

one copy to each State and Territorial library in the United States, a copy to the Congressional Library and one copy to each of the first State officers elected.

The amendment was carried.

Mr. STEVENS. I move that the committee rise and recommend to the Convention that the resolution as amended be adopted.

Seconded and carried.

The Committee then rose, and the Convention convened.

Mr. POLLOCK. I move the adoption of the report of the Committee of the Whole.

Mr. SCOTT. If we figure out on a basis of a thousand copies, six for each member will be 450 copies. If each State library is only entitled to one and one to each Territory, and the Congressional library one, and each employe one, that would only make about 550. What are we going to do with the balance?

The report of the Committee of the Whole was adopted.

Mr. BLEWETT. I move to adjourn.

The motion prevailed, and the Convention adjourned.

SIXTEENTH DAY.

BISMARCK, *Friday, July 19, 1889.*

The Convention met pursuant to adjournment, with President *pro tem.* JOHNSON in the Chair.

THE REVISION QUESTION.

Mr. LAUDER. There seems to be some misunderstanding as to the exact meaning of the resolution offered by Mr. CAMP yesterday. I desire that the resolution be reconsidered. My idea in voting for it yesterday was that it would expedite business and I did not carefully examine the language of the resolution. I was well satisfied with its general import. The resolution reads as follows :

Resolved, When the Committee of the Whole shall have recommended that any proposition or article be made a part of the Constitution, such proposition or article shall be referred to the Committee on Revision and Adjustment,

whose duty it shall be to arrange in order and revise all such propositions so that no part of the Constitution shall conflict with any other, and to report a Constitution embracing all propositions and articles so referred, as so provided and adjusted, for final adoption as a whole by this Convention.

It seems to me that there is a desire on the part of the members of this Convention that when the Committee on Revision and Adjustment shall have reported, then the Convention as a whole shall have an opportunity, not to vote on the Constitution as a whole, but to vote on the adoption of each article separately. It would appear from the reading of this resolution that the only thing the Convention could do after hearing the report of the Committee on Revision, would be to vote on the Constitution as a whole. The Convention may desire to amend some articles after they have been reported. I therefore move that the vote by which the resolution was adopted, be reconsidered.

Seconded.

Mr. MILLER. I think that the last line of the resolution is susceptible of two constructions. I know it to be the fact that the mover of the resolution intended that the Constitution should be reported here as a whole, and that it should then be voted on section by section, and amended if this body saw fit. I have no objection to change that last line. The mover of the resolution did not intend that we should be compelled to adopt the Constitution as a whole.

Mr. LAUDER. I understood the resolution the same as did the gentleman from Cass. But I think it would be more satisfactory to the members if it were so expressed in the resolution, and that is the only object I have in moving a reconsideration of the vote.

Motion to reconsider carried.

Mr. LAUDER. I move that the last line read "for final adoption section by section by this Convention."

Mr. BARTLETT of Griggs. I am opposed to the amendment as well as the resolution. It seems to me that when the Committee of the Whole rises and reports to this Convention, that is the time that report should be acted upon. I don't know why we should defer the acceptance of that report till the Committee on Revision has reported.

Mr. MILLER. I understand that the report of the Committee of the Whole on any proposition stands in about the same position as the report of any other committee. If the gentleman

is correct, and we are to act after the committee rises and accept any particular clause of this Constitution, that becomes a part of the Constitution, and we may as well send these disjointed parts to the printer and let his devil set them up as to send them to the Committee on Revision because they would have no opportunity to change their phraseology or punctuation. For example, there is one article introduced here that may become a part of the Constitution which provides that any qualified elector of the State of North Dakota is eligible to any office in the State. There are other provisions introduced that may become a part of the Constitution to the effect that a Judge of the Supreme Court must necessarily have been a resident of the State of North Dakota for five or six years. The Committee on Revision and Adjustment might add to the first quoted article the words: "Unless otherwise provided," and make the one article conform to the other. If we act on these articles and definitely decide to put certain articles in the Constitution, before the Committee on Revision has had them referred to them, the work of the committee is gone—there is nothing for them to do. But if we refer the report of the Committee of the Whole to the Committee on Revision and they put it together in logical and proper form, we can get our work properly and systematically done, and we cannot do it in any other way. It is a straightforward proceeding—to refer the articles from the Committee of the Whole to the Committee on Revision and Adjustment, and I hope the motion of the gentleman from Richland will prevail.

Mr. BARTLETT of Griggs. As Chairman of the Committee on Revision and Adjustment, I may be mistaken as to its duties, but I understand after this is adopted and referred to that committee, if we find there are sections that conflict we refer them back and the Committee of the Whole then amend the work. The Committee on Revision will have no power to change the Constitution in any respect, except so far as there are grammatical errors, and if there are any places where articles conflict those we must refer back to the Convention for amendment.

