

present that if we have two houses of legislation based on the apportionment as heretofore existing, the same evils will exist in the future that have existed in the past, and it has not been argued here that we should have two houses of the Legislature with a Senator from every county. I should like to have this matter discussed and if the parties who defend the one house theory can show that it will be a panacea for the ills under which we now labor, let us have it. If not, then let us have some change that will bring about a different state of things from that which we have had in the past.

Mr. CARLAND. I move that the committee do now rise, report progress and ask leave to sit again.

The motion was seconded and carried.

Mr. McHUGH. I move to adjourn.

The motion prevailed, and the Convention adjourned.

TWENTIETH DAY.

BISMARCK, *Tuesday, July 23, 1889.*

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

Prayer was offered by the Rev. Mr. KLINE.

File No. 63—report of the Committee on County and Township Organization—was considered.

Mr. STEVENS. If I recollect rightly the question of a single or duplicate house was made a special order for yesterday, and being continued to to-day I think it would retain its order.

Mr. MOER. I move that the consideration of the one house bill be taken up.

The motion was seconded and carried.

Mr. MILLER. In regard to the consideration of the report of the Committee on County and Township Organization, I move that it be postponed till Thursday. There are several gentlemen absent who are interested in it, and I should prefer to have them here. All of them do not agree with me on the points to be dis-

cussed, and that is one reason why I should like to have them present.

Mr. LAUDER. It seems to me that if the business in this Convention is to be dictated on the principles suggested by the gentleman from Cass, we shall be here next January making a Constitution. I have no disposition to take the matter up and discuss it in the absence of gentlemen who want to be here, or to take advantage of the absence of anyone, but we have been here nearly three weeks, and it does seem to me that we have not made the progress that we should have made, and this has resulted in a large measure from deferring to the wishes of gentlemen who find their private business of more consequence than their duties as members of this Convention. I am opposed to the postponement of the consideration of any of these matters for the convenience of men who find their private business stands in the way of their doing the work they were sent here to perform. My business at home is just as important, perhaps, as that of the other members. But I have stayed here every day at an inconvenience to myself, for the purpose of getting through with this work, and I hope that members of this Convention will take up these reports and dispose of them, and make some progress.

Mr. MILLER. I did not make my motion for the purpose of securing delay, but I understood that there were several gentlemen who propose to address this Convention on the one house plan, and in moving to postpone what I did till Thursday, it was to let some other measure take the place of the report of the Committee on County and Township Organization.

Mr. LAUDER. If the time of the Convention is entirely taken up in the discussion of the one house plan, there will be no necessity of the motion of the gentleman from Cass.

The motion was put and lost.

THE SINGLE HOUSE QUESTION.

File No. 25 was before the Convention.

Mr. McHUGH. I move that the consideration of File No. 25 be indefinitely postponed.

The motion was seconded.

Mr. STEVENS. The matter is before the committee. They have reported and ask leave to sit again. I don't understand that this motion is in order.

Mr. PARSONS of Morton. I move that we go into Committee of the Whole for the consideration of File No. 25.

The motion was seconded.

Mr. STEVENS. I hope that this motion will prevail for this reason—those who have been in favor of the one house plan have had their day, and I think it is no more than fair and just that those who have prepared speeches to be delivered in this Convention on the other side have an opportunity to convince this Convention that they are right. I am very much in favor of hearing the arguments in favor of this resolution not being passed. If I am wrong and if those who are with me in this proposition are wrong we would be pleased to know it, and hear the discussion on that point. I am informed that some of the gentlemen are ready to discuss this question before the Committee of the Whole, and I do hope that though it is against the proposition I have introduced, these arguments will be allowed to be presented to this Convention.

Mr. McHUGH. My purpose in moving the resolution I did was to bring this matter up for discussion, and if desired I will withdraw my motion.

The motion of Mr. PARSONS was carried.

Mr. O'BRIEN called to the Chair. Committee of the Whole.

Mr. CARLAND. It is perhaps, not necessary that I should address this Convention on the subject of the adoption of the proposed article known as File No. 25, providing for vesting the legislative power of the proposed State of North Dakota in a single body; but it has been asserted in the public prints and by gentlemen who have urged the adoption of the resolution of the gentleman from Ransom, that the minds of gentlemen who resist its adoption are tied down and bound by slavish devotion to precedent. Such being the case, it is not more than right that at this time and before the Committee of the Whole I state a few propositions which have led me to believe that this resolution should not be adopted. It has been said that it is a dangerous thing for a nation to forget its past, and the more those words are considered in the light of the experience of constitutional government in the United States of America, the more force can be drawn from them. It has been said that we ought to try this new experiment—that we ought not to be bound down by precedent—that because the other states of the Union have adopted the principle of vesting their legislative power in two houses is no reason why

we should do the same. Now, I don't care to weary the committee by any long or extended remarks, but I desire to call your attention to a few facts which are historical and known of men who have studied in any degree the history of constitutional government so far as it affects the American States. So far as this proposition of one house is concerned—so far as its being a novel question—it is the furthest from it. It has been tried for years and years in this American Union, and has been found utterly inadequate for the purposes of the exercise of legislative power, and after that trial it has been thrown aside, and so far from being a novel question it is to-day in constitutional law, so far as the American Union is concerned, obsolete. A few references to the history of this country will show this. It is known of all men that the American colonies, when dependent on the crown before the declaration of independence—that the legislative power of these colonies was vested in a single house. Some of those colonies existed for a hundred years in that way, but when those colonies came together to adopt the Constitution for the United States government, there was only one colony in the Union that voted for placing the national legislative power in one body, and that was Pennsylvania. A glance at the early Constitutions of some of the States of the United States show the following facts—the Constitution of the State of Vermont of 1777, provided that the supreme legislative power should be vested in the House of Representatives of the freemen or Commonwealth or State of Vermont. That was the first Constitution she formed. She acted under that Constitution till the year 1836, when a special Constitutional Convention was called for the purpose of vesting the legislative power of that State in two bodies. There was a trial of the one house proposition, and it was discarded by the State. Under the form of government prepared by William Penn for the government of Pennsylvania that was the regulation there, that it should be in one house, and Pennsylvania when she came into the Union made a Constitution vesting the legislative power in one body. The Constitution of 1776 provided that the supreme legislative power should be vested in one house. Did she continue it? Had the experience under colonial government—had the experience between 1776 and 1790 led her to believe that was the best way to exercise legislative power? Not at all. In 1790 she adopted a Constitution with this provision: "The legislative power

