The committee then rose.

Mr. BEAN. I move to adjourn.

The motion prevailed, and the Convention adjourned.

THIRTY-FIRST DAY.

BISMARCK, *Saturday, August 3, 1889.*

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

Prayer was offered by the Rev. Mr. KLINE.

Mr. PURCELL. I move that the Convention now resolve itself into a Committee of the Whole for the purpose of considering File No. 137.

The motion was carried.

Mr. CARLAND. In view of the question asked yesterday I would move to amend the File by adding at the end the following words:

"In case the voters of any county decide to increase the jurisdiction of the county courts, then such jurisdiction as thus increased shall remain until otherwise provided by law."

I move this for the purpose of enabling the Legislature to abolish the jurisdiction, if after trial the people of any county desire to abolish it.

The File as amended by Mr. CARLAND'S motion was adopted.

JUSTICE COURT JURISDICTION.

Mr. SCOTT. I desire to amend section twenty-six of File No. 121 so as to read as follows in line five:

"The justices of the peace herein provided for shall have concurrent jurisdiction with the district court in all civil actions, where the amount in controversy exclusive of costs does not exceed $100."

The section now reads as follows:

SEC. 26. The Legislature shall provide by law for the election of justices of the peace in each organized county within the State, but the number of said

justices to be elected in each organized county, shall be limited by law to such a number as shall be necessary for the proper administration of justice. The justices of the peace herein provided for shall have exclusive jurisdiction in all civil actions. where the amount in controversy exclusive of costs does not exceed $50, and concurrent jurisdiction with the district court in all civil actions where the amount in controversy exclusive of costs does not exceed $200. They shall have such jurisdiction as committing magistrates as may be prescribed by law, but in no case shall said justices of the peace have jurisdiction, where the boundaries of, or title to, real estate shall come in question.

The amendment was seconded.

Mr. STEVENS. I desire to offer an amendment to the amendment. I would insert "$200" instead of "$100."

Mr. SCOTT. I don't know whether the gentleman from Ransom has had much experience in the justice court or not, but it seems to me that $100 is all the jurisdiction the justice court should have. I fail to see any advantage to be gained by making it $200. In the first place is does not cost any more to sue in the district court than in the justice court, and now terms of court will be more frequent. There will not be nearly as much delay, and why this amendment was offered or why the report recommended $200 I cannot see. If we are compelled to go into the justice court to litigate a case involving $100 it is more than we should do, for in nineteen cases out of twenty an appeal will be taken to the district court.

Mr. STEVENS. In the first place, under the gentleman's resolution we are not compelled to go into the justice court, because the justice court has concurrent jurisdiction with the district court, and not exclusive jurisdiction. In the second place the $100 clause may work very well where you are living in the county seat, but in the larger counties there might be cases involving $200 in which there was no defense and no contest. If you bring the case into the district court, after having service you must wait thirty days before the time for answering comes. It is an injustice to parties who want to bring suits on notes where there is no defense to say that because the note exceeds $100 they shall not only be compelled to go into the district court at a greater expense, but shall also wait in addition, and in all probability there will be a delay of six months or more if there is a defense. On the other hand, if it was to be tried by a justice, if there was a defense there could be no injury, and if there was not, it would assist the plaintiff. I believe that law suits should be so that a man may get out of court the cheapest and easiest way he can. The law should be

so arranged as that any man who brings a defense that has no merit, cannot delay the trial indefinitely. I have not had a large practice in the district court or in the justice court. I am an unsophisticated youth who has just begun to practice, but my practice has convinced me that jurisdiction of $200 would have been the correct thing for my clients.

Mr. SCOTT. The same argument would apply to make the jurisdiction larger, and I would ask—why not make it $1,000? Very frequently a person having a case of a $1,000 would like to get a judgment in a day which he might get in a justice court.

Mr. WALLACE. The gentleman wants to know why there is any reason for increasing the jurisdiction beyond $100? I believe that every litigant has a right to have his case heard speedily. To force a man to go into the district court because he has a case of $200 I think is unwise. I think the justice court should have jurisdiction to as high an amount as $200.

Mr. LAUDER. It seems to me that the amendment of the gentleman from Barnes should prevail, for we have as good as adopted the county court system, and with the county court always open, and presumably presided over by a man with more ability than an ordinary justice of the peace, there will be plenty of opportunity for parties who wish to bring suits to bring them if the jurisdiction of the justice remains at $100. There is another question in this besides the rapidity with which a man may get a judgment if he has got a note against a neighbor or anybody else, and that is the character of the court and the ability of the court to transact the business of that magnitude. That should be the question here. It seems to me that the jurisdiction of $100 is sufficient for the ordinary justice. Occasionally we find a justice of the peace in whose court it would be safe to try cases involving a larger amount, but I can see no necessity for increasing the jurisdiction in view of the fact that we will have county courts in all counties that desire them.

Mr. CARLAND. I have no particular interest in the jurisdiction of justices of the peace, but there is one point that seems to have been overlooked by the gentleman from Richland, and that is that under the terms of the Constitution, as it now stands, counties that contain a population of over 2,000 do not have county courts with jurisdiction other than probate jurisdiction. Consequently in those counties it seems to me if it might not be too much for the justices to have jurisdiction of $200.

Mr. MATHEWS. Where I used to live justices of the peace had jurisdiction to an amount of $200, and it worked very well. They could settle things at once without rendering it necessary to wait five or six months.

The amendment of Mr. STEVENS was adopted, and Mr. SCOTT's amendment adopted as amended.

Mr. CLAPP. I move to amend the section by adding after the word "magistrate" in the tenth line, the words "to hear, try and determine all cases of misdemeanor."

Mr. BARTLETT of Griggs. It seems to me that this is an organized effort to defeat the county courts in another form. If we are going to give all the jurisdiction of the county courts to a justice of the peace, let us know it. The idea of giving him power to hear, try and determine all cases of misdemeanor is as absurd a proposition as we have heard.

Mr. CLAPP. The gentleman is an earnest advocate of the county courts, but I would say that there are some whom I represent who are as entitled to a hearing as he is. In the county in which I reside there are numerous villages which are not incorporated, and which would not come under section twenty-seven, where police magistrates are given the power that I would give to the justices of the peace. There are some of these villages nearly as large as some of the county seats, and they are forty or fifty miles from the county seat of my county. It is a grave injustice to them to ask them to go to the county seat in cases of misdemeanor.

Mr. STEVENS. It may be ridiculous on my part, but it sounds ridiculous on the part of this amendment in this—in the first place, we have provided that a police magistrate shall be a justice of the peace, or shall have the jurisdiction of the justice of the peace. In the second place, either the law must provide that no misdemeanor can be punished by a fine of over $200 or else he would have criminal jurisdiction to a greater extent than civil. The highest penalty ascribed for a misdemeanor under our present code is not exceeding one year in jail or $500 fine. If we abolish these penalties and make the penalty within the present jurisdiction, that we have fixed for justice of the peace, we must also make a difference in the grade of crimes, or else men who should be punished under our present laws with one year in jail, will ask that they get $200 fine and perhaps thirty days in jail. If we do that the offenses that could now be punished by a fine greater than $200 and imprisonment greater than one month

must go as felonies. That would be a great injustice in our criminal legislation—in our Criminal Code to say that a person who had been guilty of an offense, that the judge or jury might say would be amply compensated with punishment of $300 fine, must go to the penitentiary. It would increase the number that would go to the penitentiary from three to five times. I would be opposed to give this jurisdiction. When you use the term "all misdemeanors" you make it very broad. If you say misdemeanors of a certain grade, that would be very different.

Mr. ROLFE. As one of those who earnestly advocated the system of county courts I recognize the situation that some counties would be in that don't adopt the county court system, and therefore I am partially in favor of the amendment, and certainly would be if the amendment to the amendment which I would offer would be satisfactory. I would add to the amendment as offered the words: "Where the penalty does not exceed thirty days in the county jail or $100 fine or both."

Mr. POLLOCK. I am very much in favor of the amendment, and until the last few minutes I did not discover that this provision for justices of the peace does not, as it stands, give the justices of the peace jurisdiction to hear and determine any criminal cases. They certainly should have as much jurisdiction as they have under the Territorial laws, and as I understand it this will give them about the same jurisdiction as before.

Mr. O'BRIEN. I do not quite understand this amendment. What is a committing magistrate? Is not he a man who holds to the grand jury? Is it intended that the justice of the peace shall act as committing magistrate, and in addition thereto shall have the power to punish?

Mr. PURCELL. The purposes for which county courts were advocated were to take away from the justices some of their civil and criminal jurisdiction. This Convention has agreed in a measure to adopt that system, and in doing so we should not enlarge the powers of the justices of the peace, for by substituting county courts we furnish a speedy and quick hearing for the cases. This extension of jurisdiction will take away a certain measure of the county court business. It is true that some of the counties will not have county courts, but under our system of district courts they will not be at much disadvantage. Instead of extending the jurisdiction of the justice court we should restrict it.

Mr. JOHNSON. I recognize the objection of the gentleman from Ramsey, and I think it could be obviated by placing this amendment a few words further along. Instead of placing it after the word "magistrate," place it after the word "law" in the eleventh line.

Mr. SCOTT. It seems to me that now in place of having one court in the county you are making the justice of the peace a county court. This is increasing the jurisdiction of the justice of the peace so that he may try and determine cases of the grade of misdemeanor. As the amendment of the gentleman from Benson reads, all cases which are punishable by imprisonment of thirty days and fine of $100 will be within the jurisdiction of the justice court. Misdemeanors, which are the majority of the offenses which are committed, should not, in my opinion, be brought within the jurisdiction of the justice court. If it were in my power I would take away the jurisdiction they have got.

Mr. BARTLETT of Griggs. I have been an earnest and sincere advocate of county courts, but if we are going to have five or six county courts in every county why I don't know that we want any. I want some system that will be in a measure consistent. The very object of forming the county court was to increase the dignity of the court that is near the people, and to give the people as good a court as we can of original jurisdiction. Now you place the original jurisdiction in a still inferior court and take away two-thirds of the business which would naturally come to the county court.

The amendment to the amendment of Mr. JOHNSON was lost.

The amendment of Mr. CLAPP was lost.

Mr. NOBLE. I move as an amendment the following, to come after the word "magistrate" in the tenth line: "such criminal jurisdiction to try and determine, as may be prescribed by law."

