

over it a good deal in order to convey the idea that was intended, but the Convention did not think it was right, and they have made a bad matter worse. So far as that committee is concerned I don't believe it can do anything except to bring in the section that was contained in the original report. I should be very much obliged if the gentlemen who opposed the original section will hand us something on the subject.

Mr. PARSONS of Morton. After the time we spent on this section I think it is no time to recommit it. It may not be that the section is the most elegant in expression that could be found. It seems to me that there is a decided effort to get the idea conveyed in this section, out of the Constitution. If you want to fight this issue over again we will fight it if you want to take the time. I hope the motion will not prevail.

Sections 174 and 175 were referred back to the committee.

Mr. MILLER. I move to adjourn.

The motion prevailed, and the Convention adjourned.

FORTY-FOURTH DAY.

BISMARCK, *Friday, August 16, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

The Committee on County and Township Organization offered the following in place of section 174:

SEC. 174. The Legislative Assembly shall provide by general law for township organization, under which any county may organize whenever a majority of all the legal voters of such county, voting at a general election, shall so determine, and whenever any county shall adopt township organization, so much of this Constitution as provides for the management of the fiscal concerns of said county by the board of county commissioners may be dispensed with by a majority vote of the people voting at any general election, and the affairs of said county may be transacted by the chairmen of the several township boards of said county, and such others as may be provided by law for incorporated cities, towns or villages within such county.

SEC. 175. In any county that shall have adopted a system of government by the chairmen of the several township boards, the question of continuing the same may be submitted to the electors of such county at a general election in such manner as may be provided by law, and if a majority of all the votes cast upon such question shall be against said system of government, then such system shall cease in said county, and the affairs of said county shall then be transacted by a board of county commissioners as is now provided by the laws of the Territory of Dakota.

SEC. 176. Until the system of county government by the chairmen of the several township boards is adopted by any county, the fiscal affairs of said county shall be transacted by a board of county commissioners. Said board shall consist of not less than three and not more than five members, whose term of office shall be prescribed by law. Said board shall hold sessions for the transaction of county business as shall be prescribed by law.

Mr. SCOTT. I move that the report be adopted.

Mr. STEVENS. I move that the words "general" and "a" in the proposed substitute 174 be stricken out, and the words "as may be provided by law" be inserted therefor. It will then read—at an election as may be provided by law. My reason is this: the Legislature will convene this winter. They will pass this law, and there will be no general election at which it can be submitted till next fall. In the spring the township organizations vote for township officers. This question could then be submitted so that the counties could adopt it, and it might go into effect next spring. If the Legislature see fit to submit it only at a general election they will so state. This amendment I offer to obviate the necessity of waiting a whole year. I hope this amendment will prevail for this reason: that the counties that desire this system of government may be authorized to organize under it at the earliest possible time.

Mr. APPLETON. We prepared these sections in lieu of 174, and we should have recommended that section 175 be adopted.

The amendment of Mr. STEVENS was adopted, and the sections were adopted as amended.

Section 175 was adopted and 176 was stricken out.

LIMITING TERMS OF OFFICE.

Section 177 was read as follows:

SEC. 177. The sheriff and treasurer of any county shall not hold their respective offices for more than four years in succession.

Mr. MOER. I move to amend the section by placing at the beginning thereof the words: "Under this Constitution."

Mr. APPLETON. It seems to me that this amendment should

prevail. I think it should be definitely known as to whether the sheriff and treasurer holding their offices at the present time should be eligible for four years, or whether the time they have already held it should be counted in. I would like to see the amendment prevail.

The amendment was lost.

Mr. MOER. I move to amend the section by adding at the close the words: "Under the Constitution."

The motion was seconded and adopted.

Sections 177, 178 and 179 were adopted after being read.

GROSS EARNINGS.

Section 180 was read as follows:

SEC. 180. Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the State, county and municipal corporations, both real and personal, shall be exempt from taxation; and the Legislative Assembly shall by a general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes, and personal property to any amount not exceeding in value \$200 for each individual liable to taxation.

Mr. SCOTT. I move to amend this section by adding thereto the following:

"Provided, however, That the Legislative Assembly may by law accept and provide for a tax based on gross earnings in lieu of all other taxes to be assessed against the road, roadbed, rolling stock, franchise and all other, and only such property as is owned by any railroad corporation, and used by it in the actual operation of its road."

Mr. COLTON. I move to lay the amendment on the table.

Mr. SCOTT. The object of the amendment was this: there was quite an extended discussion on this section the last time it came up, and it was stated that the real meaning of section 180 as passed was to prohibit the Legislative Assembly from passing a gross earnings law, so that all railroads would be taxed the same as any other property, and the Legislative Assembly could not, if they deemed proper and right, accept a tax on the gross earnings of a railroad. Mr. HARRIS stated that at the present time we were receiving on the basis of the gross earnings a larger amount of revenue than we would receive if we taxed them in the manner proposed in section 180. I think that there may be such circumstances arise that it would be well and wise for the Legislature to pass a gross earnings law so that they might pay taxes on these gross earnings in lieu of all taxes that would otherwise be assessed

on the franchises, road and roadbed, and all other property directly used by the railroad in the operation of its road. It is well known that the Northern Pacific has a large land grant and they own a great deal of land, and I see no reason why that land should also be included in the gross earnings tax, and I think that should be taxed as well as the land held by individuals, and if the Legislative Assembly decide that in lieu of taxes on railroad property proper, they will levy a gross earnings tax, we should give them an opportunity to do that.

Mr. HEGGE. I move as a substitute to amend the section by adding thereto the words, "until otherwise provided by law."

Mr. WALLACE. I move to lay the amendment on the table. The motion was lost by a vote of 33 to 35.

Mr. WALLACE. The intention of this amendment of the gentleman from Traill is to leave this matter to the Legislature so that they may adopt a system of gross earnings for one branch of business and for another class of business another. He wants to tax one class of citizens in one way and another class in another way. That is the principle of the thing proposed. It is immaterial whether we get more out of the railroad by taxing it according to the gross earnings or taxing it the same as you and I are taxed. All property should be taxed alike and no exceptions should be made. The only reason why the railroad companies should be taxed according to the gross earnings system is because they expect to pay a smaller tax that way. The citizen is obliged to pay according to what property he has got. The point has been made that we may under certain circumstances get less than under the gross earnings system. That does not enter into the question. The question is whether every class of property and every citizen should be taxed alike, or whether exceptions should be made for the benefit of certain classes. I hope the amendment will not prevail.

Mr. HEGGE. I believe most of us would like to get the most taxes but don't know how to get them.

Mr. MOER. I am not exactly in favor of the amendment proposed by the gentleman from Traill, but I would like to suggest to the gentlemen who so violently oppose the gross earnings law, that under the charter of the Northern Pacific there is a clause that exempts them from taxation, and it is now a question whether or not it perpetually exempts them, or only while we were a Territory. The railroads claim that it is perpetual exemption, and

they say that the Supreme Court of the United States will so hold. That is a mooted question. I would suggest to the gentlemen who are against the railroads having anything to do with this, suppose on a test matter the Supreme Court of the United States holds that the Northern Pacific is exempt from taxation under its charter and we have prevented the Legislature from enacting a gross earnings law, where would we get our tax? Is there a possible way in the world that we could get any tax under such a condition of things?