of this commonwealth shall be vested in the General Assembly which shall consist of the Senate and the House of Representatives." Again, Georgia, when she adopted her Constitution, vested the legislative power in one house; so did South Carolina, but they all changed, until to-day there is not a State in the American Union which has that system of the exercise of the legislative power. The Congress which governed the colonies of America thought that the most prominent defect in the whole Articles of Federation was the vesting the power of Congress in a single body, and they decided that they would not try the experiment again. The history of this country shows that this is an old question—that it has been tried, and the people have decided that it was not the proper way and that it was not a safe way to exercise the legislative power. I cannot conceive that such is the case, but there may be communities so small in population or geographical extent, or of habits so simple that a single body might exercise the legislative power without harm, but I can say it without contradiction that there is no political power on the face of the earth to-day possessing the legislative power that the State of North Dakota will possess after it has been admitted into the Union, but that exercises the legislative power through two houses. All the examples that have been given of the Swiss Republic, Norway and of Ontario are to be looked at under the conditions of things which exist in those countries. In Ontario there is the supervisory power in the Crown, or the Privy Council, that may be exercised at any time to veto a law passed by the legislative body, and so in Switzerland. They are little bodies in the cantons, but there is a check and balance on the whole business by the adoption of laws providing for the Central Legislature. It has been argued that because corporations by boards of directors have governed their property with success that consequently a legislative power vested in one house in this State could and ought to exercise the legislative power with discretion and for the welfare of the people. In considering this question this important principle must not be forgotten—it must be admitted, or it may be admitted for the sake of argument that the majority of men are good, that they are honest, that they are benevolent, but when you admit that, you must also admit that their goodness or their honesty or their benevolence is always first exercised at home—first to the near relative, then to the distant relative, then it goes out of the family to the town, the county

and the state. When that truth is admitted it decides this whole question, because in the Legislature consisting of a single body, men will go there with a knowledge of the wants of their constituency as regards their particular locality, and they go to secure certain things; and you will find that a body consisting of a number of men to be called a Senate, who should be elected for a longer term, will act as a check against the exercise of ill digested legislation on the part of the people. It must be admitted that the people themselves sometimes make mistakes. The people have their flatterers as well as kings, but it may be as well admitted right here that the people make mistakes, and are often led away by passion, prejudice, self interest—by thinking of the interest of the state last, and history has shown that wherever the legislative power has been vested in a single body they have been carried away by passion, and their proceedings have been so irregular as to cause an inadversion of mankind upon their proceedings. No sadder example is presented in history than the fall and ruin of the Italian republics, who had the system of exercising the legislative power vested in one body. It has been argued that the Constitutional Convention that framed the Constitution of the United States was only a single body, and that it framed a remarkable document. It did, but the action of that convention had to be ratified by the states—two-thirds of the states—and the action of this Convention will have to be ratified by the people of North Dakota. If you will give us a legislative body who shall exercise legislative power by simply proposing as we do, the law, and sending it to the people for their adoption or rejection, there would be no trouble about vesting it in one body, but when there is but one body, and nothing to stop or check their action, no judge but themselves as to how far they will go in transcending their powers, or jeopardizing the rights of the citizens—I say the liberties of the citizens are in danger and no man will ever consent when taking a practical view of the matter to vest the legislative power in one body. The arguments in favor of one house have always been made by enthusiasts, by gentlemen of studious habits but of impractical mind. It was advocated in favor of the congress or the assembly that ruled the French government during the French revolution in 1791; it was advocated by no less a statesman than Benjamin Franklin in our own country; but there is not a sadder example of the folly and foolishness of vesting legislative power in one body than that very assembly. In conclusion I

would say that the history of this country, so far as constitutional government is concerned, and so far as I have been able to judge, in the short time that I have looked at it, shows conclusively that this vesting of the legislative power in one body has been denied by the universal consent of the people inhabiting the United States. And I don't agree with the gentleman who discussed the proposition on the other side, that if we are to adopt this proposition and vest the legislative power in one body that we would be the north star of the republic, and that all eyes would be turned to us as such as soon as we had made this constitution. I think on the other hand that the boundaries of the United States government so far as North Dakota would be concerned, would be changed, and limited on the north by the northern boundary of South Dakota, and that the mind in looking at the map or upon the situation of the country would think that we had gotten into her Majesty's dominions, or into Manitoba, subject to the rule of the imperial cabinet.

Mr. JOHNSON. I was very glad that the vote on this question was not taken yesterday. We heard the argument for the one house presented then with great force and eloquence, and there was a feeling on the part of the side that has been represented here to-day that they were strong in numbers and that argument was unnecessary, and thus it was feared that argument would be dispensed with. I am very happy that this Convention has asserted its dignity; assumed its proper position as a deliberative assembly, an assembly that will hear argument and deliberate on such questions. I am happy to believe that this Convention is composed of men who have come here, and who are here to-day unbiased and unprejudiced, and free to decide according to the argument and the reason that is produced here. I am glad, too, that the prevailing constitutional provisions—the prevailing institutions in the country, have been so happy as to have an advocate of the ability, the experience and the learning in constitutional law and history that they have had in their advocacy on the floor of this Convention. I take it for granted that that side has been presented with all the learning, with all the ability, with all the force and reason of which that side is capable. No other conclusion can be drawn but this, that if the argument just made is inconclusive, it is so, not from lack of ability and force on the part of its advocates, but from inherent weakness in its structure. It was said that the reason for the two houses was simply one of fashion,

one of tradition—that in this country we had fallen into certain ruts which we are following after the reason for these ruts had vanished. Another argument was that one house would be a check on the other. I leave it to you to say if that is not a fair representation of the arguments just made. Does it include any other points than the ones I have made? If those points can be answered, then we are entitled to your votes. I don't come here as a special advocate of this cause. The thought never entered my head, I confess it with some humiliation, but it is a fact that in the few hours that I had for a preliminary study of the questions to come before us, I did not think of this. I dare say that the same is true of many of you—of the many things you studied this important matter escaped you as it did me. My opinions on the question have been entirely formed by the discussions that I have read in the papers; by the arguments on this floor and by my own reflection. The time has come when I am prepared to take a decided stand.