Mr. NOBLE. It seems to me that under the section we are considering in one of these counties that is below the 2,000 population limit, for the crime of assault and battery the magistrate would simply act as a committing magistrate and the defendant would lie in jail till the next term of the district court. Some provision should be made so that crimes of that kind can be punished by the justice. That is the main reason why I would leave it to the Legislature.

Mr. CAMP. I offer an amendmeht to the amendment. After the word "magistrate" in the tenth line, insert: "And in counties

where no county court with criminal jurisdiction exists, they shall have such jurisdiction to try and determine cases of misdemeanor as may be prescribed by law."

Mr. CARLAND. The amendment to the amendment and the amendment presented by the gentleman from Bottineau would authorize the Legislature to give the justices power to try a man for homicide. I don't think the Constitution wants to confer any such power on the justice of the peace.

The amendment of Mr. CAMP was adopted and the other amendments rejected.

Mr. BARTLETT of Griggs. I desire to move as an amendment that the following be added at the end of the section:

"The Legislature shall have power to abolish the office of justice of the peace and confer that jurisdiction upon judges of the county courts or elsewhere."

To be consistent with my theory we should provide the best possible courts as inferior or original courts. If the county court should become so popular that the Legislature desires to confer on them all the power, they should be able to do so.

The amendment was carried.

DISCUSSION OF THE PREAMBLE.

Mr. McHUGH. I move that we substitute the Preamble of File No. 106 for that of File No. 133.

The motion was carried.

Mr. POLLOCK. I move to substitute File No. 74 for the one just adopted. It reads as follows:

"We, the people of North Dakota, acknowledging the supreme and perfect law of Almighty God, in order to maintain and perpetuate the peace, prosperity and happiness of our citizens, do ordain and establish this Constitution."

Mr. BARTLETT of Griggs. I move to strike out the words "acknowledging the supreme and perfect law of Almighty God." In this world, unfortunately, there is a large class of people that declare that the only law there is lies within the lids of the Bible, and they will stand by that with their heart's blood. The framers of the Constitution of the United States kept the name of Almighty God out of their work.

Mr. MILLER. I have read the preambles of almost all the constitutions in the different states of the Union, and I don't believe there is a terser, more expressive, more complete preamble

to any constitution in any state in the Union than the one we have just adopted as a substitute for the one reported from the committee. While it does not interfere with anyone's particular belief, it expresses fully and tersely everything which should be covered by the Preamble.

Mr. STEVENS. I am surprise that any member of this Convention who voted to have service each morning before our exercises or before our business commenced, should offer to strike from this preamble the name that should be remembered at our earliest morning wakening, and as we close our eyes in sleep. I am surprised that any man in this day—in this enlightened day—would get up in this hall and ask to strike from the preamble of our Constitution, words that are, or should be, near and dear to every true citizen and every lover of law and liberty. When you strike those words from this Constitution you strike a blow at civil liberty, because without a due reverence for Almighty God all forms of government must crumble in the dust, and the enlightenment of our day go back into the dark ages of the past. If the gentleman has a single silver dollar in his pocket, and will take it out and examine it, he will find that "In God We Trust" is good enough for him in financial transactions every day of his life. He will find that every silver doller he handles says "In God We Trust." If we do not trust in God in whom shall we trust? What are we but creatures of the Divine Being? You may call him God or not as you please, but I say that the majority of mankind at this day and age of the world have arrived at the conclusion that that is the name by which He should be called. The very first thing that was done in this Convention was to invoke the Divine blessing and morning after morning that has continued. In every Convention of a political or civil nature that is held in this country the first thing to have is the invocation of the Divine blessing. Why should we not rely on Him? Do we not rely on Him for the sunshine and the shower—do we not rely on Him for every benefit that nature bestows on man? Why, then, should not we say so, and then the coming generations when they open the lids of that Constitution will see that its compilers relied upon the blessings of the great Jehovah? Strike these words from this Constitution and you send broadcast, not only over this land, but over across the deep sea to every civilized nation, that North Dakota has deliberately and willfully struck a blow at religious liberty. You say in that Constitution that no man shall be de-

prived of the right of worshipping according to the dictates of his own conscience. Take your Declaration of Independence, and what are its provisions? "With a firm reliance upon an Allwise Being." You cannot find a single document within the last hundred years, that speaks of man's liberty, that does not recognize also a Supreme and Allwise Being. I say it is a disgrace to any man who votes to strike the name of God from this Constitution.

Mr. BARTLETT of Dickey. The gentleman is a nice talker. I like to hear him. But I have not heard anyone who wants to strike the name of God from this Constitution. We know that there is a large element of the religious world to-day that is struggling with all their might to keep the law of God out of the Constitution, simply that they may not have the blood stained streets that there have been in years that are past. Recently in Arkansas they threw men in prison bacause they broke the Sunday law. Who makes this persecution? It was the orthodox world that was oppressing their fellow men. Right along there are men lying in jail there, and all because they got this into their law. In the history of the world up to the fifth century, people lived in peace and quiet, but when they began to get the law of God into their constitutions and their laws, the world was deluged with blood; one religious sect began to persecute another, and it has been so through all time till now. For my part I am willing that they should claim that they are governed by a higher power, but not to say that they are controlled by the law of God. There is not an orthodox man in the United States but would say that that means the Bible, and therefore I am opposed to the measure.

Mr. BARTLETT of Griggs. I did not suppose when I made this motion that I should be the cause of springing a sermon on this Convention. It was not my intention. I believe in being consistent. The gentleman alludes to the fact that we open our Convention with prayer. We do; we open the sessions with prayer, and the Legislature opens its sessions with prayer, but do members of the Legislature or of this Convention bow their heads in suppliance and ask Almighty God for wisdom to conduct these meetings and the Legislature in accordance with His law? The gentleman says it is a disgrace to try to strike the name of God from this preamble. I say that it is more of a disgrace to stand and listen to the prayer, and one moment after to put your heads together and connive in schemes that are disgraceful. That is what I say is a disgrace. Does it occur in the Preamble of the

Constitution of the United States?—one of the greatest, grandest documents that was ever written? Were our forefathers disgraceful that they left it out of that document? I believe that a preamble without the name of Almighty God in it would be one that all could unite on. That is why I made this motion, and I am not ashamed to stand here and father it, and I don't feel disgraced.

The amendment of Mr. BARTLETT was lost.

The amendment of Mr. POLLOCK was lost.

Mr. BARTLETT of Dickey. I move that the words "Almighty God" be stricken out of the preamble that we have adopted, and the words "Supreme Ruler of the Universe" be inserted in their place.

The motion was lost.

CAPITAL PUNISHMENT.

Mr. ROLFE. In view of the fact that in the State of New York the system of execution by electricity has been adopted, which is modern and may be considered unusual, and since one who has been condemned to death since that law was placed on the statute books has contested the sentence imposed on him on the ground that it is unconstitutional under a provision similar to this, I would move that the words "or unusual" in the fourth line of section six of the Preamble and Bill of Rights be stricken out. In the advance of science we do hope that, if the death penalty be retained, some means will be devised by scientists whereby that horrible penalty may be imposed without the scenes of suffering that are at present entailed on many murderers. It may be that electricity will accomplish this, and it may be in years to come means may be devised which will be superior to that which has been adopted in New York, but we don't want to handicap our Legislature so that it cannot inflict another penalty by some means which will be superior to those now in force.

Mr. STEVENS. It won't be unusual by that time, as it is already being tested. If these words are there for the purpose of preventing experiments then I think it should be there. The committee thought that it was better to have such a provision there than not, because there might be a time when some Legislature might see fit to prescribe some plan for execution that would not be best. I don't see any advantage that would follow striking it out. "Unusual" might be construed to mean cruel. That is the

ground on which the New York case is to be tested, and the question that the courts are to pass on is whether or not death by electricity is unusual or cruel. They have to pass on the meaning of the word "unusual."

The amendment of Mr. ROLFE was lost.

TRIAL BY JURY.

Sections one to six inclusive were adopted. Section seven was read as follows:

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate, but a jury in civil cases in courts not of record may consist of less than twelve men, as may be prescribed by law.

Mr. BEAN. I move that this section be amended by inserting after the word "inviolate" the following: "In civil cases a three-fourths majority of a petit jury shall constitute a verdict." I make this motion for the object which is apparent. We all know that in civil cases it is very easy for a man to have a friend on the jury that will, when the right is on the other side, prevent a verdict from being arrived at. For instance, I had a case which was as good as one could wish, and I got all the jury but two and they hung the jury. It was nothing but a petty case in the justice court. That occurs frequently. It is my opinion that justice can be secured more frequently if we say that three men out of four in all civil cases shall be sufficient. I think if we get three men out of four in a jury it is a pretty good sign that those three men are right.

Mr. CARLAND. I hope the amendment will not prevail, for if we are to retain trial by jury at all I think we must retain it as it was known to the common law. If we are not to retain it I should like to have some good reason given for setting it aside, and trying our cases without a jury. But if we are to have it, let it remain as it was to the common law. Of course it is possible and probable that men will disagree on facts submitted to them for their decision, but it must not be argued that the men who are in the minority are wrong and that those who are in the majority are right. If ten think one way and two another it does not argue from that fact that the ten are right. The matter of hung juries will continue in any event, supposing you put it at three-quarters of twelve men. Those men may still disagree. They are all men with different minds, and will look at facts differently and will disagree on facts presented to them, and if you are

going to adopt a practice of letting three-fourths of a jury render a verdict, it will be proper in my judgement to abolish the whole system. I am in favor of having the right of trial by jury secured to all, and hope that this amendment will not prevail.

Mr. BEAN. I desire to show great deference, as do other members of the Convention, to the opinion of the gentleman from Burleigh, but at the same time I claim, on this occasion, that the gentleman's ground is untenable. He says that he is not willing to allow nine men out of twelve to settle a case. Rather than that he would let one man decide it. I may be wrong, but I think that that is untenable ground. I care not for the history of the matter, or whether it originated in England or in the United States—if I think that justice can be brought about better by having nine men out of twelve decide a case, I am in favor of amending the old law.