Mr. COLTON. If it is a fact that the Northern Pacific is not entitled to pay a tax I say let them go. I don't believe in trying to impose a tax on people or corporations that are exempt. If we have a right to tax them, I say tax them as you would anybody else. This motion is to strike out the whole business; it leaves everything to the Legislature to fix just as they see fit. If you want to leave everything to the Legislature we might as well leave everything to them, and have no restrictions whatever. I believe the railroad company is entitled to be taxed, and they know it or they would never fight this section. They would not come up here and try to fight a thing that it is claimed would practically exempt them from taxation. If they would be exempt under this section, they would be exempt under a gross earnings law. I say let every man be equally taxed according to his valuation.

Mr. BARTLETT of Griggs. I desire to say in reply to the gentleman from La Moure that if the railroad company believes it is exempt from taxation under the provisions of their charter, they are the most magnanimous corporation I ever knew to step up to the Treasury of this State and pay \$100,000 or \$200,000. I never knew a soulless corporation before that was so generous. I don't believe that the railroad company do believe that they are exempt from taxation, for if they did they would not step up and give us this money. If they do that now they will do it after the Supreme Court has sustained their case.

Mr. MOER. I want to suggest that the argument used is as follows: The railroad pays on its gross earnings, which the Legislature has full power to control and tax. The United States did not exempt their earnings, but their roadbed and their franchises. Under the territorial condition the Legislature have had full power to tax the gross earnings in the Territory. If we have a constitutional provision prohibiting the Legislature from enacting any such law and the Supreme Court of the United States says

that the roadbed and rolling stock are exempt, we cannot get at them at all. The gentleman from Ward says that he does not want to tax them under the general law if they are exempt. But they are taxable on their earnings, but if we have this clause in the Constitution, and they should then be held to be exempt on their roadbed, we shall have cut ourselves off from getting anything out of them.

Mr. LAUDER. I will ask if it is not a fact that the Supreme Court of the United States has held that the gross earnings tax law was unconstitutional and could not be enforced? I would ask if it is not a fact that the only gross earnings law that can be enforced is on the earnings within the jurisdiction imposing the law? If we pass the gross earnings law, won't it rest entirely with the railroads whether they pay or not?

Mr. MOER. If we pass a gross earnings law the roads will pay under it.

Mr. CARLAND. I am in favor of leaving the matter to the Legislature. But I don't understand this would modify the section as it now stands, as it is claimed. There is a semicolon after the word "taxation," and "until otherwise provided by law" would not reach back of the semicolon.

Mr. PARSONS of Morton. This subject has been discussed a good deal, and I am opposed to the amendment of the gentleman from Traill, because it does not place the matter in proper form.

Mr. SCOTT. I don't think this amendment would sound very euphonious if it was passed as it is. I believe the Legislature should have the power to pass a gross earnings law something similar to the one which exists now, so that the railroads may come in under it and pay on their earnings. But I don't believe that it should be left within the power of the Legislature to include in that tax their lands. The lands should be taxed like other lands. As this amendment will give the Legislature the opportunity to include the lands in a gross earnings tax, I shall vote against it.

Mr. WILLIAMS. I shall vote aye because I think this should be left to the Legislature. I don't believe we should tie their hands in this matter. I don't think that we have any right to believe that the Legislature will be less honest than we are. I think they will be just as honest as this Convention. It should be left to them to do as they wish.

The amendment of Mr. HEGGE was lost by a vote of 51 to 17.

Mr. PARSONS of Morton. I move that the following words be added to the section:

“Provided, That the Legislature may provide a uniform rate for taxing all property used exclusively for railroad purposes.”

Mr. STEVENS. I am in favor of the gross earnings system for railroads provided there is no other property to be taxed under the system except such as is actually used in the operation of the franchises of the road. I am opposed to a tax by a gross earnings system which will embrace the lands that lie aside from the right of way belonging to the railroad company.

The amendment of Mr. PARSONS was laid on the table.

Mr. MOER. I move to amend the section by adding thereto the following:

“But this section shall not be construed as prohibiting the Legislature from enacting a uniform gross earnings law upon property of railroad corporations used exclusively for railroad purposes.”

AFTERNOON SESSION.

Mr. LOWELL. I move as a substitute for the original section (180) and the amendment the following:

“The rule of taxation shall be uniform, and taxes shall be levied on such property as the Legislative Assembly shall prescribe.”

Mr. BELL. Without a doubt there has been an immense amount of education on this article 180. The gentlemen have claimed that it was unjust, but the real fact of the matter is that it is too just to suit a great many of the gentlemen who are on the other side of the question. What they don't like is a provision that taxes shall be uniform—that all property shall be taxed alike—without reference to whom it belongs. This section only provides that every individual, every corporation shall be taxed alike. The gentlemen on the other side of the question made such a cry for justice yesterday on the article on corporations—made such a cry for the railroads, that they should have power to appeal to the courts the same as individuals. But now they want the railroads on the question of taxation to have an undue advantage over every one else. They want the railroads to be taxed by a gross earnings system. If that is correct why not tax the farmer, the merchant and the manufacturer by the gross earnings system? But no, they don't want to do that. They want to give the Legislature

power to have favorites and pets to give certain privileges to. They want to tax one individual and one set of people one way and another set another way. If you give the Legislature this power that they can tax under any system they want to, it is feasible enough that the corporations will ask to be taxed under the gross earnings system. I would like to know if there is anything unjust in all of us being taxed alike? Are the railroads and corporations any better than the individuals of this State? Why should they have privileges that other people don't have? I hope any amendment to this section will not prevail.

Mr. PARSONS of Morton. I feel that the remarks of the gentleman from Walsh have been directed at me for one, as I have advocated an amendment to this section. I wish to say that I don't believe I have a constituent west of the Missouri river—a farmer or a laborer—or anyone else that would have me, or urge me in any way to vote for a measure that was unjust. Our forefathers had a little difference with the British government at one time over a matter of taxes. It was not the amount of taxes, but the principle of the thing that was at stake. The gentleman stands on this floor and says these things are for the interest of the dear people—we are to be all taxed alike, “provided that no railroad shall be taxed for less than \$3,000 a mile.” If the gentleman from Walsh wants a provision in the law that no farm shall be taxed for less than \$10 an acre, then we are getting down to the same basis. But you have made a distinction here, and have stated by the very act before us that we do wish to make a distinction against the railroads. I stand here as one who is not afraid to declare his opinion on any subject under heaven. I don't care whether this is for or against a corporation. If it is necessary to stand by a corporation, I will stand there as quickly as on the other side. The gentleman objects to this amendment simply on the ground that it makes a distinction. I claim that we have already made a distinction which is an injustice and an outrage. I say the principle is wrong of placing \$3,000 a mile on the railroads. I say place all in the same category. Let some uniform rule apply to all.

Mr. COLTON. The gentleman from Morton is getting ahead of the business. We have not come to that section which says \$3,000 yet. The question before us is now—shall we have a uniform and equal taxation or shall we not. That is the question we have

before us. There is not a man of you that has ever got one vote from the farmer but wants to see just and equal taxation.

A vote was then taken on the substitute of Mr. LOWELL.

