeen meeting and the combination formed there. This is the first I have heard of that suggestion.

Before we came down here, the delegates coming down here that would have to go through Aberdeen to come here, I presume, received a card as I did, signed by the delegates from Brown county, asking us to meet at the parlors of the Sherman House the night before we came down. Accordingly I was there and went into a room and was introduced and we shook hands all round and arranged as to what train we should take to come down here and then adjourned, without date. That is all the combination I know anything about. In reference to the judicial matters nothing thought of particularly at that time that I was informed of at least. So far as my knowledge goes, Aberdeen has not "poked her nose" as is sometimes said, into this business at all. Nobody has said anything except the delegates who had their duty to perform in this matter, no attempt to control in the interests of Aberdeen or Brown County. There are a good many other things, it seems to me ought to be said. I want to allude to just one thing

more,—that is the assertion made that fourteen counties would be opposed to the arrangement if the substitute was carried. There might be three counties that would be in some measure inconvenienced, but none of them, I think, but what would be more conveniently situated that the balance of the counties would under any other arrangement. The counties I think, as conveniently arranged as they could possibly be arranged,—as the plan proposes. It seems to me the convenience of the entire State should be kept in mind. The spirit of the arrangement was that it should be made convenient of access from all parts of the counties and district.

Mr. Hole: Mr. Chairman and Gentlemen of the Convention: When we were elected and sent to Sioux Falls as delegates, our duties then were to represent our constituents in our individual districts. When we were appointed on Committees in that Sioux Falls Convention, our duties then were to serve the Convention and to forget that we were representing merely one county, or one particular place. That was the position to be taken upon these Committees. I will say that in the main, that has been respected,—I will say that the Committees have arranged these districts to the satisfaction of everyone of the delegates from those districts every single one of them,—every one of them were consulted and we were acting the part of representatives of a dignified body.

But taking this map, we have a member of this Committee there, one there, and one there (indicating) and as you see, there is no power that can reconcile their claims.

This member gives his district and this member gives his, (indicating on map). It was probably unfortunate,—unintentionally so, but unfortunate that they happened to be placed right along together. They could hardly do otherwise than look out for self-interests; it was natural remembering that they came here representing individual constituents forgetting that when appointed upon committees they ceased to represent their constituents alone but fairly and honorably to represent all of Dakota. That much for that one point; I think that is the keynote. It all hinges with the north half of South Dakota. The whole disturbing trouble comes out of the desire to fix this in the Committee,—at least it looks that way to me. The purposes of these Judicial Districts is to satisfy and accomodate the people in their law business, in their legal difficulties; that is the purpose of it; let them be equitably and fairly divided.

When we came here it was talked all around by almost every lawyer in the Convention that we had not districts enough; that there were not sufficient districts; but as soon as these districts were formed I find that that was forgotten. In the east we divided it in this way, (indicating on map) leaving that one district more business, as I am informed by members who are acquainted with the facts,—more business in that one district than both the others; more than any other one district.

The political feature as referred to by my friend from Clark is an amusing one; of course there was no politics in what they have outlined, going on, he shows that Aberdeen makes a center, and Huron makes a center. I presume as soon as he studied Long's Legislative Hand Book he maybe satisfied he knows that Kingsbury and Beadle Counties have at least a majority.

Mr. Sherwood: I said Miner and Kingsbury.

Mr. Hole: That question is not before the Convention; Miner has never been mentioned, never been thought of in this connection, because Miner objected and would not come in and plainly said we are satisfied. That much for the politics of the whole arrangement. Yet, gentlemen, you will bear me out today that I am not as much of a politician as my friend from Clark (Mr. Sherwood) and I ask that you look this all over before you take what has been stated for facts.

Another thing; you say that these districts must be in compact form; it took a great while to pound into me the idea that a district one hundred and thirty miles long and thirty-six miles wide was compact; I can't see that it is compact; the idea of putting a district in that shape! As it now stands, so far as convenience is concerned, I will state this, and I do not fear contradiction or dispute, that in this district as arranged, making these seven counties as one district makes a district that when you come to go from one place to another that cannot be made up in matters of convenience any more desirable by any other manipulation of these counties. Distance in miles does not figure it; it is time taken to get from one court to another. That is the fair equitable consideration; not the consideration perhaps that a railroad runs the entire length of the district and through every county in the district. From our county you can reach every point in the district, every day. In Brown County you have the same result,—in the county of Codington, Hamlin, Deuel, Brookings you have the same result.

And so far as stating the ground is concerned, I will defy contradiction of this statement, that outside of political and little personal matters, to have the report carried through, the Counties of Codrington, Hamlin, Clark, Brookings and Deuel, Grant, never have complained of this District. Spink has some reason to remonstrate and they can sympathize with us. Potter, Faulk, Sully, Hyde and Hughes Counties, never have objected because they are compact in form. The people of Kingsbury County may, but they do not here today. I may state to you that Beadle County will be satisfied as it is best that it seems possible to get; I will say further that Hand County is satisfied and wants that arrangement. I will also say that Hyde County is satisfied and wants that, and so far as Hughes County is concerned it has not been heard from. Faulk County has no reasons for dissatisfaction because they can reach every other point conveniently so far as judicial services are concerned. The purposes and duties of this Convention is not to make up a circuit for any particular person or any particular clique, but to make up a circuit that would serve the common people and give them what they demand. Give them an expeditious and convenient district in which to do business. The railroad facilities in making up these districts have been studied in particular, and it was not made up on the spur of the moment,—it has been worked over. That was kept in mind from the first. I do not believe that this Convention, while it has got the power to do it, will do anything other than what the original motion contemplates. Now you have four counties that have more business than all the north districts in which there is not one single man satisfied,—not one single delegate, if I may use their words, not one single delegate satisfied. I have talked with the members from Spink County,—Chairman of the Committee, I have also talked with the other men, and they all say it does not suit them at all. Now I am confident that this Convention will not allow it to perpetrate this huge mistake and force this district upon the people, in which there is not one assenting voice. I know you will not do it. You are here this afternoon in the capacity of a jury,—you are listening to what is said upon either side, then make up your minds and do what is right, what is fair, and that is all that is asked at your hands. We do not wish any prejudice, any petty jealousy, any of the little feelings that we may have engendered by contending over this thing or when we get excited sometimes we do,—

to enter into this consideration at all. These things ought, from this moment, to be entirely forgotten; you are to act as jurors; you are to do your duty as jurors. I am satisfied that you will do exactly what is right in this matter.

Compactness of these districts is another matter I wish to call your attention to just a moment. The idea of calling this compactness. There is not one element of compactness in a district 130 miles long and 30 miles wide. I do not think that it is necessary to be argued. I will say yet that the districts as made will, I think, satisfy the people of the district.

Mr. Van Buskirk: I want to reiterate two things that the gentleman just on the floor has made. He said there is more business in that Jim River District than all of the others. I have had occasion to visit the courts of every county except Roberts, lying east of the west line of Beadle, Spink and Brown Counties. I am familiar with the business. I know whereof I speak. I know there is no business there in those districts that compares with the Empire District to the west of that section.