Mr. STEVENS. I have nothing further to say that is different from what I said yesterday. While I would not for a moment wish to question the motives of either the mover or any other supporter of this motion, I can see in my mind's eye that it is subject to this objection—we are here not, perhaps, to legislate, but in a sense to legislate, for various interests. Those interests are to be

considered when they come up, and those interests have no right to be apprised of what we are about to do in relation to them. As for instance, the corporations have no right to know what this body has passed upon as to effect their interests long enough to interfere with the operations of this Convention. If this resolution is passed as it is presented here, every corporation will know, and every interest will know, when passed upon by the Committee of the Whole, and will have a right to swarm this town with a lobby if they see fit, and attempt to entirely change the work of the Committee of the Whole. I say that when it is adopted it should be adopted as it comes from the Committee of the Whole, and after that it will take two-thirds majority to rectify any mistake we have made. I know that at least two-thirds of the members of this Convention are at all times and under all circumstances willing to suspend the rules and correct an error, if it is shown to them. It will obviate the necessity of examining as closely as we would have to do the report of the Committee on Revision and Adjustment. If the plan is adopted that is proposed in this resolution, it will make this Committee on Revision practically the Committee of the Convention. Every word will have to be scanned to see whether or not the propositions that have been passed by the Committee of the Whole have been embodied in the report, and for that reason, and for the strongest of reasons to my mind, that no one interest should have notice a week ahead of what this Convention proposed to do in this Constitution there is objection to this propositions.

Mr. LAUDER. I fail to see the force of the arguments of the gentleman from Ransom. We sit here with open doors. I supposed it was the policy of this Constitutional Convention, as of all such conventions, to give as great publicity as possible to its proceedings. I cannot see the force of his argument that corporations or special interests will know what we are about to do. The Journal is supposed to contain everything we do, and it is public property. I have too high a regard for the members of this Convention to believe for a moment any such argument as has just been made by the gentleman here. It seems to me that it is a reflection on the members of this Convention to talk about flooding this town with railroad lobbies or any other lobbies. It seems to me that the resolution here that I have offered presents the best and the simplest way to proceed in this matter, and it seems to me that the explanations offered by the gentleman from Cass are

satisfactory and should be regarded as such. When an article is recommended by the Committee of the Whole to become a part of the Constitution, it is then referred to the Committee on Revision and Adjustment. When they have finished their labors that instrument is brought back to the Convention and becomes the property of the Convention. It can be taken up, examined section by section, adopted, so every member of the Convention will have an opportunity to go on record on every proposition contained in the Constitution. It was, Mr. PRESIDENT, for the purpose of giving every member an opportunity of placing himself on record on every proposition that I offered this amendment. It was for the purpose of giving the fullest debate, the widest discussion, the most extended consideration of each and every article in the Constitution—and it seems to me that this is the proper way—that I have introduced this motion.

Mr. ROLFE. I am opposed to any course of proceeding which will defer final action on any article until the Committee on Revision and Adjustment are able to report an entire Constitution. For various reasons—one because our action on certain articles would depend largely on the action of the Convention on other articles. As an illustration—the Committee of the Whole can take no action on apportionment until the Convention has previously acted on the question of the number of members the Legislature is to be composed of. The idea that we are none of us to know anything as to what the Convention will finally do as to specific articles until the entire Constitution is ready to be passed on is out of the question. It seems to me that it is the natural and logical course to pursue, that when the Committee of the Whole have reported on a proposed article that the Convention should then pass that article or reject it, and then it can be referred to the Committee on Revision and Adjustment, and that should be done from day to day as the Committee of the Whole may pass on the several proposed articles. We can thus limit the action which we will allow the Committee on Revision and Adjustment to take, so that their duties shall be simply clerical—so that their duties shall not embrace much of any work beyond making certain grammatical changes or the like. We can by resolution limit that committee so that it shall not be an important committee further than its obvious duties are concerned—simply that of revision and adjustment. I am opposed first and last and all the time to this continued deferring of our work to some distant point in the future.

Mr. STEVENS. I rise to a question of personal privilege. If my remarks were susceptible of the construction that the gentleman from Richland put upon them, I assure you it was the furthest from my mind to express such a sentiment. I did not understand that what I said was capable of such a construction. I believe that every man in this Convention is as honorable, at least as myself, and I believe that every man in this Convention will be as far from being influenced by a lobby as I would myself. I shall believe that till I see to the contrary, but at the same time I do believe that a lobby in this town attempting to get engrafted into this Constitution any article, would impede our business and be an injury to the Constitution, honest though we may be.