Mr. SPALDING explained his vote. I desire to explain my vote for the second and I trust the last time. I came to this Convention unpledged to any individual or corporation, with sympathies where they still are—in favor of that portion of the inhabitants of the State to be, on whose prosperity we all, to a greater or lesser extent depend, but desiring to see justice done to all, and no means favoring any class to the prejudice of any other class. Least of all did I desire to see a Constitution made giving special privileges to wealth and the corporations, or prejudicial to the poor man or farmer. But this Convention had not long been in session. Then it became evident to me that corporations were not the only class seeking to influence its members to adopt class measures, for I found many members pressing measures that if passed, would, in my judgment, prove unjust, unreasonable and oppressive, and a detriment to the welfare of the State and its inhabitants. So extreme and radical were many of these measures; so persistent and uncompromising, and so averse to adopting a middle and conservative course were their advocates, that in some instances in my efforts to avoid extreme measures and class legislation, I have been compelled to accept one horn of the dilemma and support that measure which, while not meeting my approval, was in my judgment the least objectionable. This is especially the case in the matter now before the House, viz., section 180, requiring among other things all property to be taxed according to its true value in cash, while section 181 and 183, for which the very same majority which is urging the passage of this section unamended voted, provide in substance that lands in certain conditions shall be taxed without regard to value, and fix an arbitrary minimum amount for the assessment of railroads, without regard to actual value, thus conflicting with section 180 and attempting to except certain parties from the operation of the principle which they claim to support, and discriminating against such. In some cases this state of affairs has caused me to vote with the minority and subjected me to the criticism of railroad influence, but I desire to say that neither before nor since the opening of this Convention has any person asked my vote for or against corporate measures, and when cast as in this case, apparently in their behalf, it has been for the

measures before stated, or because in my feeble judgment the proposed measure, even though advocated by corporations, was a proper and just one.

The amendment was lost by the following vote:

The roll being called, there were ayes, 35; nays, 36; viz.:

Those who voted in the affirmative were:

Messrs. Bartlett of Dickey, Bennett, Blewett, Brown, Budge, Carland, Chaffee, Clapp, Fay, Flemington, Gayton, Glick, Griggs, Harris, Hegge, Holmes, Hoyt, Leach, Lohnes, Lowell, Mathews, Meacham, McHugh, Miller, Moer, Parsons of Morton, Parsons of Rolette, Pollock, Purcell, Ray, Shuman, Spalding, Stevens, Whipple, Williams.

Those who voted in the negative were:

Messrs. Allin, Appleton, Bartlett of Griggs, Bean, Bell, Best, Camp, Carothers, Clark, Colton, Douglas, Elliott, Gray, Haugen, Johnson, Lauder, Linwell, Marrinan, McBride, McKenzie, Noble, Nomland, O'Brien, Peterson, Powers, Powles, Richardson, Robertson, Rowe, Sandager, Scott, Slotten, Turner, Wallace, Wellwood, Mr. President.

Absent and not voting:

Messrs. Almen, Paulson, Rolfe, Selby.

The amendment of Mr. MOER was then voted upon.

Mr. CAMP. I desire to explain my vote. I was not here when this amendment was offered, and reached my seat after the previous question was being put. I am in favor of a gross earnings system of taxation being applied to the property of railroads used exclusively for railroad purposes, but it does not seem to me that the amendment as now made is well worded to convey that idea, and I vote no.

The amendment of Mr. MOER was lost by a vote of 30 to 40.

Mr. MOER. I regard this as practically settling the question whether the Convention is in favor of allowing the Legislature to have the power, in case it becomes necessary in lieu of taxes on the roadbed and franchises, to take the taxes under a gross earnings system. In the event that the Supreme Court should hold that the roadbed, etc., were not taxable, we should be left without taxation of railroad property. I am opposed myself to the gross earnings system of taxation. I am in favor of a law which will allow the railroad lands to be taxed like other lands. I am opposed to a constitutional enactment which will preclude a Legislature from taxing railroad property at all.

Section 180 was adopted.

Mr. MOER. I desire to give notice of motion to reconsider the vote by which section 180 was adopted.

Sections 181 and 182 were adopted.

TAXING RAILROADS.

Section 183 was read as follows, with the recommendation of the Revision Committee:

SEC. 183. All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, town, village or district in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in this State shall be assessed by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities, towns, townships and districts in which said roads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and districts; *Provided*, That for the purpose of assessment and taxation such railroad shall not be valued at less than \$3,000 per mile.

[Committee recommend that the words "in which it is situated" be inserted after the word "district" where it first occurs in the section.

Mr. MILLER. I move to strike out the proviso, for the reason that I think it grants a monopoly to the two great railroad corporations now running through the Territory. A smaller railroad company, and one operating a road paying a less percentage of profit than these roads, could not stand it. It gives these two roads a virtual monopoly of all the railroad business of Dakota. It is unjust and unreasonable, because it fixes a price of something that we do not know anything about what the price should be.

Mr. LAUDER. I have desired to be consistent as nearly as I could in the consideration of these sections. I voted against the amendment to section 180, because I believed railroad companies should be taxed just the same as any other person or corporation in the State, and that they might be taxed in the same way and in no other way, that there might be no greater burden placed on them than is placed on any other person, but the same rule should apply to the taxation of their property that applies in the assessment and taxation of all other property. The removal of this proviso will leave this article on taxation in such a way that every person in the State, all corporations in the State, and all other property, will be affected in the same way, and will be made uniform. There will be no special privileges and no special burdens on any one.

Mr. BARTLETT of Griggs. I desire also to second the striking out of that proviso. I believe we have no legal, moral or any other right to prescribe the rate of assessment of any property.

Mr. TURNER. I also favor the striking out of this proviso. I think it is only just and fair, and as the representative of one of the classes represented here I believe that no community in this Territory desires to have any one unjustly taxed.

Mr. MOER. I am heartily glad that the gentleman from Richland has at last consented to strike these words out, and he now uses the same arguments that were used in the committee. I don't know what has changed his heart, but I am glad it is changed.

Mr. SPALDING. I am heartily in favor of striking out this proviso, for the same arguments that I urged to strike out 181 apply here. I never experienced instantaneous conversion that I recollect, and I have not seen it very often in others, but it seems to me that here is an example of it, and I am glad to see the gentlemen from Richland and Griggs and Bottineau experiencing a change of heart so suddenly.

Mr. COLTON. I don't think it is any very sudden change of heart. We have all had our minds made up to that amendment for several days—long before this came up, and it is no sudden change of heart as seems to be imagined. I don't think there will be any opposition to it.

Mr. BARTLETT of Dickey. As the two extremes have come together and there seems to be such splendid feeling I move that we take a recess while the gentlemen embrace.

The amendment of Mr. MILLER was adopted and the section was adopted as amended.

Sections 184 and 185 were read and adopted.

Articles twelve, thirteen and fourteen were adopted.

AMENDMENTS TO THE CONSTITUTION.

Article fifteen was read as follows:

“Any amendment or amendments to this Constitution may be proposed in either House of the Legislative Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment shall be entered on the Journal of the House with the yeas and nays taken thereon, and referred to the Legislative Assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the Legislative Assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each

House, then it shall be the duty of the Legislative Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the Legislative Assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislative Assembly voting thereon, such amendment or amendments shall become a part of the Constitution of this State. If two or more amendments shall be submitted at the same time they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately."

Mr. WILLIAMS. I move to amend this article by striking out in line three the words "a majority" and inserting therefor the words "two-thirds."

Mr. PURCELL. I hope the amendment will not prevail, for the reason that in the case of an amendment to the Constitution being desired, it will require a majority of two successive Legislatures before it can be submitted to the people, and it seems to me that that is safeguard enough to be thrown around our Constitution. It may be difficult to get a two-thirds majority of each Legislature to agree to submit this question, and as this is a new State, the people should have the privilege of voting on an amendment if the majority of the members of two Legislatures vote for the submission.