Another thing, gentlemen of this Convention, there is something very serious about making a district one hundred and twenty miles long; I have counted up the townships; it is 120 miles long; counting up the townships from the west line of Spink County to the Minnesota state line, it is a little longer than the other one; it is large enough to make a state over 120 miles long; talk about compactness, and look at it!

Mr. Hall: With regard to the matter of the amendment I think there are counties that should be consulted in regard to forming that kind of a district as well as other matters.

In Hand, Hyde, Hughes, Sully and Potter and Faulk Counties they are not satisfied; and I do not think a single one of the delegates are. They claim Hyde as being favorable; I wish to read portions of a letter I received from an attorney at Highmore in regard to this matter: "I favor a judicial district stretching east taking in Kingsbury county; it is not very flattering that they have since signed a paper cancelling their former signatures, which paper I will forward to you tomorrow. Our people here are united upon a district lying in a body, and cut off the necessity of attorneys running to Huron for court business. We favor the report as made by the majority of the Judiciary Committee and look to you to protect our interests in this direction."

It seems Beadle County or somewhere else has sent a man down in the adjoining counties for the purpose of getting signatures.

I will read a portion of another letter: "For Heavens sake don't let Huron own us any longer". Signed, W. A. Perkins. (Laughter).

The letter shows, Mr. President, that the people of this district are opposed to the arrangement as suggested.

Mr. Anderson: I presume it becomes necessary for me to straighten myself out a little; I might get somewhat mixed up. I came here under the impression that I was a representative from the Eleventh District. Almost immediately after coming here I was credited with being a Huron man; the next thing I was charged with being a Republican; I can stand that tolerably well; the next thing I was taken for a Presbyterian preacher; and now, Mr. Chairman, I am almost unable to tell after listening to the gentleman from Beadle, whether I represent Hand County or Beadle County.

The gentleman has stated that all the counties pretty much west of Beadle, were in favor of this substitute; that Hand County was in favor of it, and Hyde County was in favor of it, and Sully and possibly Potter; these gentlemen have spoken for themselves they have said to the Convention they are not satisfied and do not favor it. I think I can speak for the people of Hand County certainly as well as the gentleman from Beadle. I say unhesitatingly that the people do not want any connection with Beadle County; it would not suit the people of Hand County to be included in the District as comprised in this substitute; I shall vote for the report of the Committee on Judiciary; I shall vote against this substitute; we are satisfied with the district as reported by the Committee and expect to vote for it; I think the Committee has done a remarkably good job in putting up these districts, particularly the Fifth District. The District comprising the empire counties of Brown, Spink and Beadle, including the metropolitan cities of Aberdeen and Redfield and the Village of Huron, I think this is exceedingly proper. I hope this Convention will come to the aid of the rural sections of these districts and release us from the grasp of these cities.

Mr. Cooper: I have been waiting to hear from Hand County before touching up this question; I am glad I have at last heard from it. About a week or ten days ago the gentleman who just

addressed the Convention came to me with a proposed circuit which read as follows: Sully, Hughes, Hyde, Hand, Beadle and Kingsbury, and perhaps Miner Counties. He told me last night that he didn't know the people of Hand county stood on this question except from what he had heard from that county since he came here. I have heard from that county; I have it in black and white, signed by every attorney living in the county of Hand; the gentleman from Hand County included saying that they desire to be connected in that district consisting of Sully, Hughes, Hand, Hyde Beadle, and Kingsbury, or a similiar circuit; signed by every attorney, I say in the county of Hand, with one exception, and the reason that he gave for not signing it was this: That he was in favor of the Circuit proposed in the substitute,—other attorneys opposed the Circuit proposed by the majority of the Judiciary Committee and that he was in favor of sending this petition (which they afterwards adopted) through the representatives from that county, but the majority of the attorneys said that they desired that the petition should be addressed to the Constitutional Convention of the State of South Dakota; and for that reason he did not sign the petition. The petition speaks for itself and is substantially in the following language:

TO THE MEMBERS OF THE SIOUX FALLS CONVENTION:

We, the undersigned members of the Hand County Bar, respectfully represent that we learn with surprise, the boundaries of the Sixth Judicial Circuit and desire to enter our earnest protest against the same; that it will be injurious to the people of this county owing to the lack of railroad facilities with which to reach the different portions of the proposed circuit. And we further represent that all person or persons who may state or have stated that the Bar and people of Hand county are in favor of the proposed circuit do not represent the sentiments of the people.

Right in this connection I would like to make an explanation; Mr. Hole who came down here to represent his county, and he met a proposition from the delegates living north of the Second Standard of this kind; that this District should be composed of the Counties of Sully, Hughes, Hyde, Hand, Beadle, Kingsbury, Potter and Faulk; brought that proposition from one of the delegates from the County of Hand who sits in this Convention now; who said they had counted up the votes which would be in the Judicial Convention in that Circuit and that they wanted votes enough to defeat two counties, Beadle and Kingsbury. We told them they could have

them so far as we were concerned- we wanted to be connected only with counties in which decent members of the bar practiced back and forth. So far as the judgeship was concerned, if Hand County had a man they wanted to present for judge, all right, or if Hughes or Sully or any of them, that was all right. We say if we cannot get those counties, we want a smaller circuit; if it is not necessary to do it to take off a county, why let it be done. We do not know what the Convention will do but this is practically what we want; we want a circuit running along the Dakota Central railroad; if it is necessary to add to that circuit, the County of Potter and Faulk, or if it is necessary on the other hand to add the County of Buffalo or the County of Jerauld, very well. Now, I say this came from the Bar of Hand County, themselves; it didn't come from the Bar of Beadle County, although I was there in Miller on that day; I had nothing to do with this petition; made no suggestions at all except to say to them that the people living south of the Second Standard were satisfied with their Circuit; that it would be impossible and impolitic to take six counties in that circuit as the delegates had agreed; and they asked me when I went to Miller on that day, (I say I was there on private business; nothing connected with the Judicial Circuits) how it came that this Sixth Circuit had been formed in the manner and shape that it was; wanted to know why it was that we left a tract east of them side by side with them; why I would permit anything of that kind without raising my voice; I told them what the situation was and they said with one voice we will petition the Constitutional Convention at Sioux Falls that justice may be done the people of this county.

I say there is not a lawyer in this county, not a man in that county with possibly two exceptions that are in favor of the Sixth Circuit as proposed in the majority report of the Judiciary Committee. I say that it is not the evidence I have presented to this Convention as to the sentiment of the people of that county in relation to this matter. On yesterday, those in the minority, presented to the Chairman of the Judiciary Committee, the following petition, substantially:

Sioux Falls, July 23, 1889.