Mr. LAUDER. I don't agree with the gentleman from Nelson that one man decides the case. When a case has been tried before a jury, and they have taken it into their jury room and rendered a verdict, that is a judgment of them all. His objection to requiring a unanimous verdict is that one man may hang a jury. My experience has been very limited, but during that limited experience I have found that one man on a jury was the means, not of hanging a jury, but of going a great way in moulding their verdict so that it would agree with the principles of right and justice. I have in mind a case that was tried in court awhile ago in Fargo. I understand that the jury were actuated more or less by passion and prejudice, and eleven of them were in favor of returning a verdict which would have been pronounced by the people as outrageous, and one cool-headed man stood there and insisted on getting down to business and finding a verdict as should be found, without any personal considerations. The verdict was returned and the sense of the public was that it was a sensible and a righteous verdict. That one man prevented an outrage, and that is oftener the case than that we will find a corrupt man in the box who will refuse to exercise his judgment or return a verdict in accordance with the rights in the case. We should not act on the theory that we are going to deal with dishonest men. Occasionally we find a man in the jury box who is corrupt. But that is not the fault of our system. No system that men can devise will be perfect, or will mete out exact justice in all cases. As long as we are dealing with men we must deal with the

infirmities of men. I think the experience of mankind in England and the United States is that our jury system is the best system that can be devised. When twelve men agree, ordinarily they agree pretty nearly to the right thing. The system prevents a body of men who may be actuated by passion or prejudice from doing what is wrong, and it is that way far oftener than that it prevents a fair verdict from being returned.

Mr. BARTLETT of Dickey. I must enter my protest to some of their talk. They want it understood that if a man goes into court claiming that a certain party may owe him, twelve men must be on his side or the debt goes unpaid. Won't they also admit that if you have a mean case—what is the first thing you do? Every one of you know that you just walk up and down that jury box and talk at your man and throw your whole force on him. That is what all attorneys do when they have a hard case. They pick out their man, and throw every bit of their force on him. Presently the attorney will see the man's head bow, and then he knows that he has got him. Every lawyer knows that this is true, and the moment the lawyers go out of the court room to take their quiet drink they will tell you how they pinned their man, and the jury is hung and justice is perverted.

Mr. STEVENS. So far as the gentleman's argument is concerned about the attorney picking out the man, it may be right, but the attorneys get on the other side as often as they get on this side. Sometimes we are on the side of the one, and sometimes on the side with the eleven. But I desire to say a word in addition to what has been said by the gentleman from Burleigh and the gentleman from Richland. The Legislature will have power under this provision, as it now stands, to do just what the gentleman from Nelson wants to have done, in case they should see fit. I think it would be a bad provision to be made by the Legislature or anybody else, but more particularly to be made in the Constitution. If the time should ever come when it was found expedient to adopt this plan, let the Legislature adopt it, but don't put it in the Constitution. It would be poor legislation, and of all places the wrong place to put it would be in the Bill of Rights. If it would be right now it might be wrong hereafter and if it is put in here it would be impossible for the Legislature to change it.

The amendment of Mr. BEAN was lost.

Section seven was adopted.

INDICTMENT AND INFORMATION.

Mr. ROLFE. I move to amend section eight, which reads as follows:

SEC. 8. That until otherwise provided by law, no person for a felony be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases offences shall be prosecuted criminally by indictment or information. The Legislature may change, regulate or abolish the Grand Jury system.

By striking out the word "felony" and inserting the words "criminal offenses" in the second line, also inserting after the word "by" in the second line, the words "information or;" also in the fourth and fifth lines strike out the words "In all other cases offenses shall be prosecuted criminally by indictment or information." I offer these amendments in the interest of the public and defendant's in criminal cases. I suppose there is no lawyer in the House, and probably no member of the Convention, who has not seen the occasion for some such change in our laws as this. I suppose there are some who would raise the objection that this might result in trifling charges being made against parties from malice, but this is not the day and age when such moves are popular, and it is rarely the case in my experience now, when a trifling or malicious charge is brought before the grand jury or a court directed against some person for whom the prosecuting witness has some malice. This substitute that I propose simply makes it possible that a defendant may be proceeded against by information and not necessarily by indictment. As I stated the other day to illustrate the abuse which under the present system may arise, a man in Benson county was confined for thirteen months awating the action of the grand jury on the charge of obtaining $10 under false pretenses. Under the law his case was a felony, therefore he could get no trial until after the grand jury had passed on his case, and he was immured in the cell for thirteen months under the system we have agreed on as to our judiciary. This will never arise again perhaps in the State, but the case might arise that he would be confined awaiting the grand jury for a longer period than he would be sentenced after he was found guilty of the offense charged. The State of Wisconsin, whose system we cannot but admire in many respects, has gone to this extent that "no man shall answer for a criminal offense except by due process of law." There is no grand jury drawn except where

it is apparent to the judge that one is needed. This amendment provides that information or indictment may be the proceeding, but we shall not be limited to indictment alone. It appeals to our pocket books, as we have to support men in jail for a long time, and it certainly appeals to the rights of the defendant. We are careful to place in our Bill of Rights that any person charged with a crime shall have a speedy trial, but at the same time we make it possible that he may lie in jail for six months before he can possibly have a trial. This is inconsistent, and should be changed.

Mr. CAMP. I am in favor of abolishing the grand jury, but I don't see why the section is not just as good as it now stands, as it would be with the amendments of the gentleman from Benson. The section provides that the Legislature may establish some other method of bringing accused persons to trial besides the grand jury, and until they have some other method the accused could not be brought to trial in any other way. Until the Legislature does provide some other way we shall have to go on under the present system.

Mr. CARLAND. It was the view of the committee in adopting section eight that as the territory had grown up since its organization under the grand jury system and our laws were now framed for the purpose of prosecuting criminals by the grand jury, it would be unwise to make any radical change in the Constitution in this matter at this time, for the reason that the Constitution would go into effect before the Legislature would have an opportunity to pass any laws to provide the machinery for prosecution on information. So the section is worded that the grand jury system will prevail until the Legislature makes some other provision. I think the gentlemen who wish to abolish the grand jury system can see that the Legislature will have full power to do that, and I think it best to leave it as it is, and then the law-making body, after a full discussion, can abolish the system if they desire to do so.

The amendment of Mr. ROLFE was lost.

BLACK LISTING.

Mr. PARSONS of Morton. I wish to offer an amendment to the report. I desire to add to it File No. 89, which reads as follows (with certain amendmendments to the original file):

"Every citizen of this State shall be free to obtain employment, wherever possible, and any person, corporation or agent thereof keeping a black list, in-

terfering or hindering in any way a citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of conspiracy against the welfare of the State, which offense shall be punished as shall be prescribed by law."

I have presented this File to a good many members of this Convention, and have endeavored to amend it so that it would not be objectionable.

Mr. POLLOCK. I have no objection to the spirit of what is contained in that proposed amendment, but it seems to me that it is a matter that belongs to the Legislature. There are other matters just as important as this that scarcely any member would ask to have incorporated in the Constitution. The matter itself is all right, except that this is not the place for it.

Mr. PARSONS of Morton. It is incorporated in other constitutions of states in the Union already.

Mr. CAMP. It seems to me that this is one of the most important articles we have had under consideration, and I am very sorry that it comes up now that the House is so empty. Every one of us, who rides upon the railroad train, expects the utmost care from every employe of that train. We expect to hold the company responsible to the highest degree of care for our personal safety. And if by any misconduct of the engineer—if by any mistake of the conductor or any telegraph operator, I am injured while on that train, I expect to recover heavy damages against that corporation, and every judge and every jury is ready to grant such damages. How is a railroad company, for instance, and I take a railroad company as one instance, to know that its employes are competent? Railroad employes are men who pass from one community to another. Men are working on the Northern Pacific to-day who six months ago were on the Southern Pacific—men are in California to-day who were laboring a few months ago in New York or Connecticut. Now, when a railroad company has found that one of its employes is inefficient, incompetent or a habitual drunkard, is it not right to put him on a list and say to its own managers and the managers of every other railroad corporation—this man we have found to be a habitual drunkard, or he is color blind, and cannot safely act as an engineer? That would be a violation of this clause, and yet it seems to me that that is the only right and proper thing for a railroad corporation to do, and it seems to me that they should get a list of men whom it is found are inefficient, and that any other

method would result in great danger, not only to the traveling public, but also the railroad employes themselves.

Mr. LAUDER. If what has been stated by the gentleman from Stutsman was all there was of this proposition, it seems to me there could be no disagreement as to what ought to be done with the proposed article. But it strikes me that there is more of it than has been stated. I grant everything he has said, and if the black list was used for no other purpose than that which has been stated by the gentleman from Stutsman, I should be in favor of it. But laboring men have rights—they have the right to band themselves together for mutual protection, and the black list is not used, I take it, simply for the purpose of warning other corporations or the public generally against incompetent men, but I believe it is used oftener as a means of punishing men who have banded themselves together for mutual protection—men who have been engaged in strikes for instance—something that they have a right to engage in. Then they are often put on the black list for this reason, and this black list is used as a menace to the laboring men to prevent them from asserting their rights, and when it is used for that purpose it is wrong, and should not be permitted.

Mr. CAMP. I will not allow the gentleman to go one step further than I will go in allowing a body of men to band themselves together for mutual protection. The use of the black list is already a violation of the law, and the passage of this amendment would not make it any more so. I see no reason why a railroad company should not be put on a par with a newspaper. The newspaper can print anything it chooses, but is liable both civilly and criminally for the abuse of that privilege. Let the railroad company make all the lists it chooses, but let it be civilly and criminally liable for the misuse of that right. The gentleman from Richland has admitted that there is a right and a wrong use of the black list. This proposition would prohibit not only the wrong use but the rightful use as well. I do not sustain the wrongful use, but I do sustain the rightful use.

Mr. LAUDER. I know of no law on the statute books, or in force in this territory, that prevents the railroad companies from making out a black list and sending it to any other railroad company, giving the names of the employes of that company who have been engaged in strikes, warning the other roads against

employing them. If there is such a law my attention has not been called to it.

Mr. BARTLETT of Dickey. I desire to say why I am in favor of the black list. I believe there should be merit for good men —good laboring men. There is no danger of their getting on the list, and if there is no merit for doing right, there is nothing to encourage a man in well doing. Every town in the country has its black list. Every merchant has his black list, and they post one another as to who is entitled to credit and who is not. All through this land there are black lists, and it seems to me that while we hold railroad and other corporations liable for the damage they may do—I cannot see why they should not be entitled to warn one another against all the dangerous men that they have had experience with. I think it is only just and right that they should have that privilege, and when a man is notoriously incompetent they should have the right to post other people all over the United States and show what these men are like. On the river there are certain men who do not get drunk, but they are reckless. The minute your back is turned they will put on more steam than the law allows. We have the names of these men on the river, so that we can crop their wings whenever they present themselves, and it is right that it should be so.