Mr. LAUDER. I heartily agree with the remarks of my colleague from Richland, and I therefore move that the amendment be laid on the table.

The motion was carried.

The article was then adopted as reported.

Articles sixteen and seventeen were then adopted.

Mr. WILLIAMS. I move that the following be made an additional section to article seventeen:

"The real and personal property of any woman in this state, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property, and shall not be liable for the debts of her husband."

The motion was carried.

THE OATH OF OFFICE.

Mr. JOHNSON offered the following substitute for section 217:

"Members of the Legislative Assembly and the officers thereof, before they enter upon their official duties, shall take or subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of North Dakota, and will faithfully discharge the duties of (senator, representative or officer)

according to the best of my abilities, and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive directly or indirectly, any money, pass or other valuable thing from any corporation, company or person, for any vote or influence I may give or withhold on any bill or resolution, or appropriation, or for any official act."

Mr. JOHNSON. I don't wish to argue the question. When it was discussed before it was in the Committee of the Whole. It is one of the three things that were desired by the Farmers' Alliance, and they have a right to have it.

The substitute was lost.

Mr. CLAPP. I offer the following amendment to section 217: Add after the word "ability" the following: "(If an oath) So help me God. (If an affirmation) Under the pains and penalties of perjury." I recognize the fact that as it now stands, in case of an affirmation it might be inconsistent to have the words "so help me God," although some states of the Union have the form of oath like this. But I think this amendment, if adopted, will leave the matter in better shape.

The amendment was carried.

BLACK LISTS.

Mr. PARSONS of Morton. I move the adoption of the following as a section of article 217: "The exchange of black lists between corporations shall be prohibited."

Mr. SPALDING. I would like to know what a black list is?

Mr. PARSONS of Morton. It is a list of discharged employes, for no matter what cause, and circulated by agreement among corporations. It is supposed to be a list of employes that have been discharged for cause, and they are circulated from month to month by the corporations. A man may be discharged in Dakota, and it is known by the roads in Missouri. There are some roads with managers who have enough manhood about them to sit down on such a procedure. There is no way you can prevent it except by some such clause as this. The black list does not specify the cause, particularly, for the discharge. They may be obnoxious in one way or another; they have done some bad thing, but we all are liable to make mistakes. If a man makes a mistake, that is no reason why he should be persecuted. It is a persecution list, and it is exchanged around among the corporations. Each corporation can have its own black list.

Mr. MOER. I would suggest that possibly if we adopt this section they would call them blue lists.

Mr. BARTLETT of Dickey. It seems to me that some men came here to play and have some fun. This is one of the most foolish things. I have been figuring with black lists all my life. If this is adopted they will be able then to get up red lists and then blue lists. Men who want to can get around these things without any trouble. If a man is not good put "A" after his name, and if not so good as "A" put "B" there. I have bushels of black lists. There is not a power on earth that can prevent a company from keeping black lists if it wants to have them, and never will while the world stands.

The motion of Mr. PARSONS was adopted.

EVENING SESSION.

Mr. JOHNSON. I would like to have the report of the committee read appointed to examine the telegrams, letters and memorials regarding the location of the public buildings. I understand the report is ready, and if it is to be of any use to us it should be submitted now. Therefore I move that the report be now submitted.

Mr. MILLER. As Chairman of the committee I have partially, and perhaps fully, prepared a report that would be satisfactory to myself, but there are questions raised by the balance of the committee, and I am not prepared to make that report. But I will be ready to report to-morrow morning. I am not prepared to do it now.

Mr. JOHNSON. I have examined the report prepared by the Chairman and the majority of the committee, and am unable to concur in the conclusions, and I have prepared a minority report which I ask leave to submit.

Mr. SPALDING. I rise to a point of order. The gentleman cannot have a report of the special committee read now without a suspension of the rules, and the proper place for that is in the proceedings which come in the morning session.

Mr. BARTLETT of Griggs. I move that the rules be suspended for the purpose of receiving the minority report.

Mr. STEVENS. I think I am entitled to know something about what is going on in this committee, or I am entitled to be excused from the committee. I did not know that there had been

a meeting of that committee. I have seen no report. I have not heard the gentleman raise any objections to the report of the Chairman, and I don't know but that I may want to sign his minority report. But I would at least like to have an opportunity of looking at it.

The motion was laid on the table.

Article eighteen was adopted.

THE PUBLIC INSTITUTIONS.

Mr. BARTLETT of Griggs. I renew the motion I made before that the minority report of the Committee on Public Institutions be substituted for article nineteen.

This was laid upon the table.

Mr. BARTLETT of Griggs. I move to amend the article by inserting before the first sub-division the following:

"The following article shall be submitted as a separate article to be voted on separately."

Mr. MILLER. I move that the motion of the gentleman be laid upon the table.

Mr. WILLIAMS. I move the previous question on the question of the gentleman from Cass.

Mr. PURCELL. I move that the whole section be stricken out.

The previous question, and the main question were put and the section was adopted.

While the section was being voted upon, Mr. BEAN said: I wish to explain my vote as regards this article; in fact, all the votes we have taken this evening on this question. When I first came to this Convention I was opposed to the Convention locating the public institutions. When we took our vote last week I was also opposed to locating them. My two first votes showed that fact. When the third vote came I saw the question was going anyhow, and I voted in the affirmative, thus giving me a chance to reconsider my vote if I desired. After that one of the members of this Convention saw fit to have an indignation meeting held at the village of Lakota. There they not only condemned the action of the majority of this Convention, but saw fit to point out me personally, and shower their condemnation on me. Now, in voting for this article, I do not consider it alone as a question of locating these public institutions, but I consider it a question of my personal character. Since coming back here I have had reasons to change my mind in regard to this matter. Since coming back

here this second time I have seen more political trickery going on than I have ever seen before in all the political conventions that I have attended. I have seen the persons who were in the minority at the other vote, who went up and told of the jobs that were put up, and how the rings were formed and the cliques would gather, and how the boodle was used; I have seen these same gentlemen trying to form their own rings to beat the same majority that they charge with the same offenses. I consider that this is not alone a question of erecting these public buildings. I don't consider this is the only question, as to where we shall locate these public buildings. The question is not that; the question lying under the whole thing is whether the city of Bismarck shall have the Capital, or Grand Forks. Taking this fact into consideration, I have voted this evening, and I do so to sustain my private character in spite of what my colleagues may go home and report in Lakota.

Mr. BENNETT. He has just said one thing I know is false. I fling it back in his face right here or any other time, and that is that it is a question of locating the capital here or at Grand Forks. That is not so. When he comes up and makes such a statement as that he states a falsehood. When I came down here from Grand Forks as a delegate I did not come to work in the interest of Grand Forks as against any other part of the Territory. I was not three hours in Bismarck until I was approached on the question of locating the capital at Bismarck. I told them I was in favor of locating the temporary seat of government here, and then voting on the question. Now then, that was not what was sought. The question was to locate the permanent seat of government at Bismarck. I was asked to go into a combination. I stated that Grand Forks and Grand Forks people did not propose to go into any combination at the expense of any other part of the Territory. That is our statement of the position we maintained from the first till we finally saw this combination of forty-four, bound to locate the Capital here, and then I think we were justified in trying to break it up if possible. That is the course of the people from Grand Forks.