We, your petitioners respectfully represent that we believe there is much dissatisfaction with the judicial apportionment as proposed by your Committee as to the districts made up of the following counties, to-wit: Campbell, McPherson, Walworth, Edmunds, Sully, Hyde, Hughes, Hand, Beadle, Kingsbury, Faulk,

Potter, Brown, Miner and Day; and in order that full justice be done, and full consideration be given that section, we, the delegates within said territory, respectfully ask that the proposed judicial apportionment report as to those counties only, be reconsidered. Signed by Dickenson, Couchman, Hole, Stoddard and others.

Potter, Hughes, Hyde, Sully, Hand, Beadle and Kingsbury have sent petitions and other papers in connection with the matter and will be here tonight. C. G. Hartley, of Hand County, I have been told—Hartley now votes for the substitute. I have it over his own signature that the people of that county are opposed to it. I understand that he has received no new light from Hand County since yesterday. I have also some evidence from the County of Hyde. There is D. A. W. Perkins. I presume that when these gentlemen signed this petition they knew what counties composed the Sixth Judicial Circuit; I believe when they signed this petition they knew where were located the Counties of Sully, Hughes, Hyde, Hand, Beadle, and Kingsbury; I believe they knew these things and until there is some better evidence before this Convention, then this letter from one single member of the Bar,—I say I believe it would be injustice to the Hyde County Bar to say that they did not know what they were asking for when they petitioned this Convention as they did upon this piece of paper, substantially in these words:

“We, as members of the Bar of Hyde County, represent to the Constitutional Convention that the proposed judicial district to which we are attached is very unsatisfactory and will be very inconvenient and expensive for us. We therefore respectfully ask that our county be attached to Sully, Hughes, Hand, Beadle, Kingsbury and Miner counties for judicial purposes.”

I think the signatures to this document include all but two attorneys who live in Hyde County,—Mr. Perkins and Mr. Price, who is at present in Bismarck; and so I say that the evidence from Hyde County is to the effect that they desire to be placed in a judicial circuit as provided by this substitute.

A good deal has been said in this Convention about center of Huron and Aberdeen, but I think if you look at the majority report you will find another center in Codington or Clark Counties. I think if you count the votes as has been argued before this Convention you will find that Codington, together with the counties

north, can outvote the counties south; or take the vote of Codington or Clark, with the vote of the other counties south and they can out-vote the counties north. So that it is a law that cuts both ways, if there is anything in it. But I say that I do not believe this Convention at this time is going to build up judicial circuits in a manner to favor any particular locality, in a manner to favor any particular man for the honorable position (I say the most honorable position a man ever is elected to in this world) that of judge of our courts. I say I do not believe this Convention at this time is going to cut up the Territory in such a manner as to entail endless expense and endless inconvenience to the people for the purpose of giving some man over in Edmunds county or some other county the fancied advantage. I do not believe that this Convention will do it.

Let us look at these counties formed into circuits by this substitute. We will start with Day county. Day county speaks as one voice, one man against the Third Judicial Circuit. They say they have to travel forty-five miles by stage in order to reach the center of the Judicial Circuit.

Another thing I would like to call the attention of the Convention to in this connection.

There must be something behind this,—there must be something rotten about this matter when all of these counties speak with one voice saying they do not want to go into a judicial circuit known as the "Codington Circuit". We hear from Marshall, and what does Marshall say? Marshall says, "We desire to go into a district with Brown County". Day says the same, McPherson the same, Campbell the same, Walworth says the same, Brown says the same; Edmunds says they want a judge over there and that they cannot vote down these other counties,—six counties.

If this proposed circuit, as proposed by the substitute, has a perfect railroad connection with almost every other portion of the circuit,—and we are told time and again while this Committee were at work, that they were opposed to the circuit including the counties of Beadle, Spink, Brown, and Marshall. Now, what do they want, and where do they want to go; what are their desires? I say they told us they were opposed to this circuit and I believe the gentlemen upon the Committee; the Chairman I have always found to be an honest man. I say I believe it. I find the men of Marshall County are opposed to this circuit; Brown county is op-

posed to the circuit; Spink county is also opposed, and Beadle county is opposed to this circuit. We find Hand county is opposed to the circuit they are in; we find that Hyde county is opposed to that circuit and McPherson county is also opposed and Campbell county is opposed to the Circuit, and also Walworth county. We find Kingsbury county also opposed to the circuit they are in; we find Brookings, Deuel, Hamlin, Clark, Codington, Grant, Roberts, are perfectly satisfied. We are willing to leave them as they are we do not want to force any one of these counties into another judicial circuit. We say they have no right; there is no justice in coming before this Convention and asking that Kingsbury county be attached to a circuit it will take them three days to reach the center of that circuit and come back home, when they can go to any portion of the Judicial Circuit composed of the counties of Kingsbury, Beadle, Hand, Hyde, Hughes, Potter, Faulk, in one day.

Now, in relation to the letter which was read by Mr. Sherwood, from Kingsbury County. It seems that it is uncontradicted that the Bar meeting, consisting of two members of the Bar only, one elected Chairman and the other was Secretary. That was the petition they presented to the Judiciary Committee as expressing the sentiment of the people of that county. I believe, Mr. President, and gentlemen of the Convention, that the majority of the members of the Judiciary Committee were with us,—were in favor of doing what is right and justice so far as the people are concerned living in the counties lying north of the Second Standard. This report is not signed by all. Some who signed it said they signed with a mental reservation that if they were not sure that these counties lying north of the Second Standard were not fairly dealt with they would see that they were fairly dealt with on the floor of this Convention.

Now in relation to the statement that during the last five or six years these centers have monopolized the time of the court; that the Court laid around Beadle and around Brown county and that these outlying counties did not get their fair proportion of the services of the Judge. I say that I know that is a mistake. I know that Codington has had more days' court during the last three years,—I know that Codington county's calendar is in better condition than is Beadle's. I know that the county of Hand is in better condition than Beadle county; I know Hyde is in the same

condition; I know Spink county is in the same condition. But there are gentlemen representing these counties who are here and who can speak for themselves. I believe it is the desire of this Convention to form these judicial circuits so that they will satisfy as many of the people residing within their limits as possible. The majority report provides a Fifth Judicial Circuit that is objected to by every county in it. The majority report submits to this Convention the Sixth Judicial Circuit, which is opposed by at least five or more of the counties that it contains. The third by at least two. Now, I reiterate that Sully, Hughes, Hyde, Hand, Beadle and Kingsbury, lying on this line of road are in favor of a circuit such as proposed in this substitute. If I am in error I would like to have some gentleman representing these counties call attention of this Convention to it in some way. The gentleman who spoke for Hand county said the people were opposed. Last night he said he did not know what the wishes of the people were. The other gentleman, over his own signature yesterday in his own handwriting, said the people of Hand county were opposed to the counties proposed by the substitute.

Mr. Couchman called to the chair by the President.