Mr. PARSONS of Morton. I did not expect that there would be much discussion over this. I would like to make this statement. This section that I propose has been presented to, and received the endorsement of, every railroad attorney in town, but if the gentleman from Stutsman is a railroad attorney I will except him. I have submitted it to these gentlemen and have amended it to suit them and they have been willing to acept it in this from. It is strange that parties should rise here and try to help out those who do not ask for any help in this matter. This measure is not mine, but has been carefully prepared and advocated for years and years, and in our system of government you may talk about legal privileges, but there is no remedy for the laws that exist. There is a class of laboring men in some of the states that have worked for their fellows, and have succeeded in securing their rights, but they themselves, the men who have done the work, may go to the poor house. There is no tribunal before which you can bring these things, and the men are left to the mercy of the corporations. If corporations in practice worked as well as they do in theory it would be all right. I wish to say, that it does not interfere with

the discharge or the hiring of competent men and it does not interfere with the discharge of incompetent men. There is nothing in the provisions of this section which will prevent the employer from acting and using the same judgment and discretion, (although this employer may be an employe of a railroad company,) that he would use if he were in another walk of life. If a man asks for employment of a railroad company and he is asked where he was last employed, he will have to answer. If he is a skilled workman he will so state or show his papers. Nothing in this clause interferes with or trammels the right of the employer to write or inquire all over the United States as to the character of the applicant, but it is intended to make the circulation of the black list a crime, and most of the names on these black lists are there for political offenses. It has become tyranical, and in some cases people are held in shackles by the custom of exchanging black lists between corporations. The word "person" is in this clause to prevent an officer saying that he was acting as a person, and not as an agent of the corporation or the corporation itself. No other persons circulate black lists but the corporations. If this country is to be free—if the poor laboring man is to have the same rights as any other man, he should not have his bread and butter taken from himself and family simply because he may have offended some little petty officer—may have committed some little political offense, and have had his name put on the black list, and published to the world. There is no tribunal that has that right, and yet they take that right. There was a recent decision in Missouri to the effect that there was nothing in the Constitution of that State to prevent corporations from circulating a black list. I could point you to cases of men with families who would strive to obtain work, and they would get it, but the moment it was found that their names were on the black list they would be discharged. If that is right, then let it continue, but if the laboring men have any rights, we ask that they may have those rights preserved to them.

Mr. BEAN. I am in favor of this section for another reason which it seems to me has been overlooked, and that is on account of strikes. If I read this section right it will prevent strikes. It says that every citizen shall be able to obtain employment, etc. To my mind that would tend to prevent what is taking place in the east every day. We all know that these strikers form together and unite and endeavor to keep other persons from going there to obtain employment. To my mind this article would pre-

vent that very thing. They could not unite and say: "You must not come here and work." A man would be free to go there and work if the employer would hire him.

Mr. ROLFE. If there is in this measure only a prohibition of that feature of the black list which amounts to a boycott, I would be in favor of it. I think that the section could be so amended as to eliminate the objectionable feature. I would move that it be laid over till Monday.

The motion was seconded and lost.

Mr. STEVENS. I think that I know more about this question than any man who did not come from a coal or iron working state. The black list originated in the coal fields of Illinois. Miners who were not satisfactory or who objected to their wages or in any way were disliked, were put on the black list. These lists were sent out to other mines, and the men were not allowed to be employed by the other mines in the combination, and the whole mining interests of the state were into it. This system resulted in strikes, combinations of laborers, and to-day the two systems are at war with each other. There is no provision in the Illinois Constitution on this subject. They have passed laws by the Legislature, but they found that it was very hard to enforce them, because the practice has become so deep-rooted. I don't think the system is very much in vogue in this part of the country, and if we can prevent the condition of affairs that exists in Pennsylvania and Illinois, and those states where miners or other workmen are employed in large numbers, it would be a good thing. Since it was started in Illinois the system has been in vogue among the railroad corporations. The railroad corporation is all right but it has a president who looks after his department, and he has a lot of subs, and these subs run clear down to the foremen of the sections, and any offense committed by any person in the employ of the road—offensive, not to the corporation, but to the chief of the department in which he is employed, is reported and blacklisted. That is one of the ways. The system can be carried to such an extent that the man who offends his section boss can be put on the black list, and the president approves it because he does not know anything about the circumstances of the case, for each officer supposes that his inferior officer has made a correct statement. It may be that a man has done wrong—violated the confidence of his employer—that he should have been discharged, but has not he a right to say, "I

will reform," to say, "when I go to the next man and he employs me I will reform, and refrain from the acts that I have committed in the past." If you put him on the black list you practically say that he cannot work in that particular line of employment any more, even if he has concluded to reform. Again, as the gentleman says, it will tend to prevent strikes. No combination of laborers should have the right to say that because they are not willing to accept the wages they are offered, nobody else should have the privilege of doing the work they refuse to do. Look at the combination that has been waging war on the Burlington railroad of late. That was simply a counter combination. The railroad first started it, and in order to protect themselves the men formed a counter combination, as is always the case, and went far beyond what was the original intention when they entered upon the contest. Political reasons, as has been said, are often the cause of men being put on the black list. For corporations expect and insist, very frequently, that they own the political power of the voters who are in their employ. Take the case of John V. Farwell of Chicago—there is hardly an election but there is a notice posted up in his place which reads like this: "Persons employed in this house are expected to vote for so and so, for it is to interest of this house." Everybody knows what that means. This may not be absolutely necessary to have in our Constitution now, but there will come a time when it will be of the utmost value to the new State, and I am heartily in favor of the amendment.

The amendment of Mr. PARSONS was adopted.

The committee then rose.

Mr. CAMP. I move that the Committee on Public Institutions be requested to report back to the Convention File No. 79 on Monday next.

The motion was seconded and carried.

EVENING SESSION.

Mr. STEVENS. I move that the Convention resolve itself into a Committee of the Whole for the purpose of considering the matters on the Clerk's table.

The motion was carried.

Mr. STEVENS. I see a great many vacant chairs. To my mind the most important subjects that we will have to consider will be that of corporations other than municipal, and taxation

and revenue. I hope these two subjects will be delayed if possible till the absent members come. I believe there should be a full attendance when they are discussed. I would like to see seventy-five votes on every section of these articles, as they are two propositions of all others that will give us trouble in the future if they are not properly considered here, and I hope there will be unanimous consent given to have them go over till we have a larger attendance.

Mr. LAUDER. I hope the consideration of these articles will not be delayed. There is no reason why every member cannot be here now. They all know when this Convention convenes, and if they will be here in five or ten minutes they will be here before we have proceeded at a great length in the consideration of these articles and I hope that we will proceed to consider them at once.

CORPORATIONS DISCUSSED.

Section one of File No. 134 was then read by the Clerk as follows:

SECTION 1. No corporation shall be created or have its charter extended, changed or amended by special laws except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the State; but the Legislature shall provide by general laws for the organization of all corporations hereafter to be created.

The Clerk then read section one of File No. 135 as follows:

SECTION 1. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under control of the State, but the General Assembly shall provide by general laws for the organization of all corporations hereafter to be created, and any such law so passed shall be subject to future repeal or alteration.

Mr. JOHNSON. I would like to know if there has been any motion made to change the rules here—any different rule adopted? Is there any precedent for the Clerk reading an article and then reading another without being requested to do so?

The CHAIRMAN. It was at my request that he read both articles. I thought that it would be an advantage to this body to have the majority and the minority reports both before them.

Mr. MOER. I move that when the committee rise they report back to the Convention section one of the minority report and recommend that it do pass.

Mr. JOHNSON. I second the motion. I wish to be fair in this matter, and I think the section from the minority report is

better than that of the majority, although we had no opportunity to consider the ideas of the minority in the committee. Therefore I second the motion and hope it will pass. I consider the last part of the section reading "and any such law so passed shall be subject to future repeal or alteration" is useless, but I do not wish to bring on a contest here over this.

The motion was adopted.

Mr. MOER. I move that the minority report be read with the majority report section by section.

The motion was seconded and carried.

Mr. JOHNSON. I move to amend by saying that the corresponding sections be read not by numbers. Section two in the minority report is section fifteen in the majority.

The amendment was seconded.

Mr. PARSONS of Morton. With all due respect to every one concerned, would it not be better to proceed according to the regular order and take the regular majority report of the committee; when we come to a section that answers to one in the minority report, bring it up by motion to be substituted for the majority report. I make that as a motion. The second section may take the sixth or the seventh or twelfth of the minority report.

Mr. MOER. I move to reconsider the previous motion.

The motion was seconded and carried.

Mr. PARSONS of Morton. I move that we take the sections of the majority report and when the minority has a corresponding section it can be moved as a substitute.

The motion was carried.

Sections two, three, four, five and six of the majority report were adopted.

Section seven of the majority report was read as follows:

"No corporation shall engage in any business other than that expressly authorized in its charter."

Mr. MOER. I would call the attention of the committee to a section in the minority report which reads as follows:

"No corporation shall engage in any business other than that expressly authorized in its charter and the law."

I move that the section in the minority report as just read be substituted for the majority report.

Mr. WALLACE. I would like to ask the meaning of the words "and the law." Does it mean some future law that the Legislature may make?

Mr. MOER. It would probably mean any law relative to that corporation, I should think.

The motion of Mr. MOER was lost.

Sections seven, eight, nine and ten were adopted.

Section eleven of the majority report was read as follows:

PARALLEL AND COMPETING RAILROADS.

"No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section, by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter."