A voice in the gallery called out "rats."

Mr. PURCELL. It is simply a question whether a man can speak here and be heard, or whether some outsider can yell "rats." The case is just this. Of course this majority have the right to have their remarks heard, but the minority also have the right to

be heard, and while the gentleman from Grand Forks was speaking somebody yelled "rats." That is unbecoming and unmanly. The gentleman from Nelson stated that since he came back he has seen more chicanery and more scheming going on to defeat the will of the majority than he ever saw before. I am one of the minority and I was present at the meeting which the gentleman from Nelson attended to-day. And sir, I want it distinctly understood that that meeting was not called by any man who has voted with the minority, but in the interest of friends of those who have voted with the majority, and when I speak of them I speak of the men who represent Jamestown and their delegates on this floor. The minority have been willing to submit to the will of the majority if they could not defeat them fairly and squarely. In all of their meetings there has been no attempt at chicanery or underhand action to defeat the will of the majority. It was at the call of others who came here and organized this minority into a caucus, and because of the promised assistance of those who to-day have voted with the majority that these meetings were held, and not otherwise. It was a question with the minority whether they would sacrifice their votes for baits that were promised them in case they would vote for the compromise location, and what has been done in caucus has been done because they were called together by those outside who pretended to be able to bring to the assistance of the minority some of those who have voted with the majority. If the gentleman charges the minority with having done anything wrong, they have the right to stand up here and say why they were in caucus at the time they were in caucus.

Mr. CAMP. I desire to explain my vote. The gentleman who has just finished speaking has referred to caucuses that have been held, and in which the delegates from Stutsman took part. When I voted on this question a little more than a week ago, I took occasion to say to this body that I knew the vote which I cast would subject me to the most scathing criticism. I found my prophecy fulfilled speedily, and in a quarter where I least expected it. I was called home a week ago to-night to attend an indignation meeting, at which the delegates from Stutsman county were to be burned in effigy, and otherwise honored. However, we were not burned in effigy, or otherwise dishonored. It seems, however, that the citizens of Jamestown thought that there was still a possibility that their hopes might be attained, and our city might be made, at least temporarily, the capital of the State of North Da-

kota. Their delegates were instructed and urged—they were unnecessarily instructed and urged, for we should have done the same thing and had done the same thing anyway—to use every honorable effort to secure the location of the Capital of North Dakota temporarily at our city. One of the delegates from Grand Forks was present at Jamestown, and he made a statement that he could secure a certain number of gentlemen to vote for the seat of government temporarily at Jamestown if we could secure a sufficient number to make with them a majority. We undertook the task, and the delegation from Jamestown has been here working with that end in view. For that reason I went with the other delegates from Jamestown into caucus with the gentleman from Grand Forks and with the members of the minority here.

At the opening of the first meeting of that caucus I was very careful to state the object for which I myself was there, which was nothing but that if a majority was obtained for Jamestown, I would work with that majority. Otherwise, I would remain where I had placed myself before, believing then, as I do now, that this combination is the best for the County of Stutsman and the City of Jamestown, provided we could not get the Capital permanently or temporarily. That caucus held various sessions, and at its sessions this afternoon it was finally decided, and at least definitely fixed, that we could not command a majority for the proposition of locating the Capital temporarily at Jamestown. The minority then said, and to their honor be it said, that they had gone into this matter as a matter of principle, and that to go to locate any institution even temporarily would take from them the moral strength of their position. They took that position, and although some and most of the gentlemen were willing to vote the Capital temporarily at Jamestown, yet some of the gentlemen would not do this, and that proposition was left in a hopeless minority. When that was found to be unalterably fixed, I left the caucus; the caucus adjourned *sine die*, and it was understood that every delegate was free to vote upon this measure as he saw fit. Therefore, I vote with the consent and under the advice of the city I represent. I vote as I did before—aye.

Mr. JOHNSON. I wish to say a word, not exactly in explanation of my vote, but in correction of one of the statements made by my colleague. He states correctly the proceedings at Lakota, with one exception. It is unimportant, but he is in that respect laboring under a misapprehension when he states that I had an

indignation meeting called. He said a member of this Convention did it. I being the only member of this Convention there, was the one pointed out. If I had had an opportunity to join in the call, I should not have hesitated to do so. I should have considered it perfectly proper, but I had not the opportunity to do so. When I came to Lakota, on the way to my house I went into the printing office and had a chat with the editor, and while I was there, before I had said a word about a meeting, a gentleman came in and said an indignation meeting had been called. I went to the postoffice and saw the notice signed by a great many of the leading citizens. This is unimportant. I vote no.

Mr. LAUDER. Mr. PRESIDENT, in view of the vote that I cast on this question when it was before this Convention something over a week ago, I feel it my duty to explain my vote on this occasion. I think all the members of this Convention with whom I have conversed will bear me out in the statement when I say that I have been against this proposition from the start as a matter of principle. But this combination was formed, and they saw fit in their generosity to establish or locate a public institution in the city in which I live, no doubt with the expectation that the delegation from that county would support the measure. Two of the gentlemen from my county, my colleagues, expressed in unmistakable terms their dissent from this proceeding, and refused to support it, concurring with me that it was an unwise measure—wrong in principle. The alternative was presented to us, as it occurred to me at the time—I may have been mistaken—but as it was presented to me the alternative was to support this measure or the institution that was in contemplation would be taken away. I had but a short time to consider the matter. Of course I am loyal to the county from which I come and which I represent, and I was not at that time entirely certain that my people would justify me in voting against this measure, when if I did so they would lose the institution which was provided in the bill, knowing as I did that there was strength enough behind the combination to carry it through. For that reason, and not being entirely satisfied that my constituents would justify my vote, if I voted against it, I voted aye. Since casting that vote I have had occasion to visit my home and converse with my people, and I am very glad that I can come back here now and satisfy my judgment and conscience by voting on this question as I believe I ought from the standpoint of principle. There has been something said by the

gentleman from Nelson about combinations in opposition to this measure. I believe I have been in every meeting that has been held for the purpose of devising ways and means whereby this combination can be defeated. I have seen no such combinations as he speaks of. For my part I have not, except in the vote I cast here a week ago—I have never consented to any scheme or any combination by which any institution of this State should be permanently located in this Constitution. In this I can also include both of my colleagues from Richland county. Some of those who were in opposition to this combination were willing to go this far to defeat this combination—we were willing to locate the seat of government temporarily at Jamestown, or we would have been willing to locate it at Fargo or Grand Forks or anywhere else, if by so doing we could defeat this combination, but at no time have I or any of my colleagues from Richland county, or any gentlemen who have been opposed to this combination, so far as I know, advocated a measure permanently locating the seat of government of this State by this Constitution. I vote no.