Mr. BEAN. There is a motion before the House to amend this resolution. Yesterday we spent half or three-quarters of an hour going over this same ground. Now the same persons are going over the same ground again, expressing the same ideas that they had yesterday. But now the question is not on the resolution but simply on the amendment offered by the gentlemen from Richland, and I don't believe that there are half a dozen persons here who are opposed to the amendment itself.

The amendment was then put and carried.

Mr. WALLACE. There seems to be an impression prevailing that this Committee on Revision have the authority and the power to take up the various articles and disturb the ideas that are there engrafted. I take it that the duty of the committee consists in putting these articles in symmetrical order and arranging the substance of the matter, but in no way to make any change that will change their intent. If we send to the Committee on Revision and Adjustment this Constitution before we have adopted it, it places it in their hands in such a way that they can change the phraseology so as to seriously impair the meaning of the various articles that have come before them. It seems to me that the proper course would be when the Committee of the Whole rises it should report to the Convention what it has done, and then the articles go to the Committee on Revision and Adjustment, and they simply correct grammatical errors. It seems to me that in case they have the right to insert here and change there, without specifying what they have done, we will finally have to go over our work again and examine it word by word, to see that we have got what we passed upon.

Mr. SPALDING. I concur in the remarks of the gentleman

from Steele in regard to the work of this committee; also with the remarks of the gentleman from Richland that under this resolution we propose to take it out of the hands of the Committee on Revision and Adjustment, so that they cannot, if by any reason they do make an amendment to the Constitution which would effect the intent—so that they can't tie our hands and prevent us from changing it back to its original intent. If it first is reported to the Committee on Revision and Adjustment, and then they make a change, the Convention still has it in its hands to reject or amend, or do what they please. It seems to me that the thing for us to do is to pass this resolution.

Mr. MOER. I understand that the amendment does not provide for adopting the Constitution as a whole at all. There should be an adoption of it as a whole after the adoption by sections. I move to amend by adding the words: "And to be then adopted as a whole."

Motion to reconsider was carried.

Mr. WILLIAMS. There seems to be quite a division on this proposition. I cannot see any reason for forcing this through at this early day. I am really in favor of further consideration, and I move that the resolution be laid over till Monday and then come up under the head of unfinished business.

Mr. NOBLE. This resolution has already been before this Convention once, and was then considered pretty thoroughly, and the motion to reconsider is simply to get in a small amendment. I don't see the necessity of delaying this matter till Monday, and then going over all this ground again. The resolution itself has been considered thoroughly.

Mr. WILLIAMS. It has been suggested to me that Tuesday would suit some of the members better. Therefore, with the consent of my second, I will make it Tuesday—under the head of unfinished business. I will say that the resolution has been reconsidered and is now before the Convention. It is before us for action.

Mr. ROLFE. I may be wrong, but it occurs to me that possibly many members of this Convention have in their minds the idea that action of the Committee of the Whole is action of this Convention.

The Chair ruled that the question to postpone to a day certain was not debatable, and the motion of Mr. WILLIAMS was then put

and lost. The resolution as amended by Messrs. LAUDER and MOER was then adopted.

Mr. PARSONS of Morton, introduced the following resolution:

Resolved, That the Committee on Revision and Adjustment be instructed to report to this Convention every change made in the text of matter referred to it.

Seconded.

Mr. MOER. It seems to me that this resolution is useless, as the Committee on Revision and Adjustment must refer these articles back to the Convention, and certainly the Convention will take notice of any change. It seems to me that it is useless to call on them to make such a report.

Mr. WALLACE. I take it that it would enable the members of this Convention to see much more easily what corrections had been made if they were pointed out as this resolution calls for. It would be a good deal like looking for a needle in a hay stack, and I think it is proper that we call on them to point out exactly what changes they have made. We may find their changes after a very careful hunt and we may not.

Mr. BARTLETT of Griggs. I hope that this resolution will pass. If by any accident a change of one word should change the phraseology or the meaning of any section, and this Convention did not notice it, I don't want it said afterwards that I purposely did it, and I hope that the committee will be compelled to note every change made.

The resolution carried.

COUNTY AND TOWNSHIP ORGANIZATION.

In Committee of the Whole section one of the report of the Committee on County and Township Organization was read as follows:

SECTION 1. The several counties of the territory of Dakota lying north of the seventh standard parallel, as they now exist, are hereby declared to be counties of the State of North Dakota.

Moved and seconded that it be adopted.

Mr. SCOTT. I move that the word "organized" be inserted in the first line before the word "counties."