Mr. MILLER. I am inclined to think that this section as it now stands will work a serious injury to railroad building in the State of North Dakota. If it is to be strictly construed it certainly will do that. It is a fact probably known to every member of this Convention, that every branch of the Northern Pacific has been built by a separate company. It is also known to every member of this Convention that the Manitoba road from Barnesville to Grand Forks was built by a local company as a competing line to the Manitoba across the Red River. It is also known that the branch west of Casselton to Mayville, and the branch west of Casselton also running up in the same direction, were both built by separate and independent companies and were competing and parallel lines and were sold out to the Manitoba line. I don't know that there has ever been a line built in Dakota except the main line of the Northern Pacific that has not been built by an independent company and then sold out. The Fargo Southern was built by a local company, organized in Fargo as a competing line with the Manitoba, and afterwards sold to the Milwaukee road. While I have not examined this section before, and have not any amendment just at present to suggest, I think it is well to look into this matter. If my recollection serves me rightly the original charter of the Northern Pacific does not permit them to build branches, so that any branches they may have must be built by local companies. If there is anything in this section to prevent the sale of these branches, it would certainly be a serious detriment to railroad building in North Dakota. I know of the facts that I have stated. In regard to the organization of private companies within the territory to construct these lines, every member of this Convention knows that there is no

man or set of men who can organize these companies and build a line from ten to 125 miles long and have the means and money to equip and operate that road after its completion, especially when they come to arrange for an eastern connection. These roads that cover the Territory of Dakota to-day were all built by independent companies, but of course with the expectation of selling them to some one of the larger companies that occupied the field contiguous thereto. This section would have prevented the Manitoba from buying the branch from Casselton to Mayville; it would have prevented, possibly, the sale to the Milwaukee of the Fargo Southern, some 125 miles, and it would have prevented the sale to the Manitoba of the road which was known as the Moorhead, Fargo & Northern; and if the stockholders of that road had known in advance that they would not be able to sell it to another company, they would never have built it. While I have no amendment to offer to this section at present, I should like to have it passed over for a little while.

Mr. JOHNSON. I think if the gentleman will read the section a little more carefully he will find that the objection which at first flush have occurred to him do not exist. The gentleman argues as if section eleven prohibited the consolidation of different railroads—as if it prohibited the purchase of one railroad by another—as if it prevented a small local company from selling out to a great trunk line. It contemplates no such thing. . It will work no such result. This is a provision which I think the gentleman will find on investigation has been placed in all the Constitutions—all that have been made within the last sixteen years, or since the Illinois Constitution in 1870. I am very happy that the report has gone forward so smoothly and so nicely. Here are ten important sections that have been adopted with scarcely an amendment; nothing but verbal changes and improvements. It is significant, but I knew the time would come when we would not have as much smoothness, and we have struck a snag right here. This is one of the sections which we cannot yield an inch upon. We are not against corporations. We know that these prairies would be utterly uninhabitable without these roads, but we want just and fair treatment and we want guarantees for the future. People are not afraid of the railroads. It is the monopolies that they are afraid of. This clause is certain to guard against monopolies. It is so fair and just that it has been accepted by every Constitutionl Convention that has been held within the last sixteen years, since

this question of monopolies grew up to be a threatening danger and a live question in American politics. It is in the Constitutions of Colorado, Illinois, West Virginia, Pennsylvania, Texas and South Dakota. In some of these constitutions they provide that the question of a competing line, or being a parallel line shall be left to the courts to determine. I have no objection to inserting that there, except for the mere matter of lumbering up the Constitution with useless matter.

There would be no objection to a road building a line up and down the Missouri river and selling it to the Northern Pacific. They would not be parallel or competing lines. They would be feeders instead of competitors. But it does aim to strike at a giant combination like that of the Northern Pacific and the Manitoba. Those are the only two great companies in North Dakota. Think of the helplessness of the people in the event of a consolidation of these two great corporations. History would be turned back; progress would be stopped; people would be denied their rights, and unless we have some law of this kind on the statute books or in the Constitution, there is no guarantee but that at any moment in the future the fruits of their victory would be swept away. We are willing to give hundreds of thousands of dollars to get the roads, but are you going to invest that money when you have no safeguards in the Constitution that it will not be swept away in a minute? An agreement can be made in New York or Boston or St. Paul between the heads of these great corporations that will sweep away the rights of the people in an instant, and it is to guard against this that we seek to have this section in our Constitution. This is a moment when I call on you to represent the people, not only the farmers but the laboring classes—to stand up against the monopolies—to stand up against the combination of parallel and competing lines.

Mr. CARLAND. This may be a very good provision, but it seems to me that the penalty that is provided as a result of the violation of this section, would be inoperative so far as the Northern Pacific and the Manitoba roads were concerned. The section reads: "Any attempt to evade the provisions of this section, by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter." It is not within the jurisdiction of this State to work the forfeiture of the charter of either the Northern Pacific or the Manitoba roads.

Mr. MILLER. I am as anxious as the gentleman from Nelson

to have every safeguard thrown around the rights of the people, against the consolidation of monopolies, which would render the life and the business of the people burdensome. On the other hand I don't want to throw anything in the way of building railroads, upon which depends in a great measure the upbuilding of this country. I have no amendment to offer to this section, but I have in my mind now an instance where this section would work serious harm. There is a charter for a road running parallel to another road in North Dakota; the right of way has been secured; the road is being surveyed for over fifty miles, with the strong probability that much, at least, of the road will be completed this present season. It is a parallel and competing road to another line of railway of this Territory. It is being built by local parties for the benefit and the upbuilding of the country through which it passes. There is no moral question involved, and when it is completed the very parties who will seek to obtain it will be those parties to whose line it runs parallel, and with whom it is a competitor. It would be to the interest of every party along that road to sell it in that way. The road that now exists will not build along the projected road. They will have no road, opening up a new stretch of country, till a local company builds it up and sells it to them. The road would be a fixed fact; and be a valuable aid to the development and improvement of that section of country. If this section is aimed at preventing the building of roads in that manner, then I am opposed to it. I desire, as I said before, to see all safeguards thrown around the people in the protection of their rights, but I do not wish to call things by their wrong names, and say "safeguards" when I mean obstacle to the improvement and the development of the country. I have no captious objection to make to this section. I only wish for an opportunity to consider it carefully enough to be certain in my own mind as to what effect it will have. Perhaps there is no person here but is more or less interested in the building of railroads in this State, either directly or indirectly.

Mr. STEVENS. I confess frankly that I have never read this section before. I do not understand the word "parallel" when applied to a railroad to mean the same as the gentleman from Cass, but if it does, then I agree fully with what he says. I would like time to consider this question. I believe that this Convention should throw all the safeguards it is possible to throw, around the rights of the people, and I believe I for one would be better able

to vote on the question after having studied it than I am now. I move that this section be passed until Monday's session. I do this simply for the purpose of getting what light I can upon the subject.

Mr. PARSONS of Morton. I am willing to postpone this matter, for it is of so great importance that we should not consider it hastily.

The motion of Mr. STEVENS was carried.

RAILWAYS DECLARED PUBLIC HIGHWAYS.

Section twelve of File No. 134 was then read as follows:

SEC. 12. Railways heretofore constructed or that may hereafter be constructed in this State are hereby declared public highways, and all railroads and transportation companies are declared to be common carriers and subject to legislative control; and the Legislature shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers and freight, as such common carriers from one point to another in this State.

Mr. MILLER. I move to substitute for this section nine of File No. 135. It reads as follows:

SEC. 9. All railroads and canals shall be public highways, and all railroads, canals, transportation and express companies shall be common carriers and subject to legislative control, and the Legislature shall have power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the State; *Provided, however*, That such common carriers shall be entitled to charge and receive just and reasonable compensation for such transportation of freight and passengers within the State, and the determination of what is a just and reasonable compensation shall be a judicial question to be determined by the courts.

Mr. STEVENS. I desire to ask a question of somebody. How far would that section be interfered with by the present Interstate Commerce Law? We don't want to adopt anything that will be in direct conflict with that law. It comes close to a subject that they have done a good deal of legislating upon.

Mr. CARLAND. This is intended to apply only to commerce within the State. It would be inoperative for anything else, of course.

Mr. PARSONS of Morton. I would amend by inserting in the second line after the word "transportrtion" the word "telegraph," and after the word "passengers" in the fifth line the word "intelligence."

Mr. MOER. I think it would be rather a hard matter to make a telegraph company a common carrier.

Mr. LAUDER. I had always supposed that they were common carriers.

The amendment of Mr. PARSONS of Morton was carried.

Mr. STEVENS. I desire to offer an amendment to section nine, line two, adding after the word "companies," the following: "and palace car companies."

The amendment was seconded and carried.

Mr. JOHNSON. I have been waiting for somebody to say something in favor of the section that it is proposed to substitute for that reported by the majority of the committee. I figure that this section is the most important section in the minority report. In order to get at the difference between the two sections, let me go back just a few years in the history of this contest between the people and the railroads, and I will do it as briefly as possible. You will remember that the question of the oppression of the people by the railroad companies did not become a live question till after the war. Before the war we had comparatively few railroads. The immense development of the country immediately after the war sent forward the work of railroad building, immensely. The railroad industry grew to a giant. A great many evils followed; the people did not know how to deal with it, and the railroads themselves did not know how to use the great power and responsibility that were thrown upon them. In 1874 the oppression throughout the Western states became so general and intolerable that there was a general uprising of the people. It almost amounted to a revolution, and in the winter of that year there were enacted throughout the western states—Iowa, Wisconsin, Illinois and Minnesota, what were known as the granger laws. The companies were defiant. They said, "We own our roads just as you own your oxen—as you own your ox-carts. We can charge what we like. If you don't like to ride on our coaches you can walk. If you do not like to send your freight by our roads, you can send it in some other way." That is what the roads said then. The Legislatures were disposed to be fair, and reasonable and honest. There was a railroad lobby at the sessions of the Legislature in the different western states—there were men there also who were posted and competent to give advice as to what was reasonable. But in every one of the states the roads assumed a position of defiance and contempt for the Legislatures. In Iowa the farmers had control of the Legislature. They knew nothing about railroading, as to what was fair and reasonable. They could

not get the information from the men who were lobbying and had the information, so what could they do? They went to the railroad station and tore down a schedule that was nailed up on the wall, gotten up by the Illinois Central railroad, giving lists of classified freights, and giving a list of everything in the way of merchandise and farm products, and the price to be charged. The Legislature took that list and put a preamble to it, saying that ten per cent. less than the following rates shall be the legal rates for Iowa. They signed their names to it and made it a law.

These ignorant, honest farmers were helpless unless they did that. In some respects it was an unreasonable thing to do, and the railroad attorneys laughed louder than they had ever done before, and kept laughing till they got to the Supreme Court, and the Supreme Court sustained the Legislature. They laughed again till they got to the Supreme Court of the United States but this court sustained the law, and said that the Legislature had the right to fix freight and passenger rates. That settled that principle once for all. We don't have to ask any favors of that sort any more. If there is one thing that is settled in the constitutional history of the country, it is that railroads are *quasi* public institutions. They don't own their roads as we own our ox carts. They must run their roads in the interest of the public—they cannot stop these arteries of commerce, and deprive the husbandman of the fruits of his labor. It is decided that they cannot charge any arbitrary rate they may choose to fix and thus rob the laboring man of the fruits of his labor. This matter has been fixed in all the late constitutions. The fruit of these granger laws has been placed in these constitutions, and we propose to place it in this Constitution if possible.