Is it not true that the argument presented here for two houses is one strongly of precedent? That we should follow the traditions and fashions that we see around us? Is not that one-half of the strongest arguments that are brought? Is it not more than one-half? I am reminded of the way they have in China of cookery. They have a curious way of preparing roast pig in China. Many centuries ago there was a stable burned down. In the stable there was a litter of small pigs. In raking over the embers the carcasses were found. They were very delicious and from that day to this the same custom has been followed and handed down from generation to generation and from century to century, and the fashionable and stylish way to prepare roast pig is to corral them in a stable, burn the stable, rake out the embers and put the pig on the table. That is the Chinese method. Is that the Anglo-Saxon method? If we are to be bound by such fashions we are not true to the progressive mind of which our race is a part. We are not followers of Alfred the Great, of Cromwell and Washington. Coming nearer to our own times and the political heart of the gentleman who has just taken his seat, there was a Democratic convention once, and one of the young delegates rose and moved that there be inserted in the platform a plank something like this: “Resolved, That the Democratic party of this county is unalterably opposed to corruption, speculation and dishonesty, and is in favor of the rigid accountability of the

officials, and public economy." An old gentleman—an old wheel-horse—one of the moss-backs, died-in-the-wool, arose and made a speech something like this: "Gentlemen, I am decidedly opposed to introducing any new-fangled theories into the platform of the Democratic party." Let me tell you that the fault of the old man was that his horizon was not wide enough. He had drawn his conclusions from the practices he had seen laid down in his own ward, township or county. If he had studied the history of his own party, had studied Jefferson and Tilden, statesmen of that rank, he would have known that instead of being against the teaching of the leaders of the party, honesty, economy and reform were the watch words of the Democracy. The same is true of this doctrine. Instead of the one house plan being a new fangled notion and untried, it is as the gentleman has well said, a long tried theory, but my conclusion is entirely different from his. In my judgment the experience is not one of failure, but one of success. I read history differently from the gentleman who spoke on the other side. Let us go back to the nation that has furnished us the oldest history—take the National Assembly of the Jews. After the days of the theocracy—for the last four hundred years before the birth of Christ, the National Assembly called the Sanhedrin was but one assembly. It was composed of three classes—of the priests, the elders of the people, and the scribes. But those three classes met in one hall, discussed public matters, passed resolutions and made the supreme law of the land for 400 years, anyhow. Take the Senate of Rome that sat at the Eternal City, and from its throne ruled the world for over 1,000 years. The government of Rome pursued the single policy of accretion and aggression and power, and glory and greatness. For 475 years of that period during the proudest period of its existence, when the people were free, when art and learning flourished and literature rose and built their splendid monuments, as Horace says, "more enduring than brass, more lasting than bronze and higher than the royal pyramids," Rome was managed by one house—the Roman Senate. Such a thing as two houses was never known till the Thirteenth Century. If we shall stand for 1,000 years, if our arms shall march under the call as the Roman legions marched for 1,000 years, we shall walk in the path, not of uncertainty, not of danger, but as the life of nations goes, in the light of safety and strength and glory. Take the Republic of Carthage—one of the great powers that long withstood the power of

Rome—the nation that sent Hannibal across the Mediterranean, scaled the Alps and for eighteen years thundered at the gates of Rome—the Republic of Carthage was governed by a single house—the Senate of Carthage. That was the only government in the great continent of Africa that ever attained a great and lofty position. Take the great republics every one—where they were not pure democracies, and where they were representative in any measure as in Athens and Corinth and Sparta, they had single legislative assemblies. Who is there that does not point with pride to the spot in southern Europe—where a handful of men stood bravely on the battle field of Thermopylae—where genius and art flourished, where literature abounded, where there was at one time in the city of Athens 30,000 marble statues—a city governed by a single house. Let us come down later to our own times. The gentleman who has just taken his seat refers to the first National Assembly 100 years ago. We are willing to stand or fall by that. When the monarchy was driven from France; when the revolution was precipitated; when the hierarchy of Rome was driven from that country, and the king and queen beheaded, the National Assembly that was called on to take charge of the government was called on to take charge of a mob of anarchists. Never was such a trying time presented to any body of men. Human nature and human sentiments were stirred to the depths, and never before was such a task given to any National Assembly as that which was called on to secure the fruits of that uprising of the French revolution. Are we ashamed of the records of that assembly—of that single house? Indeed not. Just as soon as matters had settled—just as soon as that assembly had an opportunity to assert itself, it planned and executed for the country a career of power, and glory, and splendor, and intellectual development such as had never before been equalled in Rome, and though every nation in Europe combined to crush the French republic, they trusted their ship of state to one National Assembly; their cannon wheels plowed the fields of Europe, they fought and defeated every army on the continent and spread the name and fame of their people as no monarch except perhaps, Louis XIV, had done. They planted the seeds of liberty, equality and fraternity when every power in Europe was combined against them. Have we lost the fruits of the French revolution? Never. Not to the remotest day and time will the real fruits of the French revolution be lost to liberty. Take the