Mr. COLTON. I should like to know what state or territory we will put the unorganized counties in? We have some little country that is not organized.

Mr. SCOTT. It seems to me that if we let this article go as it is without the amendment that I have proposed, the boundaries of the counties, whether the counties are organized or not, must remain as they are to-day.

Mr. ROLFE. Under section two no such thing as that suggested would take place. That provides for the changing of county lines, whether organized or unorganized, by the Legislature, under a general law to be passed. As one of the members of the Committee on Township Organization, I would say that it was the design of the committee that that should simply establish or fix the boundaries of the counties which should come into the new state. It does not necessarily fix them forever, but now.

Mr. SCOTT. I withdraw my amendment.

The section was adopted.

Section two was then read as follows:

SEC. 2. The Legislature shall provide by general law for organizing new counties, locating the county seats thereof temporarily and changing county lines; but no new county shall be organized nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than 1,000 *bona fide* inhabitants. And in the organization of new counties and in changing the lines of organized counties the boundaries of congressional townships and natural boundaries shall be observed as nearly as may be.

Mr. CLAPP moved to amend by striking out the words "twenty-four," and inserting "sixteen." He said: If this were a Legislature it might be all right to leave it as it is, but as it is a convention making a constitution for all time, to say no county shall be formed less than twenty-four by thirty-six miles is going too far.

Mr. POLLOCK seconded the amendment.

Mr. McHUGH moved as a substitute that the word "twenty" be inserted instead of "twenty-four."

Seconded by Mr. ELLIOTT.

The substitute was lost.

Mr. WALLACE. It seems to me that if counties are made only with sixteen townships they are pretty small. In the county from which I come there are twenty townships, and it is plenty small enough. I would not be in favor of making it any less than twenty.

Mr. CLAPP'S amendment lost and section adopted as it came from the committee.

Section three was then read as follows:

SEC. 3. All changes in county boundaries in counties already organized, before taking effect shall be submitted to the electors of the county or counties to be affected thereby, at the next general election thereafter, and be adopted by a majority of the legal votes cast in each county at such election; and in case any portion of an organized county is so stricken off and added to another, the county to which such portion is added shall assume and be holden for such portions, part and proportion of the indebtedness of the county or counties from which it was so stricken.

Mr. MOER moved its adoption. Seconded.

Mr. BARTLETT of Griggs. I shall have to ask for information before I can vote on this. The last three lines are indefinite. What proportion are they to assume? If one-half, are they to pay one-half? If one-third, then one-third? It seems to me that there should be a proportion fixed, and the just rate would be the proportion of the assessable property cut off. I should like some explanation as to what proportion they propose to pay.

Mr. MILLER. I am in the same fix. I don't understand this section. It reads as follows: "All changes in county boundaries * * * * at the next general election thereafter." Thereafter what? What does it refer to? There certainly can't be any changes in the boundaries until the election has taken place. I don't know how that could be construed, or if it is susceptible of two or three constructions. Going a little further, I am of the opinion that all the balance of this File No. 63 after section No. 2 is a matter more properly pertaining to legislation and to be considered by the Legislature, rather than by us here. We have established in sections one and two the counties and the conditions on which counties can be made, and that is all that is necessary for us to do. All the other matter is there to forestall some action of the Legislature. I deem it inadvisable and improper for us to do this. If the other members of the Convention differ with me I should like to have that section three construed so that I can understand it.

Mr. MOER. The point raised by the gentleman from Cass on the word "thereafter" while possibly it may be well taken—it seems to me that that word refers directly back to section two, which provides that the Legislature shall provide by general law, etc. The Legislature shall do this, and it seems to me the only construction would be that after the Legislature had provided for an election at the next general election thereafter the vote should be taken. I am strongly in favor of the opinion expressed by the gentleman from Cass as to all the article after section three. I

move that the section be adopted merely to get it before the committee. I believe that this is absolute legislation, and if we are to go on in this way we are going to have a Constitution twice as long as the Sioux Falls Constitution, which I regard as utterly useless. I believe that all of this section should be stricken out.

Mr. MILLER. In relation to File No. 63, which we are now discussing, I move to amend the motion of the gentleman from Dickey by moving to refer it back to the Committee on County and Township Organization, from whence it came, with the opinion that the balance of the entire bill is not for action of this Convention but for the Legislature.

Seconded.

Mr. MILLER. I desire to call the attention of this body to section nine of this article, which reads as follows:

SEC. 9. In each organized civil township there shall be elected, at the first general election, for such terms as the Legislature may by law prescribe, three township supervisors, one of whom shall be designated Chairman, and the chairmen of the several boards of township supervisors shall together constitute the county board of their respective counties.

