

EIGHTH DAY.

Sioux Falls, Dakota, July 11, 1889.

Two o'clock, P. M.

The Chaplain: Our Father who art in Heaven, Hallowed be Thy name; wilt Thou help us as we come before Thee, the Creator and Preserver of us all, and ask that Thou wilt be with us this day; that we may be wise and discreet and that every act of ours may advance those things that may be best for our interests and for the interests of those that have sent us here. May we at last receive from Thee, that welcome, "Well done thou good and faithful servants, enter thou into the joy of thy Lord." In Jesus' name we ask it.

AMEN.

The President: There were two special orders made yesterday, but unless otherwise directed by the Convention, I will complete the regular calls before announcing the special order.

Mr. Jolley: We do not seem to have any copies of the Journal of yesterday on our desks.

Mr. Price: I move the reading of the Journal be dispensed with.

Which motion prevailed.

Communications and presentations of petitions.

Unfinished business of the previous day.

Reports from Standing Committees.

Consideration of reports from Standing Committees.

Mr. Humphrey: Your Committee on Education and School Lands beg leave to submit a partial report; in explanation of it I would say that it is in the nature of a memorial to the President of the United States with relation to the preservation of the school lands; especially those that were particularly brought to our attention by the resolution introduced by Mr. McGillicuddy; it is as follows:

TO THE PRESIDENT OF THE UNITED STATES:

Your memorialists, the members of the Constitutional Convention, for the State of South Dakota, now in convention assembled at Sioux Falls, in said state respectfully represented:

That several of the most valuable sections of lands reserved for the use of the State for school purposes, which lie in agricultural districts, and some of which are contiguous to considerable towns and cities are sought to be improperly appropriated under pretense or claim that they are mineral or coal lands, and therefore subject to appropriation and entry under the mineral and coal land laws of the United States. Successful efforts in this behalf will cause great loss to the school fund of the State.

Proceedings by the claimants to such lands are necessarily *EX PARTE*, and at present no authority exists in the State, or any of its agents to oppose these claims.

Your memorialists are advised that applications for patents have been, or are about being made to the land department of the United States for such lands based upon their alleged mineral character. We know of no proceeding by any authorized agent of the people of South Dakota by which the applications for patent can be as yet successfully resisted.

The people have no standing in the Department for such purpose. As soon as the State shall be admitted and its agents qualified, South Dakota will be in condition to resist their claims successfully, or to protect the rights of the state whatever they may be relating thereto.

Therefore, your memorialists respectfully but earnestly pray the President of the United States to direct that all proceedings relating to the entry of or issuance of patent to alleged mineral or coal lands situated within the agricultural districts of South Dakota be postponed and stayed until the State is by proclamation of the President declared admitted into the Union of States and until the Legislature of said State shall have the opportunity to appoint the requisite agents therefor and provide by law for contesting the right to make such entries and obtain from the government patents to such lands.

H. A. HUMPHREY,

Acting Chairman of Committee on School Lands.

Mr. Humphrey: I would like to call the attention of the Convention to the partial report made by the Committee on School Lands; I am under the impression that it may be a matter that we desire to hear read.

Clerk: Reads Memorial to the President of the United States as offered by Committee on School Lands.

Mr. Price: It seems to me proper that before this Convention takes action upon so important a matter, that it ought to be discussed, and we ought to thoroughly understand it. The object of that resolution is as I understand it, to protect sections of land for school purposes which are being taken under the mineral and other laws. It is suggested to my mind, Mr. President, that it would place this Convention in a very ridiculous position before the government of the United States, if that resolution was allowed to go to its President; why? Simply because there are established laws relating to public lands, and they stand upon the statute books of the country, and the President of the United States, nor no other power, in my judgment, Sir, has a right to abrogate those laws. William Andrew Jackson Sparks, if you please, a distinguished friend of Dakota's interests(?) tried that once, and it was held by the courts and everything else, that he had no right to suspend the laws of this country. I am constrained to repeat that it would place us in a very ridiculous position before our government.