cantons of Switzerland, or take Norway. The speaker who preceded me says that there is not a state in Europe on the face of the earth that wields the power that North Dakota will wield that is governed by one house. Is it nothing that the cantons of Switzerland, in their numerical weakness have stood 500 years between nations that had the most intense hatred of each other, and have maintained a government for 500 years in their corner of Europe, through the changing times, through the wars that have many times changed the face of Europe—that these brave people in their cantons with their single house have maintained their political existence and their integrity and their power—is not all this something to their credit? You take Norway for instance—Norway is significant when compared with North Dakota. We shall probably have more people here, but we never shall have the history. I doubt if we ever shall have the genius, the art, the poetic instincts and the moral and intellectual power that reside in that people. Just think of a million and a half of people that have maintained themselves among the people of Europe for 2,000 years unconquered. When Napoleon went over to Europe he did not go as far north as Norway. Alexander never touched those shores; Julius Cæsar, when he and his legions swept over Germany, never landed a soldier in Norway. They are the only people in Europe who can say that they never bowed their neck to any foreign conqueror. You may take them under their present Constitution which was adopted in the year 1814, when they decided upon a single house, and I have this to say—you can nowhere find on the face of the earth a million and a half of people who have commenced with the poverty and the ignorance they had to commence with, when they were freed from the oppression, of Denmark—when there was not a printing press in the country, nor had there been a printing press or a high school allowed there for 300 years—and now see what they have done in seventy-five years. See what they owe to such a government as we propose to adopt here. Read the accounts from the exposition at Paris, and you will learn that in the art exhibit, when a comparison is made between the United States and the little kingdom of Norway, Norway appears to the better advantage. Think of the possibilities of a million and a half of people—as many as there are in Minnesota, who make a display in the art department of an exposition that is equivalent to that made by this nation with its sixty millions of people. Think of a nation that

begun seventy-five years ago with the poor resources that they had—a sterile soil and severe climate, and in three-quarters of a century they show a record like this. Whereas in Dakota we have only three per cent. of our population who cannot read, they have not one per cent. who cannot read—a country where every man, woman and child who is not an idiot is able to read. Are we afraid to follow in the footsteps of such a country as this? There are many people in this state from that country, and you may rest assured that they will not condemn you for following in their lead in establishing a system of government under which their country has become happy and prosperous. We have the example of the states north of us—our immediate neighbors—all of whom, with one exception, are governed with one house. There are men on this floor who have watched the plan and who speak well of it. There are thousands of our fellow citizens who were born and bred under that system, and they know that it is safe and for the best interests of the people. Are you afraid to go back and meet those citizens who would feel complimented, safe and happy over the adoption of this resolution?

Mr. PURCELL. I move that the committee rise and report that this resolution do not pass.

Mr. LAUDER. I do not intend to take up the time of the Convention with any extended remarks on this question. I have made no preparation to speak on this subject, but I have some convictions upon it. I am satisfied from what I know of the Convention that my convictions will not be adopted, but I feel it to be my duty to express them, and I will do so briefly. It seems to me that the friends or advocates of a two-house Legislature are endeavoring to put the friends of a one-house Legislature in a wrong position—in other words, they are attempting to shift the burden of proof. I think that I can safely proceed with the assumption that all things being equal and other things being equal, one house being simpler and less expensive, is preferable. Starting out with that assumption, it follows as a necessary conclusion that the burden of showing which is preferable rests upon those who represent the two-house plan, because the two houses are more expensive and complicated. Hence, we stand in the position of simply answering their argument. They must convince the Convention that two houses are preferable. I shall attempt to answer some of the arguments that have been made in favor of two houses, and shall devote but very little time in adducing ar-

guments in support of one house. The gentleman from Burleigh starts out with the idea in the first place that the Constitution of the United States is the perfection of all wisdom, and that inasmuch as that provides for two houses of the Legislature—provides that the legislative power shall be vested in two houses—it follows that the states should adopt that plan. If that were true I would say that it would have great weight, because our system of government should harmonize, should be symmetrical, and if the legislative power is vested in two houses in the National Legislature, unless for some special reason, the states should follow it. But what was the reason that induced the Convention which framed the Constitution of the United States to provide that the legislative power should be vested in two houses? What was the reason? It was no reason that has been assigned on this floor. In the short time that I have had an opportunity to devote to the debates of that Convention, I don't find a word uttered with reference to one house being a check on the other. No claim was made that one house could not be trusted to legislate for the nation, but the fact was the enactment which provided for two houses in the legislative department was the legitimate offspring of states rights. It was the fear of those men who were imbued with the idea of states rights that unless there was some power in the legislative department which should watch over and guard the sovereign power of the states, their sovereign power would be destroyed, and they would be merged in the national government. That was the argument in favor of two houses used in that convention. Is the House of Lords a part of the legislative department of Great Britain because of the fear of the people to trust the power of making the laws for their nation to the House of Commons? No, it had its origin in the condition of things then existing in Great Britain when it was established—the House of Lords was not adopted as a check on anybody, but as a representative of a distinct race or class in the nation, just as the Senate of the United States was started as a representative of the sovereignty of states. Now, I say that in these two cases the legislative power was vested in two houses for the special reasons that I have given, and if it had not been for these reasons it is safe to conclude that no nation would ever have thought of vesting their legislative power in two bodies any more than their executive power—one to watch the other. If there were classes here as there are in Great Britain;

special interests to be subserved or promoted; antagonisms between distinct classes, it might be well that all of these classes be represented in the power which legislates. But that condition of things does not exist here. Senators and representatives are elected alike; they are actuated by the same motives, influenced by the same considerations, and we have no reason to suppose that a man who is elected to one house will act any differently than if he had been elected to another house. In other words, a county, assuming that that is the integer, would not be apt to elect two senators to watch four representatives, but would elect two senators and four representatives because they would each have capacity for the places to which they were elected. There would be six members. Does not that idea destroy all idea of a check?