The minority report seeks to spring on us a very curious provision which would destroy the fruits of the struggles of the farmers in the Northwest for nearly a quarter of a century, so far as North Dakota is concerned. Read the proviso to the minority section. That proviso destroys the whole thing. If you put that in you turn back the wheels of progress to 1872. It reads:

"*Provided however*, That such common carriers shall be entitled to charge and receive just and reasonable compensation for such transportation of freight and passengers within the State, and the determination of what is just and reasonable compensation shall be a judicial question to be determined by the courts."

That is nice, is it not? When laws are passed for you and me to obey, do we say—"We will obey them if they are just and reas-

onable, and provided you can get the decision of the Supreme Court to that effect." This would mean that the fixing of rates would be delayed five or six years before it would be determined whether or not they were right. When the Legislature passes a law ordering you to destroy noxious weeds and Canada thistles would you expect that they would put in their law a provision of this kind—"*Provided however*, That such labor should be reasonable, and the question whether it is reasonable or not shall be a judicial question to be determined by the courts." Could you get a decision of the courts before the seeds of the Canada thistles were ripe, and scattered to the four winds of the heavens? That is the kind of taffy they are giving us here, and time in the matter of freight rates is more important than it is in the matter of Canada thistles. No set of men—no individuals in towns or cities, have ever before had the impudence to come before an intelligent body of men and say that they did not want to obey the laws that were made until you can prove that those laws are just and reasonable. The theory is that the king can do no wrong and that the Legislatures can do no wrong. They may be unjust but the theory is correct after all. They may pass unjust and oppressive laws, but we must obey those laws.

The history and tradition of the Anglo-Saxon people point to the fact that laws must be obeyed, and if those laws are wrong and oppressive they must be agitated and modified and repealed. Agitate the matter on the stump—through the newspapers—through the ballot. That is the way to appeal from the Legislature. You can appeal to the people, and not to the district court. Now then, as a matter of fact the Legislature won't fix the rates under the section of the majority report. No man and no set of men could foresee two years and say what would be reasonable for that length of time. We have delegated this power to the Railroad Commissioners. That has been the practice in all enlightened states, and for them to fix the rates and have a sliding scale so that they can go up and down throughout the year. You cannot always fix rates that will be fair and reasonable for two weeks. Sometimes a single blizzard will throw an obstruction in the way of the roads that will cost them $10,000 to clear off. It costs them a great deal more to carry freight in a stormy winter than in such nice pleasant weather as we had last winter. The railroad commissioners will have the power to say that they shall carry freights cheaper during a nice winter than in some such

winters as we have. No Legislature could pass a law that would be right for an entire season, if that law contained the rates the road should charge for their freights. These things will vary. The size of the crop will make a great deal of difference as to the rate at which each bushel can be carried to the market. These are matters of storm and rain and sunshine and shower. What kind of a pickle should we be in if we pass this proviso—if we say—"No, you shall not from year to year regulate it, nor during the biennial sessions of the Legislature, but you shall wait till the laws passed have taken their regular course in the law's delay, and have been submitted to the Supreme Court of the United States." What protection would we thus give to the farmer? The law has been passed, let us say, that the roads shall carry wheat to a certain point from a certain point, for five or eight cents a bushel. If the proviso is passed they will say—"The Constitution provides that if a law of that kind is passed, I am entitled to disregard it till you prove in the courts that it is reasonable." So you would have to sue the company in the court, and they would appeal to the Supreme Court, and by that time another winter's storm and summer's sun would have gone over the State and you might be sold out on a mortgage or have died and be laid under the sod. You want that question decided then and there—you want them to obey the law, and if the law is oppressive and unjust the people of this State will always be reasonable and fair in the long run.

A corporation like the Northern Pacific has nothing to fear at the hands of the people. I heard one of its attorneys say some time ago that when the people along the line of the road were unable to get seed wheat they furnished $100,000 worth of seed wheat, and of all the farmers that had this wheat there were only two men who tried to cheat them. It showed that these men who had that wheat had been treated fairly, and reasonably, and honorably by that company, and they considered it their debt of honor, and they dealt fairly and squarely with the company. I could point you to other companies that try to take every opportunity to oppress the people. I have hear of a road selling wheat to farmers along its line, and the first chance the farmers had to get even with the road they would take it—to get even for past oppression. The farmers would commence to study and and lie awake nights to beat the road out of their wheat. The companies have the matter in their own hands. If they are just, and fair, and reasonable they can trust to the Legislature. If on the other hand they

undertake to oppress the people, they must expect the people will remember it.

Mr. MILLER. I will take but a very few moments of the time of the Convention. I do not expect to be able to make the argument that my friend from Nelson is able to make. I have given this matter no consideration whatever, but have been thoroughly impressed with the justness, fairness and equity of section nine of the minority report. The objection that the gentleman raises seems to be at the two or three last lines of the section. He says that the Legislature should have the right to fix rates for transportation of freight and passengers. The section provides that the Legislature shall have the right to regulate and control by law the rates to be charged. But the objection the gentleman raises is to the last few lines of the section. From the organization of the government of the United States its foundations were laid strong in this fact; in the ability and readiness of all the people of all the states to submit their differences whether great or small, to their tribunals of justice—to the judges of the courts that had been elected by the people, or appointed by the representatives that the people had elected. These courts hold the balance of justice, and decide what is right and what is wrong. All this section seeks to do is to have the differences arising between the Legislature, or the people, or any individual and any corporation, decided by the tribunal which we have elevated to the position of a court of justice—to which we pay respect and honor. The gentleman raises the objection that in case this tribunal—this court that is the arbitrator of all differences, should be left to settle the question whether the charges were just and reasonable, that it would take so much time—that the plaintiff would be seriously injured, and cites the instance of the thistle seed being scattered. In some cases the railroad commissioners might be ignorant, as he says the members of the Legislature may be, and the gentleman cites a case in Iowa where the Legislature regulated the rates, and in such cases their judgment is very likely to be wrong. Would it be just and right between man and man for the Legislature of the state which has no knowledge of what is right, to fix an arbitrary rate, and that such as would bankrupt the companies who would be compelled to carry freight and passengers at that rate? Suppose the Legislature was all-powerful, and the railroad company had to wait till they could go to court; their lines traversing the great state of Iowa, carrying freight

and passengers at a ruinously low rate, you would have them in the hands of receivers and their operations would have to cease. Would there be no injustice on that side?

I can cite an instance in Minnesota. The commissioners fixed an arbitrary rate for switching cars at $1 a car. The actual cost of switching cars as shown by the records of all the companies was $1.87 each. The commissioners fixed that rate arbitrarily, and without any knowledge as to what it cost to switch those cars. Is it anything more than right that those roads should have the right to go before the courts and see if their property can be confiscated in that way? Corporations have rights as well as individuals. Without these corporations the State could not exist. All that is asked, and it seems to me to be a fair proposition, is that these matters may be submitted to the courts. Is there a gentleman here who would not be willing to submit the differences that exist between himself and his neighbor or himself and a stranger, to the court that he has helped to elevate to the position of a court? That is all this bill asks. Now then, in the case in Minnesota where they were compelled by the commissioners to switch for $1 a car when the cost was $1.87, they appealed to the Supreme Court and the Supreme Court held that in the absence of a constitutional provision they were powerless to help them. If the power of those commissioners were carried to its full extent every company in the State would be bankrupted. It is unjust—it is wrong—it is confiscating the property of individuals and corporations, when their right to their day in court or their right to be heard is denied them. The fact is true that railroad companies are dependent on the prosperity of the country through which they pass—they are dependent for their livelihood and support on the prosperity of the country. The gentleman has well cited the instance of the Northern Pacific where it spent $100,000 for seed wheat for the farmers. They know that the farmers and the business men must prosper in order that the road might prosper. He might have cited another instance—the president of the Manitoba road shipped a number of high bred cattle into the country traversed by that road, and made a free donation of them to the farmers who would care for them, so as to improve the grade of cattle and help to make the farmers prosperous. That fact shows that the railroads recognize the fact that communities must be prosperous in order that the roads may attain any success whatever.

I can see nothing unjust or unfair in this section, and I am sur-

prised that any gentleman in this Convention should stand up before us and assume an attitude that we as individuals are not willing to submit our differences to the courts. We will submit all our differences between each other to the court, and when we get to the artificial individual—the corporation—we refuse to submit our differences to the court. It seems to me that this is a most preposterous idea. I can see no reason or justice in it, and when the proviso is in there it seems to me that it throws every safeguard around the rights of the individual. To leave the Legislature which has no knowledge of what the freight rates should be between certain points, to arbitrarily fix those rates might ruin any company and would certainly hinder and delay any company from extending its lines in a state where such laws exist. I would not like to put myself in a position of not being willing to submit my differences to the courts. I hope the Convention will look at this matter in that light. It is just to the individual and just to the corporation.

Mr. BARTLETT of Dickey. I feel that every gentleman should favor what the last gentleman has said. I am a farmer, and I feel that when a man says he wants the farmers of this country to convene in the Legislature and enact laws to control the railroads, when they have come here and spent their hundreds of thousands of dollars among us, he takes a very one-sided position. It makes it like a jug handle—all on one side. I think certainly if the farmers and the people of the state convene together and make laws it is only just that if those laws are such that the railroads cannot live under them—it is only just that they should be able to go to a higher tribunal to settle the differences. They spend their money among us to build us up, and when we do that we convene together to make laws to freeze them out. Is it generous or right? I say it is not. I say the minority article is what we ought to adopt, and it seems to me that any farmer ought to see it in that light. Suppose we want more railroads, and you enact a law of this sort, and English capitalists look over the ground—I tell you they will be scarey about building railroads for us, and if we don't have the roads our country will go down.