Mr. Hartley: Gentlemen of the Convention; I would ask the same question; who is it that represents Hand county? Is it the two men who were elected or is it the gentlemen who were elected from the county of Beadle? Before the people of Hand county asked me to run for the position which I now occupy, it was generally conceded to be the understanding that anything of the nature of a shoestring arrangement of judicial districts should be voted down. I came down here with that understanding. Two petitions were sent down. They were not sent to either of the representatives. Now, gentlemen of the Convention, you can see the forecast of this thing. These petitions were gotten up under the dictation of the people of Huron, so I am credibly informed, and were not forwarded to the representatives of Hand county. If they were not honest enough to represent their own people in the Convention, why did they elect them? The men that got up that petition and circulated it were asked by the business men of Miller to send it to me.

A Voice: It is evident that Hartley is a Democrat. (Laughter).

Mr. Hartley: It was not done. We were ignored by the man that got up that petition. I will say right here, without fear of

contradiction, you go to Hand county and talk with her people and you will find that petition does not represent the people of that county, and if I had time to explain these conditions of affairs, I would bound by my word as an attorney, there is a different condition on the road here now. These petitions were not gotten up by the people of Hand county. I have it upon very good authority. While this is in the handwriting of different persons it was not signed by the attorneys of our Bar; the petition that was circulated in our county first was included in the county of Hyde, after this petition was circulated and all the signatures upon it but two,—a copy, not the original, was sent afterwards.

In the evening the members of the bar, or some of the members, held a consultation. They were not satisfied with the man who brought that petition down here,—they decided that they were sorry that they had signed it. There is two men here now who signed that petition,—two men who are acquainted with the county and they gave myself and my colleague that impression. That after they looked over the matter they were not satisfied and that they decided to present us with a different statement. I have lived there seven years; Mr. Anderson has the same, and we know the people of that county. That petition does not represent the sentiment of Hand county. After we had received that petition and before I had heard the balance of the report, and before I received the letters last night, I gave it weight. I felt inclined to obey the request of the bar, while I did not consider either Mr. Anderson or myself had been properly treated. I said to one of them that this district would be satisfactory,—that is true, I did say that,—but what else did I say? Did I not say, I feared they would come before this Convention with a different arrangement; that I insisted that you should get together and settle the matter and not have any conflict on the floor, that we ought to agree among ourselves and stop our controversy, for just as long as Beadle County wants Hyde County in that circuit, why, there is going to be trouble. They must have a shoestring district; they must have their own town accommodated the same as it has been.

It went out over our district that Huron must not only have the center, but must be mistress of the situation as in the past.

In regard to the new arrangement of this district, the arrangement that is proposed by this substitute, if the counties can agree upon it there will be no trouble. Can we agree? Spink county

it does not satisfy; it does not satisfy Faulk; it does not satisfy Sully, Potter, Hughes. How many counties is that? Right on the other hand east of us, they are dissatisfied. I will say in regard to this, that as far as I am personally concerned, and supposing Codrington county is satisfied, I am satisfied. But it would not be satisfactory to our people. While I am sorry that this condition of affairs should exist, I think the people of Hand county are capable of saying what they want without being dictated to by outside parties. I will say further that I have sent word at different times to the members of the County Bar, what would be the arrangement. I know the arrangement would be substantially as the Committee reported. There was a good many Hand county folks here last week. It was talked over. If there was any dissatisfaction they were requested to speak out. I heard no word. The man who brought this petition down here came down under the instruction of a number of men that signed it. I am going to vote for the original report. I am going to come down right now and vote for the original report. We may as well say Hand county is Hand county as well as say it is Beadle county. It is well understood by the members of the Bar of the county that once a man is elected in that District, to the bench, he serves the people. No man in that entire country up there will get on the bench unless he promises to serve the people,—not to serve one town. He has got to hold court in the various counties and do his duty; that is all the people are arguing for up there. They do not care who he is,—whether Democrat or Republican, they say. A majority of the people have said to me repeatedly that they do not want to go to Huron any more. I have gone to Huron and have taken two days or over on a very unimportant matter. If you think I am going to take the expenses of making such a trip out of my pocket, you are laboring under a delusion. But, if we take it out of our clients, they begin to want a court at home. While this arrangement may not suit some of the counties, I think it is the best we can do. Personally, I think they have not given us a fair show. There are other counties who have fault to find,—that they have not received a fair show in the matter of services of the judge of the district. On the other hand we have paid that Judge \$1500 a year to go around the circuit to hold chambers, so as to save clients unnecessary expense. That did not afford the relief sought; that is why I complain. I am well acquainted with a great many Huron people;

I never had any trouble with those people or with Huron attorneys. My associations with the people of Huron have always been pleasant, but I am tired of being compelled to go there every time I want an order signed. Again what are you going to do? Then a proposed county turns around in their position; you are as dissatisfied with the new county as with the old arrangement. Last night I was invited to attend a meeting of those delegates; I understood all the delegates from the dissatisfied counties were invited in there. They were not all invited. But since this happens, what are you to do but accept what the Committee has given us?

Mr. Cooper: The gentleman has asked is it necessary to come in from the outside to represent Hand county? I leave that to the Convention. I would like to ask this question: If any gentleman who signed that petition of the Hand county Bar has sent word by letter or come in person, or sent word by anyone that he did not want to be in the circuit with Kingsbury and Beadle counties? I will ask if any lawyer in Hand county, anywhere, or the gentleman who has just left the floor ever said he did not want to be in the district with Kingsbury and Beadle counties. We say that no attorney who has signed that petition has declared that he did not want to be in a district with Kingsbury and Beadle counties, but some said they would like a circuit out west heavier than those that had been east and made that objection. It was stated that Faulk and Potter counties had objected. I say I am not wrong on this matter,—I say I know what I am talking about and no gentleman in this Convention will dispute me.

It seems that the gentlemen have a grievance, for instance, Marshall and Day counties. I understand there are gentlemen here who are representing those counties; I understood that there are gentlemen here who are representing Brown, McPherson, Campbell and Walworth counties. I have understood these gentlemen to say if they wanted an order or injunction that they objected very much if they lived in Campbell county, to travel by rail to Aberdeen and from there eighty miles south to the city of Huron, and from there one hundred and twenty miles west to the city of Pierre to get their order. It has been stated that the Legislature would, sometime in the future, grant circuit jurisdiction or vest County Courts with Circuit jurisdiction.

That Mr. President, and gentlemen of the Convention, will, in my mind, depend to a great extent upon the circumstances as to

what situation these county courts will be placed in and what kind of men are elected to fill those positions. Whether or not they are capable men, whether or not they are men who are capable of performing the duties of the office. If they are, I presume that certain jurisdiction will be vested in these courts; otherwise I presume likely it will not. And if it is not, what will be the result? You will have trouble through these Judicial Circuits in the future as we had in the past. A man will have to travel over how many different lines of road and through how many circuits? I say this is a question that should be thought of by this Convention before they pass upon the question. In the proposed circuit of the substitute, what do we find? We find that these counties are nearly all contiguous,—nearly all connected by direct lines of railroad; we find that the counties lying west of Aberdeen have complete railroad connections with the county of Brown, Marshall, and Day; we find the counties lying west of the county of Kingsbury have connections throughout the Circuit with the counties lying north, the counties of Potter and Faulk, have direct communication with the balance of the Circuit. I say again, the gentlemen might not have heard what I said before I repeat it now,—I want you to say whether or not members of the Hand county Bar are opposed to the proposed plan, or prefer Hughes, Sully Hyde, Beadle, and Kingsbury counties. I ask if any gentlemen of Hand County were ever opposed to the Judicial Circuit composed of Sully, Hughes, Hyde, Beadle, Kingsbury and a couple of counties lying north or south.