That clause would leave much of the new State of North Dakota entirely unrepresented on the county boards. I will refer in the first instance to the effect it would have, for instance, on Morton county. If the townships were organized, there would be from eighty to ninety members of the county board—a body larger than this body here. It would be an exorbitant expense and entirely useless and unwieldy. In the next place take Cass county. We have forty-nine organized townships. That would make our county board consist of forty-nine members as this bill now stands. The city of Fargo has about half the population of the county—not quite that, but that city would have no representation on the county board as allowed by this bill. In other words about one-half the voters in Cass county would be disfranchised so far as representation on the county board was concerned. The board alone would consist of forty-nine members, and no representation from the cities of Fargo and Casselton, which two cities have a large proportion of the population of the county. In case that this bill is so amended as to give these cities representation, it would increase the membership of that board to over sixty members, and with their clerks and attaches would make a convention for the board of county commissioners as large as this Convention that has assembled here for the purpose of forming a

Constitution for the whole of North Dakota. These men could not work for less than \$3 a day each, and they would travel upon an estimate, at least twenty miles each to reach the county seat to hold their sessions. This would make \$180 a day fees for their per diem, and their mileage would be forty miles each—twenty going and twenty returning—which would give them \$4 each or a total of \$240 more to be added to each session. It has been urged that the township should pay its member for his attendance on the Board of County Commissioners. But it is as broad as it is long. If the township pays it must tax, but if the county pays it must tax too, and then the expense would be spread over the entire county. It seems to me that this is a serious objection to the bill. I should be in favor of the Legislature passing a law which would give counties an opportunity of trying this plan, but to make this innovation, and make these large Boards of County Commissioners as a part of this Constitution, which it will be impossible to change for many years, I deem unwise and unsafe—something that we should not do. Many of the gentlemen who favor this class of township representation on the Board of County Commissioners, have lived in states where that system is in vogue. I lived in the State of Wisconsin, but the counties there are very small, composed of but few townships, and the boards vary there from nine to twelve and fifteen members. In this Territory the counties are composed of from forty to eighty and ninety townships, thus giving you as large a membership to the Boards of County Commissioners as you have in both houses of the Territorial Legislature. I don't know but that I should vote for this bill if this were a Legislature instead of a Constitutional Convention. The experiment might be worth trying, and I am in favor of leaving it to the Legislature to be tried, if by vote the counties see fit to try it. There are some other objections to all the articles of this bill, and I hope the motion will prevail and this bill be re-referred to the committee with the recommendations that I have suggested.

Mr. GRAY. I would like to ask the gentleman where he gets his authority for saying that the new boards would want so much per day. Is there anything of the sort prescribed in the bill? Is not that a matter for the Legislature to regulate? I don't understand what right he has to say that the members would be paid \$1 or \$4 or \$5 a day. There are men, good men, in our town who

are willing to work for \$1.50 a day, and there is no reason for saying that \$3 a day would be the price.

Mr. MILLER. The statement as to \$3 a day was entirely presumption on my part. I assumed that any person who was qualified to sit as a member of the board could not be expected to sit for less than \$3 a day. His hotel bills would be \$2, and he should have some compensation in addition to that, and the Legislature in providing compensation for the service would at least pay them for their time and service what their actual expenses would be.

Mr. GRAY. We find plenty of men who are ready to serve their townships at \$1.50 a day, and we think we could find some more who would be ready to serve them for \$2 a day at least.

Mr. MOER. There are other as objectionable features. Section four for example—this is purely Legislative. Section five, too; section four reads as follows:

SEC. 4. In counties already organized, where the county seat has not been located by a vote of the people, it shall be the duty of the County Board to submit the location of the county seat to the electors of said county at the first general election after the admission of the State of North Dakota into the Union, and the place receiving a majority of all votes cast at said election shall be the county seat of said county. If, at said election, no place receive a majority of all the votes cast, it shall be the duty of the County Board of said county to re-submit the location of the county seat to the electors of said county at the next general election thereafter; and the electors at said election shall vote for one of the two places receiving the highest number of votes at the preceding election. The place receiving the majority of all the votes cast for county seat at said second election shall be the county seat of said county.

It seems to me that this is purely legislative, and that if we are to go on the theory as embraced in the File submitted by the Committee on County and Township Organization, it seems to me that we will legislate on every subject that it is possible to bring in. We shall have enough legislation, do the best we can, and it seems to me that the whole thing should be stricken out. It is a matter for the Legislature to say how we shall change county seats. Section six is perhaps wise. It reads as follows:

SEC. 6. The Legislature shall have no power to remove the county seat of any organized county.