Mr. LAUDER. As I understand this question it is not so much as is claimed by the gentleman from Cass, whether or not we are willing to submit our differences to the court. That is a question that does not arise here at all, as I understand it. The question is whether the legislative authority of this State, or the legislative

power shall abdicate their position, or whether they will not. That is the question. We must all submit our differences to the court and I cannot but notice that the gentleman from Dickey had evidently fallen into the trap that this proviso was laid to catch him in. It is the very trap that was intended to catch him. We must all submit our differences to the court. The Constitution of the United States provides in express terms that you cannot take private property for individual uses without just compensation, nor can you deprive a man of it without compensation. The courts have held uniformly that when any authority fixed a freight or a passenger rate that was less than the cost, or a rate at which the company could not make anything—lost money—could make no income—that was in effect taking private property without just compensation. The courts have held that time and again, and if the Legislature should pass a law fixing a freight rate below operating expenses, the higher courts would declare it unconstitutional at once, because it would be taking the property without just compensation. As the gentleman from Nelson county said, it was a long and a hard struggle to have the judiciary establish the principle that railroad corporations were *quasi* public corporations, and they could be controlled by the Legislature, or in other words, that they had the constitutional power to control them, and it seems to me that when it was determined that the power to control them rested in the Legislature, that that body had the power to fix the freight rate and the power to control those rates—not to go to the extent of destroying them or passing laws that would in effect render their property useless, but they had the right to control them in legitimate ways. What does this provision amount to? Read it carefully. It simply means this—that the Legislature shall abdicate the power that they have fought so long to gain, and which they finally did gain in the highest court in the United States. That is what it means. It simply says that this shall be a judicial question.

Mr. MILLER. I think the gentleman is mistaken in his remarks about the Supreme Court of the United States.

Mr. LAUDER. I did not think that there was any dispute about that. There is no question in my mind about it. Does the gentleman deny that the Potter law in Wisconsin was held by the Supreme Court of the United States to be constitutional? There can be no question about it. I say in substance that we do not refuse to submit our differences to the courts. The court is the

final resort in any case, but it is simply a question whether the people shall abdicate the power which they have through their Legislatures and go back to and put a block in the way, so that they can never travel over the road that they have traveled over before. Shall they go back there and fence the road behind them? That is what it means. As has been said, here are nearly half a dozen states—in fact I think every state in the Union, whose constitution has been revised, or which has made a new constitution for itself within the last fifteen years, contains a provision almost identical with that which is under consideration here as the report of the majority of the committee. It is strange if the State of North Dakota shall not as carefully protect the rights of the people as did those states that have been named here—nearly every state that has adopted a constitution within sixteen years. The gentleman from Cass says that unless this is a judicial question property will be confiscated—unless we resort to the courts property will be confiscated. I say that this provision is the same as the one they have in Wisconsin and Iowa. Is railroad property in those states confiscated? The gentleman knows that no matter how many provisions there were in this Constitution, no person and no power would have the right or the authority to confiscate property belonging to any railroad. We have not the right to do this, but we have the right to control corporations that are *quasi* public in their character, and that is the power that is inherent in the people, and can be exercised through the Legislature, and then if their personal rights or the rights of their property are trampled upon, they have the right to come into court. Let us see how this plan would operate if this minority report were to prevail. A law would be passed fixing the freight rate. The railroad company would say "this must be submitted to the court." It would be taken there, and to the Supreme Court, and perhaps from three to five years would elapse before that law could become operative, no matter how the people might be oppressed in the meantime. At the end of that time, when it had been determined that the rate was fair and right, the conditions might have altogether changed, and rates would be changed again, and the road would take the case again to the Supreme Court and the result whould be, perhaps, during the next quarter of a century, we would not have any legislative enactment on the question of rates, which would have any force and effect. I hope this Convention will sustain the majority report.

Mr. STEVENS. Either I am wool gathering and do not understand the two sections and the argument that has been made on them, or they are both in my opinion wrong. If the substitute means that the Railroad Commissioners shall not have the right to determine this question, then in my opinion the substitute is wrong. If the original proposition proposes not only that the Railroad Commissioners shall settle this question, but that it shall cut off all appeal to the courts, then I think it is wrong. I believe that the proposition that should be introduced is one that where a law has been passed and any person may feel aggrieved, either the railroad company or the people or any patron of the road, should have a right to appeal from the decision of the Railroad Commissioners. The commissioners are elected for the purpose of looking after this business and fixing rates where it is necessary, and if the company or anybody else is not satisfied with the decision of these commissioners, they should have the right to appeal, but it should then become a question between the State and the railroad company, If the people or the person aggrieved should be dissatisfied with the decision of the Railroad Commissioners, they should have a right to appeal to the courts, and then it would be a question between the State and the person aggrieved. I would give every person a right to have his rights adjudicated by the courts, but no person should be compelled to follow a case in which he felt aggrieved from court to court and from year to year at an expense that it is impossible for the farmer to pay. If the commissioners establish a rate which the railroad believes to be ruinous, the law should be so fixed that the State would become responsible for the damage which it might cost to the railroad company. On the other hand, if they were right, the railroad company would have nothing to pay but the costs of the appeal. I understand that this proviso would cut off that power of the Railroad Commissioners. If so, if I have understood it correctly, and that statement of the case is right, I am opposed to the substitution. But if the original provision does not give the company the right to appeal from the decision of the Railroad Commissioners, then I shall insist that it be amended so as to give that right.

Mr. PARSONS of Morton. I would like to state that when the time comes I shall offer an amendment to the section. I don't wish to state anything that occurred in the committee room, This is supposed to be an amendment to section twelve of the majority

report—"Appeal may be had from any rate fixed, to the courts of record in this State, provided the rate appealed from shall be in force until such rate is decided to be unreasonable by the courts." It seems as a simple proposition of right and justice that no person or corporation, if they have any property, shall be subject to a board of three men—that they shall have their very life and success bound up in the decisions of those three men. We have agreed that we have a right to control the railroads, but it is not right that so much power should be given to three men, for they will be human, and circumstances will arise which will render them prejudiced against some corporation, and other corporations they will, perhaps be favorable to. The point seems to be that if this is voted down it would leave it entirely in the hands of three men. I shall vote in favor of section twelve, but I shall want such a provision inserted in that section as I have introduced,

Mr. MOER. The section proposed by the minority of the committee gives the railroad company the right to have determined in court whether or not the rate fixed is reasonable. It likewise gives the shipper the same right. Should the rate be fixed too high the shipper can go into court. The objection has been raised by the gentleman from Ransom, Mr. STEVENS, that the commissioners would not have any power in the matter—that they would not be authorized to fix rates. So far as I am concerned as one of the minority I would be willing to insert, for instance these words in the fourth line "power to regulate, by direct act or through a Board of Railroad Commissioners." That would give the Railroad Commissioners power to fix the rates, and shift them as often as was necessary. Under section twelve of the majority report, it would be a grave question whether the court would not say that under this constitutional enactment the Legislature could confiscate the property of the railroads. That would be the trouble with section twelve. The gentleman from Nelson has referred to Iowa in his remarks, and I think he referred to a state in which there is a good illustration of what would happen here under such a constitutional provision as is proposed by the majority of the committee. The granger laws passed in Iowa by an ignorant body of men, stopped railroad building in Iowa for three years. The State of Iowa to-day has a Board of Railroad Commissioners who have made certain regulations which the railroads deem unjust and unreasonable. What has been the result in Iowa? The result has been the abondonment of large mumbers of trains—taking

the trains off the roads, and only running such as they are absolutely compelled to run, and a general period of stagnation of railrowd building in the State. That is the result of laws of this kind—it always follows unjust discrimination. I want to see this State of North Dakota built up, and nothing can build it up so fast as railroad corporations. Take south of us, through Logan, McIntosh, and into Burleigh. There is a road graded from Aberdeen to Bismarck. The people through that section of country are farmers, and what they most desire is a railroad. I don't think they will get it in ten years if this majority section is enacted.

I think the gentleman from Richland is mistaken, as to what the courts have held in this matter. But be that as it may, the section of the character proposed by the majority simply means that the Legislature may confiscate the property of the railroad when they see fit to do so. It seems to me that all corporations, whether stage lines or what they may be, should have the right to go into the courts and try their cases, and have it determined there whether the rate is fair and reasonable. The objection is further urged that if the railroad company thinks that the rate fixed is unjust they can appeal to the courts and can tie it up indefinitely and thereby defeat the operation of the law. I maintain that that is not true. I apprehend that if the Legislature or the Railroad Commissioners should fix the rate on wheat at ten cents a bushel from this point to Duluth, and that rate was deemed to be unreasonably low, when the shipper came to the company and asked it to ship his wheat and was answered that the rate of ten cents was too low, and that the rate it wanted was fifteen cents, and the shipper had to pay the fifteen cents, if it took five years to determine that the rate of ten cents was reasonable, the railroad company would have to return to that shipper the excess that had been charged. If the rate were too high and the shipper said that he would not pay it he would have to sue the road for damages, and he would get them if it was held that the rate fixed by the commissioners was reasonable. That is the way we have to do with everything else and I don't see why we should not do it with the railroads. The gentleman intimates that you cannot make him sell an ox at a given figure, but suppose you could do that—suppose as a matter of fact that were the law—suppose it were possible for this Convention to provide that the Legislature might fix the price of a horse, but the question as to

whether the rate was reasonable or not should be left to the courts. That is the same principle. Would any one maintain that there was no reason in that? But what do the gentlemen want? They want that the Legislature shall be empowered to confiscate the property of the railroads without any compensation whatever.

Mr. PARSONS of Morton. I move as a substitute that section twelve be reported by this committee for adoption and amended in the following manner: Add at the end the following words:

"Appeal may be had from any rate fixed, to the courts of record in this State, provided the rate appealed from shall be in force until such rate is decided to be unreasonable by the courts."

Mr. MILLER. Does the gentleman offer this as a substitute for section nine?

Mr. PARSONS of Morton. I offer it as a substitute and that the committee report that.

Mr. LAUDER. The committee have taken a great deal of time; they are men of undoubted ability; their fidelity to the interests of this State is unquestioned; they have prepared this section with a great deal of care; they have compared it with constitutional provisions in other states, and as I have said it is found in every Constitution that has been passed since the principle was enunciated by the Supreme Court of the United States that there was power in the legislative authority to control railroads, and I hope this Convention will stand by the majority of this committee and vote down the amendment that is offered. I believe that this section is exactly as the people of North Dakota want it. Don't allow the wool to be pulled over your eyes. This matter has been tried in the different states; it has worked well, and I hope the Convention will stand by the committee.

Mr. PARSONS of Morton. I second the words of the gentleman who has just spoken. I endorse his words, and the only amendment that I would offer is to include telegraph and telephone companies and sleeping car companies, and the other amendment that I have moved. I wish to state that I believe it was owing to a clerical error that the amendment that I have offered was not embodied in the report of the majority. The substance of it, as it was written down in my note-book, was adopted by the committee as a portion of this report, and attached to section twelve, and this amendment of mine simply corrects a clerical error. If what I say is an error the committee are present, and they can set

me right. I am standing by the majority of the committee when I offer this substitute.