Mr. PARSONS of Morton. I wish to say a word in explanation of my vote. Inasmuch as the question of purity of conscience has been brought up on this floor, I wish to make it clear and plain if possible, that no one can hurl the charge of bribery or undue influence against me. I wish to state that when I came to this Convention, I came for measures and not for the location of public institutions. But I was perhaps so verdant as to suppose that we would all consider this matter, and locate these institutions, fairly distributing them through the State, leaving it to the Legislature to make provision for them as the welfare of the State demanded. But I found a decided opposition to anything of the kind. I was satisfied—I may have been mistaken—that it was impossible to ever locate the Capital of the State by a vote, and get the wishes of the people, for it would be impossible to get a majority for any one place. In considering these things—considering that there is no body that will ever be elected by the people till another Constitutional Convention, better adapted to deal with this question, than the present body, as a common place, honest man I deemed it my right and privilege to take part in the location of these institutions. Because a minority of this body refused to take a hand in the proper location of them, and thus have a fair distribution, the only way left was for us to do what we did—to go in and locate them. I regret that it has been found necessary to

locate the educational institutions in the eastern part of the State in a body, but I wish to say that I am in no way responsible for that, and in the days to come when our children occupy the same places we do, they will find that it is the minority that has been the cause of this improper distribution of the institutions in the State. I have been ready to agree to a fair and equitable division of these things, and it is the tactics observed by the other side that has caused this state of affairs. If they charge bribery and corruption, I wish to say that overtures have been made to me by the minority which I will not describe here. I do not wish to cast any reflections on the gentlemen who have made overtures to me. I believe in the sight of God that there was no more consideration of justice and right on the side of the minority than there was on the side of the majority. If selfish motives actuated the one side, motives just as selfish actuated the other side. If any man wishes to charge that there has been bribery or corruption or undue influence used, I wish to say that I have been familiar with what has been going on, and I wish to say it is a base falsification, and I desire the world to know that this combination is as pure and honorable as any that has ever existed in any capital in the United States, and it is just as pure and honorable as the motives that govern the minority. I desire to cast my vote aye.

Mr. POLLOCK. On a former occasion I defined my position in this matter to this Convention, and I do not care now to repeat what I said then in substance or otherwise. But I wish to explain, and that briefly, that through the early days of this Convention I was interviewed by a few members of the Convention, and many people of this city, with reference to my position as to the matter of locating the capital of the State of North Dakota. I have expressed on every occasion, I think, my willingness by my vote here or at the polls, to locate the capital in this city, knowing as I do the history of the capital location here; knowing as I do what the people of this vicinity have passed through with reference to it, and knowing as I do how they have suffered in other ways. But I would like to vote on that question as an independent proposition. When the proposition comes up it is combined in such a way that it is impossible for me to vote for it. I simply make this explanation so that I may set myself right with the people of this city. I think it is absolutely necessary for me to vote as I do in order to perform the duty which I claim devolves upon me. Therefore I vote no.

Mr. STEVENS. I vote aye on this proposition so that the City of Bismarck may sit on her seven hills and be the most beautiful capital of the four new states.

Mr. TURNER. I feel called on to explain my vote on this question. I feel called on in the first place, because of the charges that have been made by the gentleman from Nelson against the minority, who have, it is true, held caucuses with respect to the question of locating the public institutions of this State. In the charges he has laid against the minority he has evidently tried to make the impression that there has been an effort made on the part of certain parties to form an improper combination in the minority on this question. I believe that I have attended every meeting of that minority, and I can testify that every expression of that minority in their caucuses has been that they would not combine to locate any of the institutions permanently. They were against the location of these institutions; they were against it because they did not believe it in the public interest, and they determined that they would not go into any combination of a character that would be buying and selling—giving something for what was to be received. The only effort made on the part of that minority was to endeavor to break the combination with respect to the public institutions which are not created. For myself, as the gentlemen know, I would, on a square issue, have voted for the temporary location or the permanent location of the Capital at Bismarck. But when the City of Bismarck went into a combination for the purpose of farming out the institutions of this State, for which the Government had appropriated a half million acres of land, and located these institutions so as to give them a majority vote on this question without reference to the question of right, which I think really they might have based their claims upon—when they did this, and located two Normal Schools, one at Mayville and one at Valley City, within sixty or seventy miles of each other, when we have a State 400 miles by 200—when they did this, I saw plainly that the interests of the State of North Dakota would be sold by the people of Bismarck for the purpose of establishing the Capital here. Hence, I would have gone into a convention to temporarily remove the Capital from Bismarck, if by so doing I could have broken up this combination. The position of things was such that I could not vote for the City of Bismarck without voting for the location of the other institutions

which I am opposed to so locating. For that reason I record my vote no.

Mr. WALLACE. I don't consider it necessary for me to take up much time. Neither do I think that what I may say will have any influence on individuals. I wish to say that when the delegates of this Constitutional Convention were elected this question was never mooted. It was not a question that the people were called upon to decide, nor did they vote upon it. We were not aware that a combination had been formed, or that the scheme had been formed that resulted in the combination which we have seen here, but in the light of recent events we can see that the inception and origination of this thing dated away back from the time this Convention came together. Various gentlemen here have been stating that they have voted in the interest of the people, and they have disclaimed the fact that they had been bribed, and yet they never could have been brought into it by any other means. Now, Mr. PRESIDENT, it is well for us to talk plain words. It does not take any very sharp eyes to see through this. The gentlemen may say that they have acted honorably and for the best interests of the people, but when they say they dare not submit this matter to a vote of the people, what does that say? Actions speak louder than words, and the history of this State will record the fact that the judgment of the people is not in accord with the majority here to-day. We very well know, as I have stated, that the results of this day's work have only been made possible by a combination which, in order to bring about that result, has parcelled off the landed heritage of this State to those various localities. If that is not corruption and bribery, it comes so close to it that it is not worth while to call it by any other name. It is not necessary for me to say anything more to explain my vote. I believe the people have a right to say where the capital of the State shall be located, but the question of the permanent location of the capital is not in my mind alongside of the right of the people to say where the capital shall be located. For that reason I have taken the position I have, that this Convention, not being elected on that issue—not having been empowered by the people with a right in this matter, have taken on themselves to do that which they had no authority to do, and they have taken on themselves to say that the people of this State shall not vote on this question—that they are afraid to go before the people and submit the result

of their labors to the people for their inspection. It is useless to try to cover this thing up; it sticks out too plain. I vote no.

The article was adopted by the following vote:

The roll being called, there were ayes 43, nays 2^o, viz.:

Those who voted in the affirmative were:

Messrs. Bartlett of Dickey, Bean, Blewett, Brown, Camp, Carland, Chaffee, Clapp, Clark, Elliott, Fay, Flemington, Gayton, Glick, Gray, Griggs, Harris, Hegge, Holmes, Hoyt, Leach, Lohnes, Lowell, Meacham, McHugh, McKenzie, Moer, Parsons of Morton, Parsons of Rolette, Paulson, Powles, Ray, Rolfe, Rowe, Sandager, Shuman, Spalding, Stevens, Wellwood, Whipple, Williams, Mr. President.

Those who voted in the negative were:

Messrs. Allin, Appleton. Bartlett of Griggs, Bell, Bennett, Best, Budge, Carothers, Colton, Douglas, Haugen, Johnson, Lauder, Linwell, Marriman, Mathews, McBride, Noble, Nomland, O'Brien, Powers, Purcell, Pollock, Richardson, Robertson, Slotten, Turner, Wallace

Messrs Peterson and Selby absent and not voting.

Messrs. Almer and Scott being paired.

Messrs. Bean, Camp, Johuson, Lauder, O'Brien, Pollock, Stevens, Turner and Wallace explaining their vote.

Article nineteen was adopted.

ELECTING COUNTY OFFICERS.