The gentleman who first spoke says that a nation should never forget its past. That is true, but it should remember its past only that it may legislate more wisely for the future. The legislators of to-day should remember the past in order that they may understand the mistakes of their ancestors, and guard against them. All the way from the time that our barbarous ancestor hunted for the snake in the hollow log, to the civilization of the Nineteenth Century, there has been one continuous innovation. If we are not to adopt this because it is an innovation, then we should say that we have arrived at the perfection of wisdom, and there is no further opportunity to advance. In answer to the gentleman who says that if we adopt the one house system the people may put the north line of the United States at the south line of our State, and conclude that we have gone over to Manitoba, I would say that if it had not been for the deference which our ancestors played to the same British empire, we never would have had, perhaps, two houses of the Legislature in this country, but it was when following the British example that we incorporated the idea into our government in which the gentlemen takes so much delight.

Mr. HARRIS. I am not here to make a speech, but I want to say in advocacy of the two house idea that I believe in the survival of the fittest; and the gentlemen who have taken the other side have not shown us one instance in modern times where the one house idea has been a success, unless it has been the gentleman from Nelson who has told us about Norway. France under the one house plan has gone into oblivion. The gentleman who has just taken his seat says we should look to the past only that we

may avoid the mistakes that have been made. He says nothing about the states in the Union that have tried the one house plan, and have discarded it as impracticable and not up with the times. I don't think that we need go back of the Nineteenth Century for advocates and examples of the two house idea. The United States to-day, if we had no other example of it—not collectively but as individual states—in their prosperity, in their civilization, in their intelligence, and in the height to which they have raised themselves in every element of prosperity and intelligence, are examples enough for us. I am not afraid of the old ruts. When we get our railroad train started on the track, we are not afraid of the two lines that lead to success, while we know that it is a practicable railway. I am not going to take the time of this Convention, but I want to say that I believe in the survival of the fittest, and the history of this nation, and the states of this nation have proved that the two house idea is the practicable way of doing our legislative business, and for that reason I am in favor of two houses.

Mr. SCOTT. I would suggest an amendment to the motion. It was moved that the committee do now rise and report this resolution back. I would amend it in this way, that when the committee rise it report the resolution back with the recommendation that it be postponed.

The amendment was accepted.

Mr. PARSONS of Morton. Inasmuch as I have been quoted as supporting one house, I would like to say that my choice and preference would be two houses of the legislature, with the upper house containing one Representative from each county, irrespective of the number of inhabitants. But if it were to be between two houses of the legislature as we have had them in the past, and one house, I should most emphatically vote for one house. It seems to me that in this discussion the questions of the day have been ignored. We have argued this question simply on the ground of precedent and what has been. If there are no issues in the present day—if the same state of affairs exist to-day which existed a hundred years ago, then I have made the greatest blunder in speaking about the matter at all. But I believe there are evils to be corrected and there are measures which have failed in the past, and I don't believe that the people have had their will in the past. These things have not been considered, and it was only on that ground that yesterday I spoke as I did. I have this

to say, and I wish it to go on record to this effect—that if the prospect in future of the legislation of North Dakota with two houses is not better than that of the past, then I would go on record in favor of one house.

The motion as amended was carried.

COUNTY AND TOWNSHIP ORGANIZATION.

Mr. BEAN moved that the committee recommend that section four of File No. 63 be stricken out.

The motion was Carried.

Mr. SELBY. I move that when the committee rise it recommend that in section five, in the third line, the words “specifying the place to which it is to be changed” be stricken out.

Seconded by Mr. LAUDER.

Mr. BARTLETT of Griggs. If that is carried, I would like to know how the county board can specify to the people. It seems to me that if we adopt that we kill the whole section.

Mr. SELBY. The section now reads as follows:

SEC. 5. Whenever a majority of all the legal voters of any organized county shall petition the county board to change the location of the county seat which has once been located by a vote of the people specifying the place to which it is to be changed, said county board shall submit the question to the voters of said county at the next general election, and if the proposition to so change the county seat be ratified by two-thirds of all the votes cast at said election then the county seat shall be so changed, otherwise not. A proposition to change the location of the county seat of any organized county shall not be submitted oftener than once in six years.

The simple proposition of presenting the petition with the proof that it is signed by a majority of the legal voters of the county, sets the wheels in motion, and it is unnecessary to state in the petition the particular place in which it shall be located.

Mr. MILLER. I move that section six of the article as embraced in File No. 106 be substituted for section five of this File No. 63.

Seconded by Mr. MATHEWS.

Mr. MILLER. With the consent of my second I desire to amend my substitute, and make my substitute sections six and seven of File No. 106.

Mr. APPLETON. The committee in drafting their report took the stand that any county that had never voted on the subject of the location of the county seat should have a vote if they desired. Now it seems to me that we are not here in this Convention to

draft a constitution for the county of Cass. We are here to draft a Constitution for the counties of the State of North Dakota. The Committee took the broad stand that the people should be heard on the question of county seats, and we made the proposition like this—that in any county where the county seat had not been located by a vote of the people they should have a vote on that question. After voting on that question and deciding it by a majority vote, afterwards the question, if it came up again, should require a two-thirds vote to change it. It seems to me, Mr. CHAIRMAN and gentlemen, that this is a fair proposition. It would be absurd for us to strike out the words “by a vote of the people,” for every county seat has been fixed somehow. There is not a county seat that has not been fixed by individual wire-pullers, and some are located in out-of-the-way corners in the interests of some particular set of men. They are all fixed. If we make the change proposed we can't move a county seat in the Territory, because they are all fixed.

I move that in the substitute offered by the gentleman from Cass, after the word “fixed,” we put the words “by a majority vote of the people.”

The substitute was seconded and carried.

Mr. CAMP. I move as an amendment to the substitute that the words “hereafter organized” be inserted after the word “county” in the second line.

Mr. MOER. I move that the substitute and the amendment be both laid on the table.

Mr. PARSONS of Morton. It seems to me very strange that after voting with a rising vote on this question, that its whole purport should be sought to be changed immediately by the gentleman from Stutsman.