Mr. STEVENS. I don't believe that the gentleman from Richland has the interests of the people at heart any more than I have. I don't believe that it is fair and right for us to pass something because the committee have agreed that it is what the seventy-five members of this Convention should promulgate to the people as part of the State Constitution. I don't believe, further than that, that there should be any amendment made here that will kill the original report. If that provision allows an appeal to the courts, then I am for it. If it does not then I am against it. I am against it in that case because it is against the form of our government—it is against the Constitution of the United States—it is against the rights of every man to shut off the right to appeal. I believe too, that when these appeals are taken the State should stand responsible for the decision of its officers. If the Railroad Commissioners make an error in their decision, and the courts shall over rule them, then the State should stand responsible for any damages that have been suffered by the wrongful acts of their officers. If any person feels aggrieved he should have the right to appeal. With the addition of this substitute motion, nobody can be harmed. It provides that the Railroad Commissioners or the Legislature may fix the rates—that the rates shall be determined as between the parties by the Railroad Commissioners, and rates so established shall stand until the courts say the Railroad Commissioners are wrong. There is only one thing I would change in the substitute of the gentleman from Morton—and that is the words "courts of this State," for it might have to go the Supreme Court of the United States. They say this would delay matters. That is no argument, and cuts no figure, for the rates established will hold until a decision is obtained stating that they are not reasonable. I hope nobody will come here and be caught here with what I would term the chaff of those who say that because the committee have determined this thing one way that therefore it should go that way.

Mr. CAMP. Let us see for a moment if anybody would be harmed. The rates are fixed, say, twenty per cent. lower than they should be—twenty per cent. lower than the actual cost of performing the service. The company appeals and from what does it appeal? As I understand it it appeals from the decision of the Railroad Commissioners—the Railroad Commissioners or the Legislature.

The matter goes to the district court and in six months time it is decided that the rates fixed are too low. The Board of Railroad Commissioners thereupon appeal to the Supreme Court of this State, and that court decides that the rates are too low. The Railroad Commissioners then appeal to the Supreme Court of the United States, and after five years more that court decides that the rate is too low. There are six and a half years in which these rates have been maintained at twenty per cent. below the actual cost of performing the work, and from whom shall the railroad company receive its compensation? As I understand the substitute, the company does not appeal in the individual cases as it should be provided that they may, but it appeals directly from the action of the Railroad Commissioners. Where is the company to get its compensation?

Mr. PARSONS of Morton. I believe that the gentleman is a lawyer. When the railroad company has a decision of the court to the effect that the rate was too low, and that they have suffered thereby, is not that a good ground for action in any court?

Mr. CAMP. Action against the State or against the Railroad Commissioners?

Mr. STEVENS. Against the State, and that is why I wish to have the State held responsible for these damages.

Mr. LAUDER. In what I said appealing to this Convention to stand by the committee I did not mean to infer or to imply that the other members of the Convention were not qualified to consider this subject and pass judgment upon it. I simply meant to say that these gentlemen have had this matter under their consideration specially, and are presumed to have given it more study, perhaps, and their judgment on it now is presumed to be of more weight, than that of the gentleman from Ransom who was not on this committee, and who presumably has not given it the amount of study he would have given it if he had been on the committee. Just one word in answer to Mr. CAMP—the gentleman from Stutsman. It seems that the gentlemen here who are opposed to this section find no difficulty whatever in raising objections to it. I will remind them that the same argument was used during the contest between the people and the railroads in establishing this principle in the first instance. The gentleman from LaMoure says it would be confiscation. That is what they said fifteen years ago—that the property of the railroads would be confiscated if the Legislature exercised the right to regulate the roads; it would

be an unwarranted invasion of individual rights. There would be nothing between the railroads and bankruptcy, it was said; but notwithstanding this the courts did hold that the Legislature had this right, and there has been no confiscation yet. The Legislatures in various states—in Minnesota, Wisconsin and Iowa have exercised their powers, and there has been no confiscation. The gentleman from LaMoure knows as well as anybody else that no law passed by any body in North Dakota, be it by a provision in the Constitution or a legislative enactment, the effect of which would be to confiscate anybody's property, would have any force or effect whatever, for it would be in contravention of the Constitution of the United States. The courts have held repeatedly that where any authority whatever made a rate below that which exhausted all of the income to pay the running expenses, this was in effect taking the property of another without just compensation, and the railroad companies are protected from that.

Mr. JOHNSON. I wish to say that I am inclined to think the gentleman from Richland is correct, and the course of safety is to vote against this amendment.

Mr. MOER. The report of any committee should always receive due weight, for the committee is supposed to have examined the subject carefully, but it is much weaker when it is only a committee of nine and five comprise the majority and four the minority. It is supposed that the minority have examined the matter about as much as the majority. If I mistake not, the gentleman from Nelson, who now tells us we must vote against it—if I mistake not in the committee supported that same proposition now introduced by the gentleman from Morton. It seems to me that there certainly cannot be anything unreasonable in this proposition, for it affords full protection to the people in every way. But just on that committee point—remember that the committee stood five to four, and all of them probably investigated this matter.

The substitute of Mr. PARSONS was lost.

The substitute of Mr. MOER was lost.

Mr. FLEMINGTON. As I understand it the last vote was upon the motion of the gentleman from LaMoure as to whether section nine of the minority report should be substituted for the majority report.

Mr. APPLETON. I don't believe that this is a jug handle. In the early part of the Convention the gentlemen who urged that we should leave everything to the Legislature, now want to take

everything away from them. It is wonderful the way they can flop around. It seems that there are three or four gentlemen here who are trying to run this Convention. I don't believe there are any gentlemen here who can be bull dozed by any such cross-fire as there has been indulged in.

Mr. FLEMINGTON. I don't understand that the last vote we had settled the original section at all. I think we should vote on the matter understandingly. I did not understand what I was doing, and I think I keep track of the work of the Convention as well as the gentleman from Pembina.

Mr. BARTLETT of Dickey. I don't know who the gentleman from Pembina was talking about. If he meant me I can say this —I voted for the minority report in the committee—I talked in its favor in the Convention, and I have told everybody where I was on it. I have always talked that way. I stood in the first place right where I stand now.

Another vote was taken on the question whether section nine of the minority report should be substituted for section twelve of the majority report with the result that the motion was lost by a vote of 20 to 35.

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

The motion was lost.

Mr. BELL. I move the adoption of section twelve as reported by the committee.

The CHAIRMAN. No motion is necessary.

Mr. STEVENS. I desire to amend section twelve by inserting in the third line after the word "railroad" the words "sleeping car, telegraph and telephone;" also in the same line after the word "companies" insert the words "of passengers, intelligence and freight."

The amendment of Mr. STEVENS was carried.

Mr. STEVENS. I would add the following as an amendment to the section as it now stands.

"*Provided*, That the regulation of such charges shall be exercised by a Railroad Commission, and all such common carriers shall have the right to appeal to the courts from all orders of the commission fixing such rates, and such common carriers shall be entitled to receive such compensation as may be determined by said courts on such appeal, or as appears to be just and reasonable."

Mr. PARSONS of Morton. I am opposed to the amendment of the gentleman from Ransom, because there is something wrong

in it. I don't know if he observes it. It makes no provision to the effect that the rate fixed by the Railroad Commission shall be in force until reversed. My amendment had that provision in it, and this is just as bad as that which we voted down here—substitute number nine. I had a provision that provided that the rate fixed should be maintained until changed by the courts, and I am opposed to the motion of the gentleman from Ransom.

Mr. STEVENS. If there is any woodchuck in my motion, vote it down. I think it is right, and if others think it is wrong I am willing to have them vote the the other way.

Mr. APPLETON. I am going to vote against it, because I think there is too much legislation about it. I don't believe that the Legislature we are going to have will legislate the railroads out of existence. I understand the railroads will have the right to appeal without our saying so, and I don't want to see so much legislation in our Constitution.

Mr. CAMP. I move that when the committee rise they recommend that section twelve be not adopted. I think there is too much legislation in it. The gentleman from Nelson when he first took the floor stated that this section embodied the decision of the Supreme Court of the United States as to what was already the law. As I have had occasion once before to say, though it is so long ago that everybody has forgotten it, this Convention can give to the Legislature no power, and this section twelve will confer on the Legislature nothing that they don't now possess—nothing that every State Legislature does not possess without any provision. Attention has been called to the Potter law in Wisconsin, and the Constituton of Wisconsin contains nothing of this kind. The Wisconsin law in question was passed under the ordinary, usual powers of the Legislature without a constitutional restriction, and therefore section twelve is absolutely useless. It does not confer and cannot confer any power on the Legislature which the Legislature does not possess. I state it as a principle that is fundamental, as the gentleman from Nelson and every member of the committee knows, that every time we say the Legislature shall have power to do such a thing, we are just uttering so much rubbish, because they have the power whether we say it or not.

Mr. BELL. Is it not very strange that so many of our bright legal lights have been fighting nothing? He says it is nothing. They have used all the law they could get, and still they say it is nothing. I think there must be something in this section after

all, or they would not fight it so hard. I agree with the gentleman from Pembina that there is no danger that any Legislature will pass laws that will kill the railroads. I should be terribly opposed to that. We need the railroads, but we want to keep them in their right places, and every one here who has an interest in the farmer will vote for section twelve.

Mr. LAUDER. As an amendment to the motion of the gentleman from Stutsman I move that when the committee rise it recommend the adoption of section twelve as amended.

The motion was carried.

The committee then rose.

On motion of Mr. ALMEN the Convention adjourned after adopting the report of the Committee of the Whole.

Mr. ALMEN. I move to adjourn.

The motion prevailed, and the Convention adjourned.

THIRTY-THIRD DAY.

BISMARCK, *Monday, August 5, 1889.*

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

Prayer was offered by the Rev. Mr. KLINE.

Mr. PRESIDENT. We have with us to-day two of the members of the Senate Committee on Irrigation and Arid Lands. I feel certain that I voice the sentiments of every delegate in this Convention when I say that we shall be glad to dispense with the regular order of business and listen to these distinguished gentlemen. I have the pleasure to introduce to you Senator Stewart of Nevada, the Chairman of the Senate Committee.

SENATOR STEWART'S SPEECH.

Senator Stewart said:

MR. PRESIDENT AND GENTLEMEN OF THE CONVENTION: We are here on a tour of investigation to obtain information rather than to impart information to others. But your President having kindly invited us to come before you