Mr. Humphrey: It was my purpose to make an explanation concerning this matter; it is this; there is no purpose as indicated in the memorial that we propose either to petition for, or urge the setting aside of the Land Laws of the United States. It is a matter of common knowledge, and especially so throughout Dakota that there is no system of laws within the United States,—laws that have been in the books for years and yet in the application of which we are so much at sea as we are with regard to the land laws; the whole system of rulings and decisions is a matter of such complexity that it is impossible to determine anything definite about them. The facts of the case are, pertaining to this, that it is understood that there are parties endeavoring to secure patents of these lands and are doing it without sufficiently establishing their just title and right to the same; the object of this resolution is to stop the issuing of patents prior to the parties having fully established their rights and at the same time aid in the protection of our school lands and preserve them from being frittered away and being fraudulently deprived of them. It is without the intention of setting aside, or urging the President to set aside any law. It is understood that parties who are anxious to accomplish the patents to these lands are pressing the matter, and are personally pressing it at Washington; I have no idea that they will hurry the officers there any, but

still, it is not impossible; and such things have been done. To prevent the possibility of their hastening action by providing that they be taken out of their order and acted upon before they all can be heard from,—that is the purpose and object of the memorial, and that is all.

Mr. Wood: There are some things in that Memorial, which I think it would be beyond question, going too far, for us to adopt. In the first place, the President has not really anything to do with the matter. These laws are for him to execute. It would be like a criminal judge suspending sentence after a verdict of guilty had been returned. There is a provision in the Federal Statutes for the protection of all parties in interest in this matter; the County Superintendents, if my recollection serves me right, are obligated by their official duties to see that no undue advantage is taken or any trespass committed upon the school lands, that is, lands that will be school lands, if we ever become a state. The laws are in force as the gentleman from Hyde has stated; under these laws the parties are undoubtedly proceeding, and we are asking the President of the United States to suspend such action as is being taken at present looking towards securing patent of this land. I think that that would be working very great hardship to those who are laboring in good faith to get title to coal lands and mineral lands. I do not believe you should memorialize the President to do anything of this character. If there are known cases in which frauds are being perpetrated, let these committees name those cases,—name those individuals who are liable to make an attempt to defraud the government, but do not strike at everybody; because one man is endeavoring to pick up a quarter section of land as coal land it is no reason for our memorializing the President to suspend patents and thus work great damage to our fellow citizens who are not endeavoring to defraud the government. I have a desire to protect the school lands, but we might make a greater mistake than Brother Sparks made in his day. It was acts of this character that worked all the hardship that was wrought upon the people of this State; the attempt to protect some counties against threatened fraud and bringing everybody else within the operation of the rule. This memorial covers too much; I hope the Convention will not pass it. As I said before, there must be in the mind of some member or members of this Convention specific cases. Now, if there

are such, name those cases; if I had any such cases in mind, I would name them; if I had any evidence of the fact that an attempt was about to be made to fraudulently obtain any of the school lands in South Dakota I would describe the land if I knew the numbers, and if I did not, I would endeavor to ascertain the numbers, and would name the parties or corporations that were endeavoring to defraud the government; then I do not strike at the guilty and innocent alike; then I do not impede progress which we should not in any manner attempt to impede. Where is the case that suggested the inserting of this memorial, let that case be named; let the parties in connection with it be named; it might strike at some of the delegates for all I know; I am sure however, not among the Democrats of the Convention. (Laughter.)