Mr. CAMP. Yes, the two words that I have sought by my amendment to get in here, do change the entire meaning of the section. My reason for introducing it is this—there are a large number of counties that have been organized for a large number of years. Under the power of the legislature the county seats were fixed. The county seats have always remained there, and it would tend to cause considerable trouble in many of the older counties if this were made to apply to any county already organized where the county seat has not been fixed by a majority vote of the people. There may be some few counties in which it is desirable to have the county seat question voted on hereafter. If

there are any such I am unaware of the fact, but it is proper that this section apply to unorganized counties hereafter to be organized. While I am on my feet I may say that I hope the whole substitute will be reported with the recommendation that it do not pass, and that section five will be reported with the recommendation that it be stricken out, for the reason that in the legislative department there will be an article, I suppose, providing that the Legislature shall pass no special law fixing county seats or organizing counties, and there will be in the Schedule a provision that the present laws of Dakota shall apply to the new state as far as practicable. That will leave us with a good and complete system for the fixing of county seats, and these two sections, four and five, are absolutely useless in this Constitution. They will be lumber in it in my opinion.

Mr. MILLER. With the consent of my second I withdraw the motion substituting these two sections.

Mr. MOER. In what condition is section five now ?

The CHAIRMAN. There was a motion by the gentleman from Morton, that the committee when it rise report back the section with the recommendation that it be adopted. The gentleman from Traill offered an amendment to that striking out the words "specifying the place to which it is to be changed."

Mr. SELBY's amendment was carried.

Mr. SELBY. I wish to offer an amendment to this effect: At the end of the section these words be added. "Providing, That in counties where the county seat has been located prior to the the construction of the line of railroad in the county, and which remains more than five miles distant from the line of railroad, and more than five miles distant from the geographical center of the county, that it can be then submitted and relocated by a majority vote."

Mr. SELBY. In explanation of this amendment I wish to say first that I don't believe that there should be anything incorporated in this Constitution relative to the removal of county seats. I think that all these questions should be left to the legislature to adapt the legislation to conform to the interests of the people. I am particularly opposed to establishing it on the basis of a two-thirds vote, having it a constitutional provision so that in the future counties like mine, suffering under the inconvenience we are suffering from, will have practically no remedy. I live in a county with 12,000 inhabitants. We have three lines of railroad

with the county seat more than twelve miles distant from any one of them and on the extreme edge of the county. There are three towns in our county that are located on the railroads, that are populous, and each one is looking for the county seat. If we have only a two-thirds vote to work on I think the county seat must remain where it is. The people want it removed. The objection that this would be special legislation, simply to cover my case is not true in fact. While it may be so to-day, when the expanse of the western portion of this Territory is opened up and counties are organized—counties that to-day have no railroads—they may be placed in precisely the same position that my people are in to-day. Are we to say to them that under a constitutional provision you must remain in that condition? It is unfair for you to say this, not only to my county but to counties that in the future may be placed in a similar situation.

Mr. McBRIDE. What is the reason for the latter part of the amendment, "Five miles from any railroad?"

Mr. SELBY. I presume that ordinarily the people prefer to have their county seats near a railroad. It is immaterial whether you say one mile or five or ten—our position is the same. But I thought it was reasonable to say five.

Mr. APPLETON. I move that all after the word "or" in the amendment be stricken out.

Mr. BLEWETT. I move that this committee do now rise and recommend that all of section five with its amendments be struck out.

Mr. CAMP. I second the motion, and I hope that it will carry. It will then leave the matter to the Legislature. Our Constitution will provide that no special legislation can be enacted, and the whole matter will be left to the Legislature to enact a general system for the removal of county seats. This article is useless in my opinion, and just so much lumber.

Mr. PARSONS of Morton. I hope sincerely that the motion will not prevail. It seems to me that it would be too bad to make it possible in the future for the Legislature or a faction, to have a club to wield over any member and say—if you don't vote so and so we will remove your county seat.

The motion to rise was lost.

Mr. BEAN. The question as it now stands is that in all counties that have had their county seats located by a majority vote—in those counties it can be resubmitted, and simply a majority vote

can carry it instead of two-thirds. If you make it a majority vote you give a preference over the plurality. Why not make it read that in all counties where the county seat has been located by a plurality vote? I should say that in counties where the county seats had been located by a plurality vote they should be allowed to vote on the question and a majority vote should carry.

Mr. SELBY. I have no objection to the amendment of the gentleman from Nelson.

The amendment of Mr. BEAN was carried.

The amendment of Mr. SELBY was carried.

Mr. SCOTT. I move that when the committee do rise they recommend that section five be stricken out as amended.

The motion was seconded and carried.

Mr. BLEWETT. I move that when the committee do rise they recommend that section six be adopted.

The motion was seconded.

Mr. CAMP. I wish to move an amendment, and I wish to state my reason. There are several prosperous counties of North Dakota now existing without township organization. They find it far more advantageous than some of their neighbors who exist under township organization. The township system has proved an expensive and wasteful experiment, and there are many counties that don't wish to be forced into it. I certainly have no objection to any county which desires township organization, adopting it, but I do object to having the township organization system forced on us, and therefore I move as an amendment that the Legislature may provide by a general law for township organization, which any county, may adopt on a vote of the people.

Mr. FANCHER. I second the amendment. Stutsman county is now working under the commissioner system, and it is very satisfactory to us. We have sixty-four townships in our county, and if we were compelled to adopt the supervisor system it would be very expensive and our people don't desire it for that reason. I second it.

Mr. SCOTT. I think the Legislature should provide for organizing counties into townships. I think it should be compulsory on the Legislature, but I don't think it should be compulsory on the counties to adopt that system unless by a majority vote. I think each county should have the privilege of adopting the system or not.

Mr. CAMP. The use of the word "shall" in this Constitution

will apply to the Legislature. This Constitution can say what the Legislature cannot do, but it cannot compel future Legislatures to do anything. When we use the word "shall," in my opinion we are doing a useless thing. We say the Legislature shall provide a township system. Suppose the Legislature does not do this, is there any power to compel them? When we use such language we are not making a fundamental law, but giving the Legislature some advice. We don't want anything here which a court of law cannot enforce. If I am mistaken in this view I hope I shall be corrected, for it will be very important in future deliberations of this body to know just what we can do. If we can compel the Legislature we want to know it, and if we can't we don't want to attempt it.