We don't want to go on and tell the Legislature just exactly what they will have to do to change county seats, or in the organization of boards of supervisors. In my county the mileage alone would cost our county \$150 every session, and in view of the fact that we have a great many very large counties, it seems absurd for us to

attempt to inaugurate a general supervisor system. The only men who favor it, it seems to me, must be the men who come from states where it is in vogue and where there are nothing but little counties. I am heartily in favor of referring this to the committee again.

Mr. SPALDING. I would amend the amendment by including as desirable for us to adopt all of sections six, seven and ten, except the word "other" in the tenth section. These are not matters of legislation, but are limitations on the Legislature, and I believe they would be proper sections for this article, and that they don't come within the objections made by the gentlemen who have just spoken.

Mr. MILLER. With the consent of my second I will accept that as part of my amendment.

Mr. STEVENS. I am heartily in favor of re-referring this report to the committee, but I am opposed to instructing them that we won't have county township organization, and I will ask for a division of the question. I desire to vote on the question separately. I am opposed to doing away with the county township system, either that, or such as the committee may recommend. I have lived under it, and in counties where the county seats are located anywhere near the centre of the counties, the mileage is not very heavy.

The CHAIRMAN. How shall the question be divided?

Mr. STEVENS. First whether it shall be referred, and second whether the recommendation shall be given to the committee.

Mr. SCOTT. I think that we can make better progress if we take up this report section by section. There are some sections that I favor, and some that I am opposed to. I don't believe that we should adopt three, four or five, but I think six is all right, and I am not so sure but some of the remaining sections are perfectly proper. At all events if this report is going to be re-referred to the committee it should be informed as to what our wishes are in the matter, and we should decide whether we are in favor of township organization going into it or not. Then the committee will know what to do with it. Take section seven—I am not clear that section seven is not all right, and so with eight, and with section six I think there is nothing the matter with it.

Mr. ROLFE. I suppose that we shall, before we get through with our work here, listen to the cry of proposed legislation a good many times. If the cry is listened to, our Constitution will

probably be a very small and comparatively unimportant document. I undertake to say that pretty nearly every member, if not every member, has suffered at the hands of the Legislature in one respect or another to a sufficient extent to make him suspicious of Legislatures. If the real and honest intent of this Convention is not to introduce some wholesome legislation into the Constitution, then we had better go home at once. In regard to section three, it does not seem to strike the gentleman from Cass as being particularly objectionable, except that it is legislation. But he undertakes to throw a cloud on section three by attacking section nine. He undertakes to blot out all respect for three by insisting that section nine is in our present condition a ridiculous system to introduce. Now, let section three stand on its own merits if it has any. Let us settle this report of this committee section by section. If section three is not a wholesome restriction on the Legislature, let us blot it out. But don't get a new report on section three because section nine is bad. I apprehend that there are many here who are in the same position that I am in—who have suffered from abuses that have arisen from a system that has been in vogue, and which system section three will correct. In the county from which I come, we were obliged to vote for the candidate for Delegate to Congress last fall that we did not want—a man who belonged to a different party, because it was the only way in which we could preserve our county intact. We made a trade; the party to which I belonged was obliged to make a trade with the opposite party, and we voted for their candidate for Delegate to Congress and they in return voted for our candidate for the Council who was pledged to oppose and defeat, if possible, any measure looking to the cutting up of our county. We sacrificed our political principles in many respects for the purpose of preserving our county life. Now I apprehend that there are a good many here whose experience has been similar. They will agree with me that there is some merit in section three. Therefore I am very much in favor of considering this section alone.

Mr. MILLER. The gentleman suggests that he has suffered at the hands of the Legislature. That may be admitted, but the suffering may be remedied after two years; the suffering that will be occasioned to the people of this Territory if these sections are adopted will be universal and will last for more than ten years before this Constitution can be amended. There is not an indi-

vidual taxpayer who won't feel it. I have no doubt but that legislatures sometimes trample on the toes of people and localities who try to organize counties. Their financial interests are trampled on, and as Judge Cooley very wisely said, we have to trust somebody in the future, and the Legislature seems to be the only tribunal that we can trust in these matters.

Mr. WALLACE. It seems to me that the best thing we can do is to take up this matter section by section.

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

The question was put and lost.

Mr. MILLER. My motion is that section three be re-referred to the committee with the opinion of this body that it is proper subject for legislation, but should not become a part of this Constitution.

Mr. APPLETON. As one of the committee that submitted this report, I would say that we were of the opinion that section three was not legislation. It seems to me that there is nothing wrong in this Convention saying that all changes in county boundaries shall be submitted to a vote of the people. We are simply saying that before a change is made in any county the people shall have a voice in the matter. We say that where the people vote to be set off and be made a new county, they shall assume their portion of the debt of the county. It did not seem to me that there was anything unfair about the proposition that before any of the boundaries or lines of the counties shall be changed, the people shall have a chance to vote upon it. I move that section three be adopted.