Mr. Sherwood: It seems to me that this resolution is a proper one; the matter of the school lands is of too much importance at this time to be trifled with; it is I think, a question of as great importance as will come before this Convention. It seems to me the gentlemen upon the other side have misapprehended the idea of the resolution. I do not think this is a matter of overriding the laws; I think it is a matter of overloading the courts; that parties interested in this action upon the one side may have a chance to be heard. Today we have no reputation at all anywhere; we stand in the position of law, of being represented by nobody; we cannot appear in these courts and plead for these school sections which are our heritage. This is a matter between the United States and individuals; the individuals take the property and appropriate it to their own use; nobody appears on the part of the United States; whereas, when we become a state, this land will vest in the State, and the State will then have the right to appear before the court and protect its interests. Today it has no title to this land at all; it cannot appear in the courts or proceedings against the United States, or against a party; therefore, I say in order to give both sides a chance to be heard, and give the State, or the people of the State, who are interested in these lands, and whose heritage these lands shall be, a right to be heard, this memorial should be forwarded to the President. It will work no great hardship to now suspend all proceedings of this character until the people of the State of South Dakota shall be represented in their capacity

as a state, I think that is fair, just and legal. I support the proposition.

Mr. Dickinson: I raise the question of order as whether memorializing the President or officers of the government as School Lands, or Artesian Basin Survey, or anything of that sort is within the scope of the work of this Constitutional Convention? It seems to me we are here to modify a constitution as per the Omnibus Bill and not for these questions or resolutions.

The President: I apprehend a memorial sent in in the nature of a petition, may with perfect propriety be sent to the President of the United States or any other department of government, whether it be the act of a town meeting, or body of clergymen, or anybody else.

Mr. Huntley: It is true that certain sections of our school lands are being sought out by parties, with a view of securing a portion of them, under the mineral laws, whether there is any legal ground or not; they are seeking to divert them from their proper channel. We will say this section here, that Sioux Falls would be near, another at Huron, and some others are mentioned that there are now parties at work endeavoring to secure portions of these sections as mineral lands because of their great value. This is a matter that concerns this Convention and the rest of the State; that if such attempts are in progress that we ought to bring about such delay as will give the State an opportunity for defense. That is about what this Memorial can do; I hope it will pass and pass unanimously.

Mr. Davies: If there is a serious grievance it ought to be met, but if we do it, let us do it properly; if we are not sure the President of the United States is the proper person to memorialize, let us seek the Department of the Interior; even the Department of Agriculture would be nearer than the President. We might send to any department, and in due course of time it would get to the right place although not properly directed. But, Sir, if it takes its usual course, we will be dead long before it ever reaches its destination. It will reach the President who will refer it to the Committee, who will pigeon-hole it; or send it on its rounds through the departments.

Again, it is too general; it is the same objection that we have to the general orders that they are something either good, bad or indifferent. There are doubtless men, today that have developed

mineral claims, and are today engaged in doing so, and those who are, in good faith, ought not to be hindered in order to find out who are not acting in good faith. I presume this affects the section of the Black Hills more than any other; I would be pleased to know something in reference to the amount of this grievance. In this section of the Territory I do not apprehend it is very serious. When we become a state, although we have our representatives in Washington, we cannot go there and in two minutes turn everything upside down, and get things just as we would like them; those who have been states long before we ever became a Territory have grievances today that existed years and years. I dare say, if we were to start today and land in Washington tomorrow morning and find Congress in session that then we could not have our grievances settled by next October, when we hope to be a state. Let us consider whether it is practical; let us consider whether it is feasible; let us consider whether it is possible before we go to the President with such a memorial.

Mr. Wood: The Rapid City settlement was in advance of the public surveys, and one section was entered under what was known as the Townsite Law, they filed upon one-half of section thirty-six, Township two, north of Range seven, east of the Black Hills Meridian; this is now within the corporate limits of Rapid City. Last year, or a year ago, coal was discovered in that vicinity, and filings were made by two individuals on this land; two quarter sections. There has been expended cash, at a cost of about six thousand dollars as I understand it, arranging their diamond drill and running the same for the purpose of going down to discover coal. When I came away, they had reached a depth of something over six hundred feet and no coal had been discovered; it was reported that they had as yet discovered nothing. Whether this is an attempt at defrauding the State out of its right and title to this land is more than I can tell. Sure it is the efforts put forward by these parties were fair, and didn't disclose to my mind any fraud or idea, or intention to take any undue advantage nor to procure title to property that they would not be entitled to receive under the law. If there is any facts connected with the entries that will suggest to anyone that they are to get the title unfairly, it has yet to come to my knowledge.