Mr. CARLAND. The criticism of the gentleman from Stutsman in regard to the use of the word "shall" seems to be in part correct, but he has argued as an amendment that the word "may" should be put in. Of course the Legislature possesses all the legislative power there is. They can do anything that the Constitution does not prohibit. So to say that they may do anything is to say they may do something without the Constitution. I don't see how the amendment of the gentleman to say that the Legislature may do something helps us at all.

Mr. CAMP. I understand the proposition of the gentleman from Burleigh as being entirely correct, and the only reason I made the amendment was to get in the requirement of consent on the part of the county.

Mr. STEVENS. I am in favor of a provision which will, after the Legislature has provided a system under which townships may be organized—a system that will give the counties an opportunity to vote on the question—then where the people vote in the majority for township organization it shall go into effect. In those counties where they vote against it, the county commissioner system shall remain in effect. But I don't believe that the amendment offered reaches that point. I believe that there is no election provided for, or how it shall be submitted. In my opinion it should be by a provision of the Legislature submitted to each county, and on a majority vote of each county, they would determine whether or not they desire to adopt the plan.

Mr. FLEMINGTON. I move that the committee do now rise. The motion was seconded and carried.

THE DEBATES.

Mr. CAMP. I desire to offer an amendment to a resolution that was adopted here some time ago, and I move that the debates that occur in the Convention be published, and not those that occur in the Committee of the Whole.

Mr. STEVENS. Under the resolution that was previously passed here, this motion is out of order.

Mr. CAMP. I move that we reconsider the resolution introduced by Mr. SELBY, and passed July 18th. It reads that the debates of the Convention shall be published. The purpose of my motion to reconsider is to make a construction of the words "debates of the Convention," and I wish to limit the publication to the debates of the Convention proper, and not to have the debates of the Committee of the Whole published.

Mr. STEVENS. The same objection might be stated here. The same matter that would have been voted on before would be voted on if this motion is put. The object is to cut out the debates of the Constitutional Convention. All the debates, or practically all of the debates, will be made in the Committee of the Whole. In all probability when we have gone into debate in the Convention, after the Committee of the Whole has passed upon these questions, the five minute rule will be established, particularly as we are nearing the close of the session. If the debates that are to be published are to be of any benefit, it is that we may see how and know all that was done in this Convention. By the adoption of this resolution you practically cut out of the debates all the most important matter that will come before us. If the debates are not published the people can never know what the views of the Convention were on the subject. If the debates of the Committee of the Whole are published in full everything that has gone on before this Convention will be there for review. For that reason I am opposed to the reconsideration.

Mr. CAMP. Some object to the publication of all the debates on account of the expense. We don't realize how rapidly we are speaking when speaking here. We have already made at least one large volume of debates in the Committee of the Whole, and we have hardly begun. The debates of the Constitutional Convention of Pennsylvania comprise from eight to ten volumes. The debates of other Constitutional Conventions which published their proceedings in full comprise numbers of volumes. Our

debates, if published in full, will hardly be found within five or eight volumes. It seems to me that the enormous expense attending such a publication should make us willing to forego the great pleasure and honor that we would derive from seeing our names printed as we would speak in the Committee of the Whole. If any gentleman is desirous of putting himself on record, he can make his little motion or his small amendment in the Convention and put himself square with his constituents.

Mr. STEVENS. How long was the Convention in session in Pennsylvania ?

Mr. CAMP. One year.

Mr. LAUDER. It seems to me that in estimating the extent of the record the gentleman from Stutsman anticipates that this Convention will be in session a very long time—much longer than I hope it will. I know not what the proceedings may be in the future, but so far as we have gone, the remarks that have taken place in the Committee of the Whole have been really the only important debates of any value that we have had. I am not ambitious, Mr. PRESIDENT, to have anything that I may say incorporated in this report. That is not the purpose of my speaking on this question. But it seems to me that unless the debates that take place in the Committee of the Whole are recorded, the record will very imperfectly record the proceedings of this body. For instance, there have been a number of speeches made here upon this one house question by members—the gentleman from Burleigh county, the gentleman from Ransom, the gentlemen from Nelson and Morton. Some of them were prepared, no doubt, evidently with some care. Some labor was bestowed upon them in their preparation—must necessarily have been—and it seems to me that debates of that kind should be recorded and perpetuated. In view of what to me seems to have been in some cases hardly a justifiable expense, it is raising the economy cry in a very bad place, to undertake to prevent the publication of these debates that take place in the Committee of the Whole, on the ground of expense. It seems to me that we had better put the expense in there and lop it off somewhere else.

Mr. BARTLETT of Dickey. I am heartily in favor of reconsideration, and I will vote for having nothing reported from the Committee of the Whole. If we proceed as we have done in the past two or three days in discussing county and township matters, we shall be here a year. If debates are to be reported here our

Convention will be lengthened out just twice as long as otherwise. I am opposed to having this Convention made a school by which political speeches made for effect shall be printed at the expense of the state. I say that there will be a great many speeches made here if they are reported and printed which would not be made and many long speeches made which would not be made, and I think our constituents would rather that we get through with our work.

Mr. HARRIS. If there is any gentleman here who thinks that his constituents are going to read his speeches, he is very much mistaken. The debates of this body are the foundation of the interpretation of this Constitution, and if we are going to print anything about this Constitutional Convention we want the whole business.

Mr. LAUDER. I am not advocating the reporting of the speeches that are made in the Committee of the Whole for the purpose of giving any member of this Convention an opportunity for display. If I thought that the Committee of the Whole was to be used here simply as an electioneering platform, as has been intimated, I should be opposed to having the speeches reported, but I don't believe this. I believe that the speeches are to be reported for the purpose of preserving a record of this Convention for the purpose of the public good, and I don't believe that the privileges of the members to talk here will be abused.