Mr. Humphrey: If the gentlemen of the Convention will pardon me for a moment, I will attempt to clear away some of this rubbish. In the first place I congratulate myself in that what I may say is addressed to a body of gentlemen and not to a petit jury, who are selected under them, and in consequence of this that this argument will have more influence with you than with a jury. Further than this, it will not be necessary for me to call your attention to the fact that positive assertion is no more argument than that a check is just a slip of paper. It has been with considerable amusement that I listened to and witnessed the assurance that the gentlemen from Beadle county,—the extraordinary assurance that they have shown in pleading for others,—and while they include Beadle county among the list of dissatisfied counties, they have not called your attention to a single ground for

that dissatisfaction,—not a single ground. Their solicitude is remarkable in that it refers only to others. While I do not descend to insinuations as to the motives of others, that alone would indicate a motive of their own. We can but infer that the gentlemen from Beadle county must have some cause for alarm to be connected with Brown county, and if it is true, why should they not immediately contribute to smaller counties the same fear of being connected with them. The gentleman who first occupied the floor from Beadle county said that there can be nothing of the nature of compactness in a district 130 miles long. Well, the district, under the apportionment made by the Committee of which Beadle county is a part, is 120 miles long. These are small inconsistencies, to which I call your attention. Another amusing thing, to my mind, presented by the gentleman who first occupied the floor from Beadle, is this: He, through some stretch of imagination, is able to discern some difference between the duties of the delegates who are on Committees and those who are not on Committees. I came here representing a locality; I came here representing all and each of the localities; I know no difference in the discharge of my duty, either as a Committeeman or as a member of this Convention. The gentleman who last had the floor from Beadle county, assures us that Spink county would have reason, as he terms it, to “kick” on the proposed substitute, he admits that others have reason to “kick” on the plan proposed, but has shown no such reason why Beadle has any reason to “kick” under the plan as proposed by the Committee. It is told you by the Chairman that the Committee devoted most careful consideration and great industry in endeavoring to present to this Convention a report that would meet the approval of the Convention. He told you they had considered every proposition that had been brought before it, and that the Committee met on the very evening of the very day they were appointed and they gave notice that their doors would be open to members of this Convention and notice was given where they met from time to time and there was no time but what those doors have been open for all who wished to address the Committee during its session for a period of about three weeks. I was amazed by the statements made here and am confident they must have been unguarded statements. It is certainly an erroneous statement that they had not had an opportunity to make their arguments before the Committee. If anyone attempts to impugn either the motives of this

Committee of this Convention in saying or implying in any sense, a dishonorable motive on the part of this Committee it is an insult, not only to the Committee, but one to the Convention. As our Chairman informed you, we considered first, carefully the powers of this Convention; also the expediency, and next the necessity of enlarging these districts. There was some diversity of opinion; a large majority were of the opinion, and that opinion was founded upon the intelligence of the Bar,—for other members of the Bar were before that Committee, not only from the Convention, but without. The question of expediency bore also upon the question of the powers for this reason, it was simply a question of doubt, a large majority feeling the power was clear and distinct and at most, but open to a question of doubt resisted the expediency of increasing the districts,—that it would interfere with the President's admitting us. I wish to indicate the care that was exercised. These questions were weighed as carefully as they might be. What would be the effect of increasing the facilities of the court? It was in view of the added facilities under the Constitution that it was finally determined by a large majority that there was no great need of increasing the facilities at the present time. During all this time that these gentlemen were insinuating that there were political motives controlling the Committee I will simply say this, that there is no doubt that there are many ambitious towns in this State and many people aspiring, perhaps among those facing yourself, Mr. President. So far as I know this was not the motive that influenced any man upon that Committee. The reason that it was held at the lowest possible estimate of necessity, was this, that at present we had to make our apportionment on a vote. No satisfactory apportionment can be made except by publication under a census. The census will be taken in 1890. We will then have a basis upon which a re-apportionment can be made that will be satisfactory to all. Therefore, it was not considered expedient or necessary by the Committee that they should attempt at the present time to provide for the future of Dakota,—simply for the near future during the period previous to the taking of this census. As to the plan upon which the form of the districts was determined, that was the question upon which there seems to have been the most charges made concerning corruption on the part of the Committee. It occurs to me that you may not all know what recently appeared in the Aberdeen Republican, asserting that that Com-

mittee was packed. Well, I will say that when I first read the names through of the members-elect of the Convention, I found that there was about one-third of the Convention, Democrat. I know six Democrats of the Convention on that Committee. I will add, though it may not be pertinent to the argument, that while it is plain that these north counties were unrepresented upon that question, events show why. The most important duty before this Convention was a division of the archives, assets and liabilities of the two states. That was the paramount duty. Who was to do it? Simply a commission of seven, over whom we had no control. We could not dictate to them in the slightest degree. Who constitute that Committee? Was the north portion of the State ignored? They had two out of the seven members of the Commission. They wanted three. It is said that the gentleman from Brown county claims that they did not wish it, but as I understand it there was two candidates from Brown county for the position. One got it,—the other got left.

Now, in regards the forming of these districts all that can be said is, that the forming of the districts is fixed by the express terms of the Constitution of the Convention of 1885. That Constitution says that these districts shall be compact in form. The very men who drafted that Constitution approve of the districts as reported by the Committee. They are compact in form in the nature of being square or as near square as may be. Mr. President, while we have been guarded step by step, we have progressed in our duties to avoid stepping over the bounds in the least particular under the provisions of the Omnibus Bill, feeling that we had no right or power to amend the Constitution in any way or shape except as provided by the provisions of that Bill. When we have exercised that care in the discharge of all our duties so far, shall we begin now to violate its spirit? Gentlemen have stated here that there was apparently quite a large minority in that Committee opposed to the report. Has it occurred to you that if that was true that it was strange that they have no minority report? How is this matter brought before the Convention? In any way implying disagreement in the Committee rooms? Mr. President, this opposition is instigated by those who have shown themselves so solicitous with regard to the convenience of the others and so ready to assert what the other's wishes are. The gentleman from Beadle should have presented a minority report and he would