Mr. SPALDING. I move to strike out all after the word "elected" in line twelve, section ten of the schedule. The section now reads as follows:

SEC. 10. All territorial, county and precinct officers, who may be in office at the time this Constitution takes effect, whether holding their offices under the authority of the United States or of the Territory, shall hold and exercise their respective offices, and perform the duties thereof as prescribed in this Constitution, until their successors shall be elected and qualified in accordance with the provisions of this Constitution, and official bonds of all such officers shall continue in full force and effect as though this Constitution had not been adopted; and such officers for their term of service, under this Constitution, shall receive the same salaries and compensation as is by this Constitution, or by the laws of the Territory, provided for like officers. *Provided*, That the county and precinct officers shall hold their offices for the term for which they were elected. Until the general election in A. D. 1890, the judges of the district courts shall have power to appoint a clerk of the court in each organized county, who shall hold his office until his successor shall be elected and qualified.

Mr. SPALDING. This provides that until 1890 the judges shall appoint clerks of the district court. There is a provision somewhere else that they shall be elected. I don't know any reason why this exception should be made. I see no reason why the judges elected this fall should have privileges over the judges elected heretofore.

Mr. LAUDER. As an addition to the motion of the gentleman from Cass I move that the following be inserted in the place of what he moves to strike out:

"There shall be elected in each organized county in this State at the election to be held for the ratification of this Constitution, a clerk of the district court who shall hold his office under said election until his successor is duly elected and qualified."

Mr. SPALDING accepted the amendment of Mr. LAUDER.

Mr. JOHNSON moved to amend Mr. LAUDER's amendment by inserting the words "or rejected" after the word "ratification."

The amendment was carried.

Mr. HARRIS. Section 108 provides for the election of the clerk of each organized county.

Mr. CAMP. For several months I have considered the question of the power of this Convention to order an election for any officers except those mentioned in the Enabling Act. This Convention is called under the Enabling Act. Its powers are defined in that Act, and I don't apprehend that this Convention can exceed those powers and give legal effect to such exceptions. The Enabling Act provides that at the election certain State officers may be chosen. It does not provide that county officers may be chosen at that time. As I understand it, the clerk of the district court will be a county officer, because elected in each organized county; and it seems to me there is a serious question whether or not a clerk elected at such an election, simply by the authority of this election and without the authority of this Enabling Act; whether a clerk so elected would have any legal warrant to hold his office. I hope the question will be considered before this part of this section is stricken out. I rather think this part of this section was put in simply because the Revision Committee who were compelled to draw this up were unable to find a warrant for the election of county officers in the Enabling Act.

Mr. POLLOCK. It may be true that the construction placed on the Enabling Act by the gentleman from Stutsman is correct, but there is an argument that has been advanced recently with

reference to whether a certain majority in this Convention had the right to pass certain measures. The point is this: if we are exceeding our authority and the people ratify it, it will stand.

Mr. JOHNSON. How would the gentleman from Cass like to have it read: "The election held for the rejection of this Constitution"? Would that be acceptable to him? It would be to me. That is what the election means to me.

Mr. MOER. The gentleman from Nelson seems to be in favor of rejecting the Constitution. It strikes me that it is a little out of place for a delegate to get up here and talk about the rejection of the Constitution he has been making. I can see no sense in this unless it is to gratify the gentleman's feelings.

Mr. LAUDER. I cannot see the necessity of getting up a captious argument about this. Anyone will see that the proposition of the gentleman from Nelson is correct. The election will be held for the adoption or the rejection of the Constitution. There is no question about that. The people are to vote on it—for it or against it, and it does not follow as a matter of course that the Constitution is going to be adopted. If we were all of one mind and every one was in favor of this Constitution, and we were all going home to work for it and support it, it would be different.

Mr. HARRIS. I see no necessity for putting the word "rejection" in the amendment of the gentleman from Richland. Everyone knows that if this is rejected we are still living under the law of the Territory, and the Clerk who would be elected under this Constitution would not have any more force than the Governor would.

The amendment of Mr. JOHNSON was lost.

The amendment of Mr. SPALDING as amended by Mr. LAUDER was adopted.

Mr. CARLAND. I am reliably informed that there are certain organized counties in North Dakota that did not elect District Attorneys at the last election, and under the Constitution there will be courts held in each organized county, and there will be an interim between the taking effect of this Constitution and the next general election that the county will be without a District Attorney. I would move that the following be added to section ten as amended:

"The Judges of the District Court shall have power to appoint District Attorneys in any organized counties where no such attorneys have been elected, which appointment shall continue until the general election to be held in 1890, and until a successor is elected and qualified."

The motion was carried.

All the sections to section twenty-three were adopted.

DISTRICT COURT JURISDICTION.

Mr. CARLAND. Section 103 was recommitted to the Committee on Judiciary Department. The Convention has been in session, and I have been unable to obtain a meeting of the committee. I made a motion to strike out the words, "each within its territorial limits." This section should be disposed of in some way. If it is in order, I would renew my motion to strike out those words, "each within its territorial limits." I have tried to find some substitute in regard to the matter as to where a defendant should be sued, but I have been unable to frame any amendment which would meet the case.

Mr. MILLER. I second the motion, and desire to say a few words on the subject. I wish, however, that every member of this Convention would consider this matter by reasoning on it, and not by any prejudices they may have. What position are we in with these five words in this section? If a man commits a heinous crime in any district, and is indicted, and the judge issues a bench warrant for the arrest of that man, all the man has got to do is to step across the line into the next district and the judge would not be able to reach him, although he may be within twenty-five miles of the court house. It does not make any difference how great the crime, he is without the jurisdiction of that court and cannot be reached. In the next place, no judge shall have jurisdiction further than his territorial limits, according to this section. No man can be sued outside his own county. A man may live in Barnes County and in an hour's ride be in Fargo. He can transact business in a mercantile line and have \$25,000 or \$50,000 capital invested in Fargo, and yet he has got to be sued in his own county. His property is exempt from any process that the Fargo court may issue. He cannot be sued in Cass County, because that is not where he resides. He may be a millionaire. His property may be in Cass County, but you cannot sue him there because you cannot publish a summons against a man who resides in the State. This would be an outrage on every citizen. It would be in its effect so pernicious as to damage us beyond all account. I can see no earthly reason for this motion not prevailing to strike out these words. Then the law will be complete and perfect. You might as well abolish your district

court as to adopt this section. The Chairman of the Judicial Committee tells me that he has studied this question carefully and cannot think of a provision to put in. I have thought over the question carefully, and I don't know what provision can be drawn to fill the requirements of this Convention. I am satisfied that you have been led away without giving this matter careful attention, and there is not a man in the hearing of my voice but will have occasion to regret it if this section is adopted. A man may come from Medora, the western boundary of the State, and go to Wahpeton; get on a tear and shoot a horse or destroy some other property. The owner of the property may see it destroyed and ruined, but if he wants to recover damages for that property he has got to go to Medora to start the suit. The man may lie around in Richland county for months and cannot be sued because he does not live there. With this state of affairs there are a good many men who would have an uncertain residence. You would issue a writ against a man in Barnes county and he would say that he did not live there, but in Traill county. Residence is a matter of intention frequently. Think of this question before you vote upon it. If you desire your own best interests and the best interests of the people of North Dakota, vote to strike out these five words from this section.