Mr. MOER. I think that the point made by the gentleman from Burleigh was exceedingly well taken in this matter. I believe with the other gentlemen that we want to keep the expense down, but it seems to me that it is very desirable that we should have all the debates so that those who come after us can find out just what the Convention actually meant. The debates would help in this, and I know of no Convention but what has had its debates reported, and it does not seem to me that they would be very extensive.

The motion to re-consider was carried.

Mr. CAMP. I move that the motion of the gentleman from Traill be amended by inserting after the word "Convention" the words "but not the proceedings or debates of the Committee of the Whole hereafter had."

The motion was seconded.

Mr. SCOTT. I am not in favor of this motion. I don't think any gentleman in this Convention will accuse me of being a speaker or intimate that I desire to have my debates or any

speeches that I may make recorded. So I feel a little freer to speak on this matter, probably, than some of the gentlemen who have already given us some of their efforts. It does not appear to me that there is any use of employing a Stenographer and paying him \$10 a day unless we employ him to some purpose. It is well known to all of us that most of our discussions where we will arrive at our decisions on any of the articles which are to be incorporated in the Constitution, will be in the Committee of the Whole. It will be very seldom indeed that after the Committee of the Whole has reported that the arguments will be brought before the Convention. We have our Journal, which contains about all that the Stenographer's report will contain unless we have a transcript of the proceedings of the Committee of the Whole. As the gentleman from Burleigh remarked, it is important that we have the debates printed with the arguments adduced pro and con on any measure, so that in the future it will be known what the reason was and what the object was of any particular paragraph. For that reason I think it is proper—I think it is right—that the debates which occur in the Committee of the Whole should be taken by the Stenographer and be printed with the published debates as well as those which occur in the Convention. I don't see that this resolution will help matters anyway, for if a gentleman is going to make an oration he will make it in the Convention in place of the Committee of the Whole. As the Committee of the Whole has more of an informal way of discussing matters, I think it is preferable that the debates there should be printed rather than those which are more stately.

Mr. CLAPP. I hope that the amendment of Mr. CAMP will not pass. This Convention has already determined by its vote that when anything has gone through the Committee of the Whole and is recommended, it shall then go to the Committee on Revision, and shall then be declared to become part of the Constitution. If it is not to be recorded how the members talked and voted on a certain proposition, we won't know where they stand. I think the amendment should not pass.

Mr. WALLACE. I have thought over this matter, and I have come to the conclusion that I was wrong before. I think we want to have a record of what our delegates have said. The yeas and nays are not called in the Committee of the Whole, and we shall have no other record of how the members stand in the committee but the report as prepared by the Stenographer.

Mr. SPALDING. Mr. PRESIDENT: The remarks of the gentleman from Steele have brought to my mind one objection which has not been raised to the publication of the debates, and that is we are not all born orators, and it puts us at a disadvantage when compared with the orators. In the Committee of the Whole there can be no roll call, and the only way a man can get himself on record as the gentleman from Steele has indicated, is by making a speech in the Committee of the Whole. This leaves all of us who cannot speak, out in the cold. We cannot go before our constituents and say what we have done and how we voted, and point to the record, because there is no roll call and no record. We have had simply a rising vote, and we cannot show them what our action was on the different questions that came before us. This places us at a disadvantage, and prejudices us in the eyes of the people of the Territory, and for that reason, considering it on the basis of the gentleman from Steele, I am opposed to it. If I were the orator that the gentleman from Steele is, or the gentleman from Ransom it would be different.

Mr. STEVENS. I appreciate a compliment when it is well intended, and a pun when well driven. I can see very well what the gentleman means by referring to me. He is attempting to have this Convention believe that I am in favor of having the debates all published because I desire my speeches recorded. I will say that I will be perfectly willing that the reporter should not record one word of what I say. Probably I would stand better with my constituents, but I would very much like to hear the gentleman from Cass in some of his consistencies in debate on the floor of this Convention. I desire, at least, in this Convention to be consistent. I desire at least, if I cannot be eloquent—if I cannot make my hearers understand the meaning of my words—I desire at least to go on record as being consistent, and the gentleman who voted in favor of the adoption of this resolution that has already passed this Convention, as the gentleman from Cass did, cannot claim consistency if he afterwards goes and seeks to amend it by cutting out all of that part which will be of any benefit. He is inconsistent in his conduct, and should be so recorded in the records. Were I to say what the gentleman does, that he cannot make an eloquent speech, I would be saying that which the facts would not justify me in saying. He is one of the most logical speakers in this Convention, but be he logical or eloquent or not, the generations that are to come after us—the Constitutional Con-

ventions that shall be held in this or other halls—are entitled to the wisdom that he shall display in argument in the Committee of the Whole of this body, and I hope they will receive it.

Mr. CAMP. When the gentleman from Cass referred to the gentleman from Ransom, I supposed he referred to the colleague of the gentleman who has just taken his seat, but the speech he has just made has convinced me that this supposition of mine was unfounded.

The amendment of Mr. CAMP was then carried.

Mr. LOHNES. I move to adjourn.

The motion prevailed, and the Convention adjourned.

T W E N T Y - F I R S T D A Y.

BISMARCK, *Wednesday, July 24, 1889.*

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

Prayer was offered by the Rev. Mr. KLINE.

THE JUDICIARY REPORT.

Mr. CARLAND. In presenting the report of the Judiciary Department I desire to say that there is one feature of it which was not universally concurred in by the committee, and it was understood that until the minority report was made on that provision, action on the report would be deferred. I understand that the report of the minority will be made to-morrow.

Mr. MILLER. I move in relation to File No. 106 that the further consideration be postponed till Saturday of this week. I do that for the reason that as it is a Constitution entirely of itself, it would seem to be showing not quite due consideration to the various committees of this House who have drafted several clauses for the Constitution, to take this up before they have had an opportunity to submit their reports. Their reports will be all in by to-morrow, and can be considered in advance of this. I hardly