have stated his reasons. The facts of the case are that it is impossible to please all, as glad as we would be to do so. Your Committee used their every endeavor to adopt a plan that would please the greatest number possible. Every possible plan that could be devised has been tried and tested and we finally determined upon a plan of a vote of apportionment that would please all but a few. It is a matter, simply an impossibility to please everybody. Where we find a single county, as glad as we would be to accomodate them, —carrying out the spirit of this Constitution, we would be glad to do so, but in the discharge of duty we should not hesitate even upon this point to do our duty and make an apportionment that would accomodate the greatest number. They have asserted that the substitute accomodates more than the majority report. It is claimed a portion of the counties whose voice they claim to speak, but secured it by sending out to get it. It is presumed that the delegates on the floor of this Convention, who represent those counties know the needs of their people and will not prove recreant to the trust imposed upon them. I will say in this connection also, in conversation with a gentleman representing Campbell, who will vote for the substitute in representing the voice of his constituency, that he told me that they went to Aberdeen in preference to any other place to attend court. When I asked him why they wanted to go there or anywhere else under the provisions of the Constitution the judges were to go to the people of the counties and not the people to go to the judges as heretofore. He replied that since they learned that fact they had no anxiety to go to Aberdeen to attend court. Another reason is this, Mr. President; these little counties and these large counties especially have almost a year's calendar on hand and in the new counties of the west it will be as in the past that they will get court at the convenience of the larger counties. It does impress me as somewhat strange that these entire counties should be afraid to stand alone,—why they should wish to have tied to them counties by the half dozen or more which I think is one of the incomprehensible things.

The people west would say almost in one voice, we favor the adoption of there port presented by the Committee; they are able to stand alone and they want judges to look after their business and as yet their business is not so extensive but what a judge coming in there could keep up with any counties in their district, except perhaps Hand and Hughes with an accumulated docket. I was

surprised by the argument by the gentleman from Beadle, on this floor. I should not refer to it, though the argument was presented to the Committee, and that is why I was surprised that it was presented here after it met with the reception it did in the Committee room, I am surprised that it was presented on this floor and had it not been so presented I should not have referred to it. It was this: That it was wrong and un-desirable to both parties who had been together before now in business relations to be separated and that the counties who had been associated with Beadle wished still to remain with Beadle because all was harmonious between them and everything working so nicely. What stuff! I want to say, gentlemen of this Convention, that I have no personal motives or any personal interests to serve in the formation of these districts. It is my purpose, as under my oath, it is my duty, to use my best influence in securing these districts as I believe best meet the requirements of the Constitution and best serves the interests of the people. I will say that so far as I know we have no candidate for judge in the county from which I come I am certainly not eligible, not being an attorney. I will say further, no matter from what county the judge is elected that no one county, Mr. President, will have more court or more chambers than any other county.

Mr. Wood: As a member of the Committee, I contended all along that eight circuits were not enough. The difficulties that we are now experiencing is a difficulty that I before contemplated, and if the state were to be divided into nine circuits I am satisfied it would not be too many. I am also satisfied that such a division should have been made as to completely remove this entire difficulty. There is some inequity in this division contended for, contained in the report of the majority Committee. There is some inequities contained in the substitute. It never can be arranged in this way and get a satisfactory division of the circuits of this State. In my judgment, having had twelve years experience at the Bar in this Territory, in my judgment, these circuits are not sufficient. While they may answer for a time, I think the Convention is giving the State an insufficient number of judicial circuits. I therefore move that this report and the proposed substitute be re-submitted to the Judiciary Committee with instructions that they report on the morrow, recommending the creation of nine circuits.

Mr. Van Tassel: I second the motion.

Mr. Fellows: I rise to second the motion of the gentleman from Pennington County and in doing so to say this,—that in my opinion nine districts will soon be insufficient to accommodate the business that they will have to perform in the administration of the justice as it ought to be administered in the courts of this State. That it will require at least nine circuits and further it would afford us a happy solution of the difficulty we have gotten into here today and at the same time satisfy all localities. I most heartily second the motion of the gentleman from Pennington.

Mr. Sterling: I would say, as stated in the report, that the Committee have also had this subject under very careful consideration. It was with reluctance that some of the members of the Committee yielded to any increase at all. It was assented to, I believe, that one additional circuit in the Black Hills country would be sufficient to transact their business there. It was said by a good many members of the Committee at first that five circuits were satisfactory to themselves as shown, but that the increase would be sufficient if the State was properly apportioned in the districts in which to do business. I think that this motion to add another district for the territory east of the river ought not to be raised.

Mr. Humphreys: The Committee, as the Chairman has stated, did most carefully consider that matter. The gentleman making the motion and the gentleman seconding it were the only two that I now remember who finally favored the idea of having nine circuits. It was the judgment of the Committee that that would not be the sense of the Convention; that it would be neither expedient nor necessary to extend the number beyond eight. I doubt if it would be possible to arrive at any other condition than now exists, if we did have nine circuits. I move that the motion of the gentleman from the Hills be laid upon the table.

Which motion was seconded.

The President: You have heard the motion. Mr. Woods, of Pennington, moved that the majority and minority reports be referred back to the Committee for revision; Mr. Humphreys moves that the motion be laid upon the table. Are you ready for the question.

The motion to lay upon the table prevailed.

Mr. Sterling: I have been a little bit surprised, gentlemen, at the assumption that has been manifested by some members of

the Convention in favor of this amendment or substitute, and who have spoken upon that side. It seems to be a remarkable solicitude for the welfare of the other counties that is exhibited by these gentlemen and you will notice, gentlemen, that the most of the opposition to the majority report and the second in favor of this amendment comes from a certain section, from a certain county. It emanated from that same county in the Committee; it emanates from that same county here in the Convention. These gentlemen deny and protest it is not for political purposes that they object to the majority report, and say that they do not know that they have any candidate for judge. That there is nothing of that kind. I will ask you, gentlemen, if at the coming election there is no other political question to be determined than the judgeship, or whether that may be any motive to base this particular form or district upon as reported by the majority of this Committee. But the gentlemen come upon the floor and make a strong point as they seem to make,—as they would have this Convention believe to be that the counties to the west of the county of Beadle as against Beadle and Kingsbury counties will overcome Beadle and Kingsbury counties in Convention, in the nomination of a judge what does that amount to? They are not so particular as to that but they have other interests at stake. What does it mean? Can we not see it? To have these counties west of them entirely tributary to them, their political preferment to be included in that same district which they have mapped out. It may be capital for them to deny their reasons and say there are no reasons for it. What do we make these judicial districts for, gentlemen of the Convention? Is this Committee to be in the despicable business of making out circuits to gratify the aspirations for judgeships? I say that is one of the questions or rather influences that this Committee had to contend with, guard against, while in session. It is one of the very things we will, in Convention, have to guard against. The opposition, most of it, to this report, comes from a county that for the transaction of business is one of the very best circuits of South Dakota today, and they dare not deny it. Four counties in the circuit and every town in it of free access to any judge from whatever part of that circuit he may come. They cannot say that each of these counties shall not have its reasonable share of his time and attention,—let him come from where he will. Then gentlemen, it must be from some other motive than the discharge of their

business that these gentlemen from Beadle county oppose this report and I think you are by this time aware of it. They pretend to speak the sentiments of these counties around them. I ask you if they speak the sentiments of Kingsbury or that of the counties west of them. From letters from a district attorney of Hand county, in which he calls attention to the very petition presented by the gentleman from Beadle, in which he says that they made a mistake and desires that their names be cancelled therefrom. They pretend to speak for Hand county in fact, made what would seem to be the strongest argument. The gentlemen from Hand, delegates on this floor, whose opinion you are bound to respect, say they are opposed to the minority report. What else is there in this? Will the gentlemen deny that their petition, signed by the attorneys of the Bar of Hand county, has been followed here by the men who signed it, and have told the members of the Committee and members of this Convention that they are satisfied with the district as embodied in the report of the Judiciary Committee?