I have heard of another case, I think in Turner County; it

is this side of the river; but I think no application for title has been made. It seems that Section 36, Township ninety-eight, Range fifty-one, and Section sixteen, Township ninety-eight, Range fifty, similar efforts are being made. I am not acquainted with the facts of these cases; I have suggested all that I know concerning the lands. I will state the land that I have been informing the Convention concerning is now very valuable; worth from three to five hundred dollars an acre.

Mr. Huntley: I think that those gentlemen who are thus honestly pressing their claims for these mineral lands should not suffer great hardship or further delay in receiving their patents. I can remember that good Brother Sparks (who has been alluded to) thought there were so many frauds out in Dakota, issued an order that all patents should be delayed five years. I know that my patent was delayed four years; I didn't complain about it; maybe some people suffered hardship under that rule. We do not wish to deprive anybody of their rights; we do not propose it in this Memorial; simply that delay be had until the matter may be inquired into. I waited four years; I waited patiently; I got my patent all right. Perhaps I will say that I did think Mr. Sparks was a little too exacting. I trust that this Memorial, if sent, will not keep anyone waiting four years; I simply ask it to delay this matter until we become a state. And certainly that is not an unjust, nor is it an extraordinary request; and if there are those in the Black Hills who have claims they are honestly presenting, and who, under the laws, are entitled to patents to portions of those coal lands, they will get their rights in due time. I believe this Convention will be doing its duty by the people who sent us here, to do all that lies in our power to prevent any of these frauds, that have been attempted, or are being attempted.

Mr. Hole: Mr. President; there are some features of this Memorial that certainly are correct. There are some features that I want to support but I do not want to support it as submitted. It strikes me that if this should be submitted at all, it should be submitted to the head of the department to which it belongs. That is the only way to have any document of this kind acted upon in time to be of any service. Again it seems to me that this Memorial might be changed so that it can in no case work hardship. For instance the Department of the Interior is provided with attorneys

to protect just such cases. Let the Memorial ask that the attorneys provided by the government protect our rights; be called upon in these cases. Let the cases be specified and if necessary let the school lands of Dakota be included so that whenever patents are asked for upon lands that may possibly become school lands in Dakota that that matter first be referred to the proper department to protect our interests. Then we do not stultify ourselves with the administration. We simply, by allowing this to go on, work justice to all and hardship to none and we protect the school lands at the same time. I think that should be the object of this Memorial. In view of this, and wishing to support it in the main, I would move, gentlemen, that this be referred back to the Committee for re-consideration and amendment so as to meet that desired end.

Mr. Cooper: I think the Memorial is entirely unnecessary for this reason: I do not believe for a moment that the school lands can be fraudulently appropriated by any man in this Territory; certain steps have got to be taken by any person or class of persons who desire to secure title to school lands under the mineral laws. That is a matter of record; it is a matter that comes before the public, they have to advertise during a certain time that they will offer proof; they have to give their testimony under oath; and if that land is in the vicinity of Huron or Sioux Falls or Mitchell, I do not believe that the real estate men of this country are going to sit around and see them gobble up that land unless it is mineral land, and if it is any distance from these towns the prices which these men will have to pay for this land is far more than will be required to buy the land within three or four miles of the best cities in this State; so I do not believe that it is necessary in the first place for the reason I do not believe it is possible under the existing order of things to secure any of this land fraudulently. I believe that when the first attempt of that kind was made that a hundred protests would be filed and then it is the duty of the special agents that are sent out here, to protect the interests of the people and protect the interests of the government. One gentleman a few moments ago said, "We will see to it that unless these lands are mineral lands that they shall not be appropriated"; while the gentleman from Turner County (Mr. Huntley) says that he made no complaint when he waited long weary years for his patent. I must congratulate him that he is the only gentleman that I have

met that did not make complaint. I see in this action a reflection upon the people of South Dakota; it ought to be voted down.