Seconded by Mr. COLTON.

The Chair ruled that a motion to refer back is not capable of being amended.

Mr. O'BRIEN. As I understand it the motion of the gentleman from Cass would be practically of no effect at all. If this motion prevails, then section three goes back to the committee. But for what purpose? What are they to do with it? Are they to change it and bring it back to us again in the shape of another report? It seems to me that a better plan would be for us to take this up and discuss it in Committee of the Whole, and if we arrive at the conclusion that it is legislation, of which I am somewhat of the opinion, we can settle it right here without burdening the committee again with it. I think it would be a great deal

better for us to settle it here. There will probably be a great many other subjects that will come up in the same way and if they are to be referred back after half an hour or an hour's discussion, the committee may make another report like the first and we will never reach the end of our discussions. But if after a full and free discussion of this matter we are of the opinion that it is not proper subject to be incorporated in the Constitution, that settles it, and we can proceed to something else. For that reason I oppose the motion of the gentleman from Cass.

Mr. COLTON moved that section three be adopted.

Mr. BARTLETT of Dickey. Whether this is legislation or constitution I cannot say, but of one thing I am certain—it is good, wholesome law. I know that it should be in the Constitution, and that is why I am in favor of it. I have listened with great pleasure to the arguments of the gentlemen in whom I have confidence as lawyers, but that section suits me mighty well.

Mr. HARRIS. I move to amend section three by adding after the last word the following: "As the assessed valuation of the part so stricken off shall bear to the total assessment of said county or counties."

Mr. COLTON. I would accept the amendment and I would have put it in, but I saw that there are so many who want to leave the Legislature something to do, and I thought it would be well to leave that to them. I believe at the same time that in the matter of the dividing of counties it is well to let the people have a voice, and that is why I am in favor of having this article adopted as part of the Constitution. I have seen the effects of there being no restrictions on the Legislature; I have seen cases where the Legislature has, without consulting the people, taken part of one county and added it to another, and made the county that took the piece, pay what they had a mind to. It is not right to leave it so that a Legislature can make one county take a piece from another whether they want to do so or not.

Mr. MOER. I move to strike out all of section three after the word "thereby" in the third line.

The amendment was declared to be out of order, and it was then moved as a substitute.

Mr. ROLFE. In the minds of the committee there was a good reason for every word in that section, and I would like the members of this Convention to analyze it carefully. It provides that changes in counties shall not be absolute when passed by the Leg-

islature. I believe that there is no question as to the wisdom of that. But further, we wish to bind the Legislature to provide for two or three items that are of importance to the voters in each county. First, that they shall not be cut up without a chance to say something about it at the polls. Second, that the county shall not be cut up unless the entire county has something to say, and third, the county shall not have a portion put on it without having something to say about it. Fourth, that the section of the county that is to be cut off shall not have the entire say in the matter. It is manifestly unfair that a portion be stricken from a county to be added to another unless the entire voting population in the two counties so affected, or three or four counties, as the case may be, without having a voice in the matter. I have seen the most fertile portion of the county which I represent taken away from the rest of the county, simply on the vote of the part which it was proposed to cut off—a small part containing not more than a hundred votes. The oldest settled portion of the county—the best portion—cut off simply by the votes of the parties living in the other part. There was no provision that the part so cut off should bear any part of the indebtedness already existing, but both counties subjected to the change made by the votes of those few people in the territory cut off. It seemed to this committee that that was manifestly unfair. In regard to the latter part of the section, it is provided that the county receiving the part cut off shall assume the proportion of the debt properly belonging to the portion so cut off, and it was thought that if the Legislature would pass a bill, any bill so changing a county, then in order that the measure might be popular it would be necessary for the Legislature in the same act to provide for an equitable adjustment of the debt, and provide the details for the assumption by one county of the debt. Remember, it was the design of the committee to embody the principle simply in this section and leave the details to the Legislature.

Mr. MOER. I want to call attention to the fact that all that has been urged in regard to section three has been that under it the Legislature would not be able of itself to cut a county to pieces. Now the first three lines of the section are sufficient for that purpose. Those three lines make it necessary for the Legislature to submit the question to all the electors of the county or counties affected. Let us take it for granted that the Legislature will give us a little decent legislation, and let us not put it all in

the Constitution. Let us presume that the Legislature will provide that the portion set off with the county or counties it is attached to, shall bear its portion of the existing indebtedness. What is the use of having it all in here? By adopting these three lines, we give all the protection to the counties that seems to me to be necessary.