Mr. LAUDER. I am not going to make a speech on this question. I have no objection to having those words stricken out. I believe I incorporated this amendment in the motion I made the other day, coupled with an addition to the section which I believe will obviate all difficulty. When the gentleman from Cass states that it is impossible to frame a section of this Constitution under which a man will have a right to be sued in his own county, I do not think his statement is made in good faith. There is no difficulty whatever in providing in our Constitution that the process of the court shall be co-extensive with the boundaries of the State, and at the same time provide that the suit shall originally be instituted in the county in which the defendant lives. All the difficulties that he points out were pointed out before. A part of it I grant, but I say now, as I said before, that the purpose and ultimate purpose is not to give to the process of the court power and effect in different parts of the State, but the ultimate purpose is to allow these gentlemen living in Fargo and Grand Forks the opportunity to sue any man they may catch in their counties whether he lives there or not. The gentleman cites the case of a man from

Medora going somewhere east and killing a horse. That is true, and perhaps it is within the circle of possibilities that something of that kind might in the course of a century happen. There is a law against carrying firearms, and yet sometimes it is a great hardship to a man that he does not have a revolver in his pocket. Are we going to repeal a salutary law because it sometimes works a hardship? That is the logic of the arguments of the gentleman from Cass. It is the same thing only in another form. I am willing that these words shall be stricken out if the gentleman will give us that provision which we ask for and which is just and right, and should be granted to every citizen of this State; and inasmuch as this section cannot all be disposed of, I move that the further consideration of this section be deferred till to-morrow morning, by which time a provision can be drafted. I know a provision can be drafted that will give effect to the process of the court in every part of the State and at the same time secure to every citizen the right to be sued in the county in which he lives. I ask that the members of this Convention be not stamped by the fallacious arguments of the gentleman from Cass. I hope the members will stand by this.

Mr. PURCELL. We have had a statement of my colleague in regard to the effect of this section, and he has in a measure severely criticised the statements of the gentleman from Cass. But it has been stated on this floor time and time again that criticism and ridicule are not argument. My colleague has not stated a single instance where, if these words remain, the objections of the gentleman from Cass would be overcome. We have had the word of Judge CARLAND that he has considered this matter, and has been unable to devise anything to meet the requirements of the gentleman from Richland. We have had one side from Mr. MILLER, and in a general way, the other side from the gentleman from Richland. But this will work both ways, and as was said by the gentleman from Cass, it will work a greater hardship on suitors, if you leave it with these words in, than on debtors, if you strike them out. Take the corporations in the East who come into this State and do an insurance business. Take the Hartford Insurance Company of Connecticut, who have thousands of policies on buildings in this Territory. Our laws require that every one of these corporations must name a party on whom process can be served, and name a town in which their principal office and place of business will be maintained. Is it right and proper when they

have selected Mr. GRIGGS of Grand Forks, that a man who has sustained a loss in Richland county, must go to Grand Forks to bring suit? Take a hail or fire insurance company, and if the statement of the gentleman from Richland is true, every man who has sustained a loss under his policy is compelled to go to the place of the residence of that corporation to bring his suit. Take it in the case of a man charged in Montana, though living in Dakota, with a crime. The officers come with a requisition for the man. The judge of the district within whose district he resides is absent. The officer comes from Montana; the man can make a showing which will entitle him not to be extradited, but he is unable to go to another judge and there make a showing of his innocence. The gentleman from Cass has not stated one-tenth of the objections that can be urged against this section. If it remains here there will not be a man here who will not feel its bad effects. The first question you must ask when you have a note in your hands to bring suit upon is—where does the man live. If he lives in Richland county I must ask where his place of residence is? If he says in Cass county I must commence action in Cass county. The first inquiry is not whether he will pay the obligation, but where is his place of residence. If I take proceedings and serve process before ascertaining where he lives, all I do is invalid if he can come in and show that he lives elsewhere. Is it not fair that the creditors should have some rights on the floor of this Convention? Should the people who sign their names to obligations have everything in their favor? I say it is no hardship upon you or me when we are sued, no matter where it is, to come in and say after the process that we live in the county of Griggs or Richland and desire to have a change of venue. It is a great hardship to say to the creditor that the first thing they must do before bringing suit is to find out where the debtor lives. There is not a provision of this kind in any constitution in the United States to-day. It is something new, and the gentleman from Richland knows that the statements he has made are not founded on fact. There is not a constitution that any one has brought forward on this floor to show that such a paragraph appears anywhere else. The Legislature can protect the people in their rights but it is time somebody should stand here and say that the creditors are entitled to their rights.

Mr. MOER. The gentleman from Richland (Mr. LAUDER) has made four or five speeches on this question and has never stated a

reason for the adoption of these five words, that any man on this floor, and especially if he is a lawyer, could possibly listen to. I move the previous question.

The motion of Mr. CARLAND to strike out the words was carried. The section as amended was adopted.

THE PASS QUESTION.

Mr. STEVENS. Among other provisions adopted in section seventeen, article seventeen, is this pass business. I believe it was passed not in a spirit of good intention, but simply to play horse. I move a reconsideration of that question. I voted against it but I do hope this article will not be passed in this way, for we will be subject to the ridicule of the country at large for this section. It goes too far. If you want to say members of the Legislature shall not have passes, all right, but this section goes farther than that.

The motion was seconded.

The section reads as follows:

“No railroad or other transportation company shall grant free passes, or tickets, or passes or tickets at a discount, to members of the Legislative Assembly, or to any state, county or municipal officer, and the acceptance of any such pass or ticket by a member of the Legislative Assembly, or any such officer, shall be a forfeiture of his office.”

Mr. BARTLETT of Dickey. If people come in here to have fun let them have it out. We were anxious to do business—that question was put and voted upon, and I hope every member here will stick to it and hold them to the position they took.

The motion to reconsider was carried.

Mr. STEVENS. I move that the section be stricken out. I want to say that I don't believe there is a gentleman here who will say that it will affect the Legislative Assembly or the laws that may be passed, if the Mayor of Fargo gets a pass over the Northern Pacific road. I don't believe they will say if a municipal officer should be fortunate enough to be friendly with a railroad man and gets a pass for himself or family, it should forfeit his office. I believe every man who votes to sustain this section, does so in a spirit of spite, because of what has happened in relation to other sections.

Mr. MOER. I have this to say: It has been asserted that the system of issuing passes, and the way they do it, has been a source of a good deal of corruption, and I certainly believe if that is true, that we ought to vote to retain this section. I don't know whether we, as members of this Constitutional Convention, should

have been favored with passes any more than any other citizens. If they were given to us they were given to us for some object. A pass is issued to a member of the Legislature for some object. Take the temptation away from the members of the Legislature.

Mr. WALLACE. I have the honor of being the only member of this Convention who was foolish enough to send back his pass. Before I came here I received a pass from the Northern Pacific Railroad Company and some other parties. I consulted with some of my constituents about the matter, and they thought that it would be a bad thing to take the passes. What have I found? I find that every member has taken passes. I think it is tomfoolery to throw away a pass. I don't think any member of the Legislature should refuse to take a favor of that kind. My experience is that it does not make any difference. I vote aye.

Mr. PARSONS of Morton. I also sent back my pass that was sent me by the Northern Pacific Railroad Company. It was a "B" pass—good only in Dakota. As I have an "A" pass, good from St. Paul to Portland, I had no use for the "B" pass.

The section was stricken out by a vote of 43 to 21.

Mr. ALLIN. I move to adjourn.

The motion prevailed, and the Convention adjourned.

FORTY-FIFTH DAY.

BISMARCK, *Saturday, August 17, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. MOER. I desire to call up section 180, which was laid on the table.

Mr. JOHNSON. I rise to a point of order—that the regular business would be interfered with, and this cannot be done without a suspension of the rules.

Point of order declared well taken.