Mr. Sherwood: I deny that any gentleman has done anything of the kind and you may publish it. I heard it told, and told by other gentlemen who have been told the same thing. I simply say that I am in duty bound to correct the impression that these gentlemen from Beadle try to leave in reference to Hand county. I say I know the delegates here from Hand county reflect the sentiment of the people there. What else is there in this report that is not satisfactory? I believe, gentlemen, that we have disposed now of the question in reference to Beadle county and the counties west of Beadle.

There is some opposition from the north,—it is opposition that is entitled to command respect. The gentlemen making that opposition do so without reference to capital purposes or judgship purposes or any other unworthy motive. The Committee have tried their best to satisfy them but we found that with the other interests of the other districts to make, we could not do any better than we did do. Then is it so very inconvenient, so distressingly inconvenient for all those gentlemen in the north? Look at the map and see. On the east is Day county. The gentlemen from Day county protest. What kind of an arrangement will we have yonder when admitted as a State? We shall undoubtedly have for these counties two terms of court each year in each of them. What

are the communications that Day county would have with the other counties around her? She will have Grant county on the east with two terms of court yearly at which her attorneys can transact business. What connection below? Clark county with two terms each year at which her attorneys can transact business, with which they have direct communication. He would go from Webster to Bristol and from Bristol to Elrod, which is about seventy miles from Clark. Is that very inconvenient? Those trains connect. What else is there about it? Why two terms of court in Day county itself, with good railroad connection, and if they have any great stress they don't have to walk, but can take the train eighty miles over to Watertown and transact their business. So I say as against the arrangement that this Committee has made, with all the work they have done, you will not with those advantages that appear so plainly upon the map, better the condition of the county of Day. I do not think you will set aside this report of this Committee. What about Kingsbury? There is objections from there. I say exactly the same argument obtains for the county of Kingsbury. It has Brookings on the east of it with two terms of court a year. It has its own two terms of court a year at which the attorneys may attend and transact their business. If you wish to go to Clark, the trains are reasonably accessible to the county of Kingsbury. In addition to this, gentlemen, it will probably be provided, if the judges do not manifest the disposition themselves to do it, by the Legislature that the inequities perhaps referred to by Mr. Van Buskirk, of Codington county, will force the matter upon their attention. The judges will be required to hold a day in chambers each month in each county in his circuit, and that with the jurisdiction which may be conferred as the gentleman from Codington has said, upon the county courts to grant motions and hear motions and chambers will still further relieve this dissatisfaction. Let us look at the other side of the Fifth District,—McPherson, Campbell, Walworth and Edmunds.

Gentlemen, I am surprised to hear the cry of distress go up and then look at the map. Why, McPherson has no communication with Brown county by railroad except down through Edmunds county. Campbell turns to Aberdeen as a Mecca and she has to perform her pilgrimage by way of Eureka. Walworth goes through Edmunds to Brown county, and yet here is a gentleman from

Edmunds having the most direct communication with Brown county through which county these other counties have to go, who tells us that they want a district by themselves away from Brown county. It is more than likely they will have railroad communication with other parts of the district. There has already been started a road that extends in that direction and which will undoubtedly be completed in a short time, and each county in that district will be connected with the other by good railroad communications. So, gentlemen, I believe that these objections, when we come to consider what has been done for the whole state and the way the Committee have had to plan and figure in order to satisfy the different places and apportion them according to the population and according to the communications so far as possible, that this Committee report must commend itself to you for your adoption.

(Repeated call of "Question".)

Mr. Sterling: I move the previous question.

Motion seconded.

Mr. Stoddard: I raise the point of order, I had the floor.

Mr. Sterling: The motion is withdrawn. I beg pardon.

Mr. Stoddard: Gentlemen are calling for the question. I am not disposed to take much of your time if I could; I am not a lawyer or a professional speaker; I have been talked to by them. What few remarks I do make I hope I will not get quite so noisy as my friend from Beadle and certainly not so excited as my friend from Spink. I know I cannot talk so smooth and oily as my friend from Faulk.

There are a few points that I wish to talk about. One is this—about Beadle county. The most of the talk seems to be of this nature that indicates that most of them are partial to Beadle county and Huron in particular. Now if that is a fact, we cannot help it. Up north there are some six counties in a block with Kingsbury down here and Hand that makes eight altogether, besides Beadle. We certainly are not responsible for the lawyers of the city of Huron. Our counties feel that there is injustice done to all these counties and it appears to me that greater injustice will be done by adopting the majority report.

We, from the north, came down here with a clear understanding not from any combination as has been insinuated,—nothing of that kind—but by talking and instructions and from the feeling all through our counties and Brown county and from all.

We have no petition, but no one denies but what we want it as the substitute calls for. Walworth and McPherson certainly do and Day. The one exception is Edmunds county. When we came down here we understood that Edmunds wanted to go with the district as it was at present under the Territorial division. But since then my friend from Faulkton has got two or three letters and there seems to be little doubt but that the lawyers of Ipswich want to be joined to the Brown county district.

I present it to this Convention; is there any sense in saying that Edmunds, whose county-seat is only twenty-six miles from Aberdeen should oppose the motion. I leave it there, if there is any sense in that.

I want to ask the gentlemen from Codington and Clark, what serious objection they have got? This substitute leaves them in good form; I ask the same question of Sully and Potter—they are small counties but have just as good right to be represented as any. What serious objections have they to re-districting this portion of the State and let some nine counties dissatisfied under the substitute that otherwise, if the Judiciary Committee report goes through, are opposed emphatically and positively to it. Excuse me gentlemen, I don't know but I am getting noisy.

It brings up another point. Nine counties positively and emphatically opposed to the majority report, so called. There are some other counties in favor of it and opposed to the substitute. But no good, tenable objection has been stated on this floor. The gentlemen from Codington and from Faulk and from Clark give no substantial reasons why they are not satisfied with the substitute. They have told you about shoe-string districts, they have represented them stretching from the Minnesota state line to the river and how convenient it was to go from one county to another. But they have not stated any reason why the wishes of these counties up north should not be respected; I submit that as a fact.