Mr. WALLACE. The gentleman seems to fear that we shall not leave the Legislature anything to do. He seems to think that if we leave it to them they will go on and do what we have here sought to compel them to do. I don't see why this article is not just what we want. I think the gentleman from Burleigh has struck the right thing with his amendment.

Mr. APPLETON. I agree with the gentleman from LaMoure that the first three lines of this section are the most important, admitting with him that those lines should go into the Constitution, and I would ask if there is anything inconsistent in saying that a majority vote shall be required? Further, I would ask if there is anything wrong or inconsistent in saying that any portion of the county cut off shall bear its part of the existing indebtedness? If this is good legislation, why not put it into the Constitution? Why leave to the Legislature something to do which the gentleman admits is right?

Mr. MOER. I admit that a great many things are right; I admit that this is right, but I believe that the Legislature could enact it. We might as well say that because murder should be punished, we should say how it should be punished. That is the only point I make against it.

The substitute motion was then put to a vote and lost by 32 for and 34 against.

Mr. JOHNSON. If there is an argument in favor of that amendment I don't see it. It occurs to me that the principle of the amendment is wrong. That is not the just method of determining the liability of each portion of the county. I think we have a very striking example now in the Joint Commission as to how debts should be divided when territories separate. I think the committee has prepared the article just as it should be without any amendment. The amendment would require you to divide the debt, not with reference to the benefits that had been received; not with reference to the causes for which the debts were created, but simply with reference to the future ability to pay. Suppose the portion stricken from the county had within its territory the

value received for this debt; suppose the bridges for which the debt was incurred were all in that portion; suppose the public buildings or improvements were all located in the portion to be stricken off; would it be fair and just then in saying who shall pay that debt, to figure up simply the present property valuation, and make that part of the county which derived no benefit, pay as much as that part which derived all the benefit? Leave the article just as it was reported by the committee that prepared it, and then the Legislature can provide that the debt shall be divided equitably between the different portions, or if no provision is made the courts will settle it equitably. The article as it comes from the committee provides that the portion so set off shall with the county to which it is added, assume and be holden for such part and proportion of the indebtedness of the county from which the piece has been taken. That would leave it an open question to be decided in a court of equity—as to what proportion each county shall bear. A commission could be arranged for to take evidence as to what was the cause of the indebtedness, and to repay it. Therefore I am decidedly opposed to the amendment offered by the gentleman from Burleigh.

Mr. HARRIS. As I understand section three without the amendment, in case a portion of an organized county is stricken off and detached from one county and added to another, the county that gets the addition only assumes that part of the indebtedness which the area of the part so stricken off bears to the whole area of the county. It says: "In case any portion of an organized county is so stricken off and added to another, the county to which said portion is added, shall assume and be holden for such portions, part and proportion of the indebtedness of the county or counties from which it is stricken." My amendment was intended to cover the proportion which the part stricken off should assume; without that amendment, in case, for illustration, the township in which the City of Bismarck is situated should wish to be stricken off and attached to Morton county, the amount of indebtedness which Morton county would assume would only be the part which the area of this township bears to the whole of Burleigh county. This would not be just. If they are to take the amount of property that we have here, they should certainly assume the amount of debts which that would carry with it, and my amendment was intended to provide that the pro-

portion assumed should be a just proportion, and should be in proportion to the total assessed value of the whole county.

A vote on the amendment of Mr. HARRIS was taken with the result that it was adopted by a vote of 42 to 6.

Mr. COLTON pressed his motion that section three be adopted as amended.

Mr. SCOTT. There is a misunderstanding as to the import of this article. In section two we have provided everything that is necessary for the Constitution. We find there that the Legislature shall provide by general law for organization of new counties, for the location of county seats temporarily, and likewise by general law for changing county lines. Now then, we have given the Legislature all the power in that respect that we can give them, and then we propose to go and take away certain of their powers by section three. We form half a law, and say that the Legislature when it makes this general law shall put in it certain provisions, one of which is that the question shall be submitted to the votes of the electors of the county. It would be a peculiar Legislature that would make a law regulating these affairs that would not submit it to a vote of the people after this. If they make a general law, they would require in it that these matters be submitted to a vote. Section three provides that it shall be approved by a majority. The Legislature cannot require anything less than that. When we require in section two that the Legislature shall pass a general law, it does not look right for us in section three to make half a law ourselves. I move as a substitute that the whole of section three be stricken out.

Substitute lost by 35 to 28.

Section three was then voted on with amendment of Mr. Harris, and carried by 41 to 25.

Mr. PARSONS of Morton. I move to adjourn.

The motion prevailed, and the Convention adjourned.