Just one other thing. The gentlemen from Spink seem to harp so much upon the fact that the Committee has labored so long and continuously while getting up this report. I am not a member of that Committee, but I am somewhat familiar with their work. In the first place they took about a week to consider the question of power, the question of expediency. Two or three of the gentlemen said that they had our case in hand and they would do us justice.

All right, we rest there easy. In the meantime a joke began to be passed around. They came, first one, then another, with the remark, "How would you like Beadle, Spink, Brown and Marshall in your district?" It was passed around to everyone as a joke and so taken. Nothing was thought about that; thought it was not possible to perpetrate such an eternal joke as that upon us. But it seems that some of the Committee went down to the Chairman, the gentleman from Spink, and spoke of the joke, lo and behold the gentleman took it seriously. There was just a few hours labor on that entire joke,—just a few hours. The most important part of the whole labor, I understand, was undertaken in those very few hours and the beginning of that work was a joke.

Now, gentlemen, I do not know whether we can count on that or not, but certainly we have a most emphatic and positive objection to that majority report. We thus appeal to you—appeal to you for this substitute. It hurts no one at all and everyone will have facilities for getting back and forth throughout the district. We thus appeal direct to you, gentlemen of this Convention, and I appeal to some of the members of the Judiciary Committee also. There is none of those counties that want to go in that unless it is Spink and with possibly the exception of Spink none of these want to go into that district. I hope you will do us justice.

Mr. Clough: I move the previous question.

Motion was duly seconded,

Call of "Question" from all parts of the House.

Mr. Willis: The majority can say whether they want the previous question.

Mr. Lee: I believe we are convinced that we do not want to stay any longer. If we stay much longer the "Old Man" will want to make speech and then he will stay here all night.

Mr. President: Shall the question be put?

This motion prevailed.

Mr. President: Mr. Sterling of the Judiciary Committee brought in a report Mr. Spooner of Kingsbury brought in a substitute. Now the question is upon the substitute.

Mr. Jolley: This is an amendment.

The President: The vote then is upon the amendment.

The Chair being in doubt roll call was resorted to.

Mr. Edgerton, of Davison: At this time I desire to state to the Convention my reasons for giving my vote in the way I

voted upon this question. It is known, perhaps to this Convention, the position I took in reference to the Omnibus Bill, when this Convention assembled. I have not changed my attitude upon that question. I believed then that this Convention had no power except those powers expressed by the Omnibus Bill. It was the charter of the powers of this Convention. That I may not be mistaken I will read the section under which we have the right to re-apportion the State. In defining the powers of this Convention the Omnibus Bill provides the scope and powers of this Convention: "That they shall also submit the articles and propositions separately submitted on that election, including the question of locating the temporary seat of government with such changes only as relate to the main boundary of the proposed state and the re-apportionment of the Judicial and Legislative districts, and such amendments as may be necessary in order to comply with the provisions of this Act."

Now, we admit this, if it is necessary to increase the number of circuits in re-apportioning the State of South Dakota, then this Convention has the power to increase the number of circuits. But if it is not necessary to increase the number of circuits then it does not necessarily fall within the powers of this Convention as granted to us by the Omnibus Bill. There are three inhibitions in the Constitution in reference to the Legislative and Judicial Department so far as the re-apportionment is concerned. In the Legislative Department of Article 3 of the Constitution in Section 2, reads as follows: "The number of members of the House of Representatives shall not be less than seventy-five (75) nor more than one hundred and thirty-five (135). The number of members of the Senate shall not be less than thirty-five (35), nor more than forty-five (45)."

There is not a member of this Convention that will claim that this Convention has a right to go beyond the limits provided in Section 2. In reference to the Supreme Court the limitation in that is this: Section 6 of Article V, reads, "The number of said judges" that is the Supreme Judges—"The number of said judges and districts may, after five years from the admission of this state under this Constitution, be increased by law to not exceeding five." There is not a member of this Convention that will claim that this Convention has the power to make four or five Supreme Judges. This is a limitation upon our powers; consequently it will not be claimed the Supreme Court shall consist of more than three judges

for the first five years. Under the head of Circuit Judges, the limitation, in my opinion, is just as absolute: "The Legislature may, whenever two-thirds of the members of each house shall concur therein, increase the number of judicial circuits and judges thereof, and divide the state into judicial circuits accordingly, taking care that they may be formed of compact territory and be bounded by county lines, but such increase of number or change in the boundaries of districts shall not work the removal of any judge from his office during the term for which he shall have been elected or appointed." The proposition is this: That this Convention has no power in re-apportioning this State for legislative purposes to increase the number of circuits beyond the limit provided by this Constitution, nor the number of the House beyond that, nor has this Convention the power to increase the number of judges upon the Supreme Bench for the next five years; nor, in my opinion, have we any power to increase the number of circuits except by two-thirds vote of the Legislature. That Legislature assembles within ninety days; that Legislature by a two-thirds vote, not by a bare majority, may increase the number of circuits to seven or eight or nine. Consequently I am not in favor of the motion; that this Convention has no power to go beyond the number fixed by the Convention of 1885, believing as I do that this is one of the limitations placed upon this body. I shall be obliged to vote against this motion. This question rests with me, not upon a question of politics, but upon a question of law; upon that I base my reasons for my vote upon this question. Mr. Chairman, I vote no.

Mr. Humphrey: If it would be allowed, I would ask a question. Would, in your judgment, our increasing the number in any manner endanger our admission under the Presidential Proclamation?

Mr. Edgerton, of Davison: I do not believe that I would say, for this reason: It is a question, I admit, upon which lawyers differ; I admit the fact that a large majority of the lawyers of this Convention differ with me upon this question; it being a question upon which lawyers may honestly differ and come to different conclusions. I do not believe the President of the United States will consider it of sufficient importance to bar admission under the proclamation.

The amendment was lost by a vote of 22 ayes and 39 nays.

Mr. Hayes: I move this as an amendment to Section 5, by striking out the words "from districts". Also to amend Section 6 by striking out the words "and districts." Section 10 by striking out the words "and at the time of his election be a resident of the district from which he is elected."

Mr. Hole: I rise to a point of order; the previous question has been called and that has not been settled.

The Chairman: I think you are correct; the previous question having been moved.

The Chairman: The question now, is upon the original motion as offered by the Chairman of the Judiciary Committee. Mr. Sterling, how will you vote?

A Voice: By ayes and nays.

Mr. Cooper: I desire to change my vote from aye to no.

Mr. Heninger: I desire to change my vote from aye to no.

The report was adopted by a vote of 42 ayes and 19 nays.

Mr. Wescott: I move the report be made the special order for tomorrow.

Mr. Peck: Is not it adopted?

Mr. Hole: I move to reconsider this question.

Mr. Humphrey: I move the motion to reconsider be tabled.

Which motion received a second, and prevailed upon reaching a vote.

Mr. Willis: I move we do now adjourn.

The motion to adjourn prevailed and the Convention was adjourned until tomorrow, at two o'clock.