Mr. Young: As a member of the Committee on Education and School Lands I wish to make a word of explanation. In the first place there is a difference under the United States statutes between mineral lands and coal lands. The process for getting a patent to coal lands is much shorter and less tedious than getting a patent to mineral lands. The memorial calls attention only to certain valuable sections of land in the mineral districts of the Territory. The memorial calls attention only to certain valuable sections of land in certain agricultural districts of the Territory, contiguous to towns and cities of considerable size. I would suggest that it does not refer to any proceedings or applications for patents on the part of miners in the Black Hills district at all. Let me say with regard to the address of this memorial, that it seems to me such a friend of Dakota as we have in the President of the United States is pre-eminently the man to whom to send a petition from such a body as the Constitutional Convention of South Dakota.

Mr. Davies: I want to explain myself in my position on this resolution. I want to vote for it; and the only object I had in view was debate, and if it was presented in proper manner to Congress or the proper department, I am not opposing this measure.

Mr. Humphrey: Just one word with regard to the amendment that is moved; we have three departments; we have the Executive, the Judiciary and the Legislative. The President of the United States is at the head of that one department; this comes within that department. We present to him our memorial; he will refer it to the proper bureau or department in his executive department. This is the direct way of placing it before the man who must act upon it. So much for its reference. Then in regard to one other point. I wish to state this, that there is a misapprehension of the intention of the Committee that they are making an attack upon any location; but it is a well known fact that there has ever been a disposition to take advantage and any advantage that they can of the school lands. The action contemplated by this memorial, does not hinder any man's rights under the law, if any man has taken any steps within the law to secure title to these lands this will not prevent him. This is simply a stay of proceedings until the rights of Dakota can be secured.

Mr. Caldwell: As a matter of information I would like to ask whether or not in the event of a miner entering land which subsequently proves to be not mineral,—does the mineral entry still hold good the claim of title?

A Voice: No, Sir.

Mr. Caldwell: If it be the case, if it does not, it seems to me that the interests of the State are not jeopardized as much as might first appear. Of course, if the claimants to land shall be able to prove by testimony, that the land actually is mineral, they are certainly entitled to the operation of the mineral land laws of the country. And would be entitled to the possession of the land, but if they do not prove to be mineral lands, according to the answer which I have received, the title to the land reverts to the state,—or will revert to the government and from the government to the State, so that it does not seem to me cause for uneasiness if efforts are to be attended, or if unsuccessful experiments are to be prosecuted. It does not jeopardize or limit, the title of the State or whatever right it may have to the land.

Mr. Humphrey: I would like to ask the question, how can the gentleman understand that it is the intent of this memorial to deprive a party of the possession of the land? It is only intended to limit the acquisition of the title; if he gets the patent of it after a while, is he greatly inconvenienced? We do not propose to deprive a man of his rights to the land, simply to stay his procuring final title.

Mr. Lee: I rise to ask a favor. In order that we may understand what we are doing and the character and importance of this resolution, I desire to hear the memorial read again.

(Clerk reads.)

The President: The question before the Convention is to re-commit this report to the Committee on School Lands.

Mr. Wood: I call for the ayes and the nays.

The motion was lost by a vote of 28 ayes; nays 32.

Mr. Humphrey: I move the previous,—the adoption of the memorial.

Mr. Sherwood: I ask that the roll be called on the main question.

Mr. Wood: I desire to call the ayes and noes on the main question for the purpose of putting myself upon record as voting

no to a petition asking the President of the United States to do what he under the law has no authority to perform.

The vote upon the previous question resulted as follows:

AYES: Atkinson, Berdahl, Boucher, Buechler, Caldwell, Clough Cook, Cooper, Corson, Culver, Davies, Dickenson, Downing, Eddy, Edgerton of Yankton, Fellows, Gifford, Harris, Hartley, Heninger, Hole, Houlton, Huntley, Humphrey, Jolley, Lee, Matson, McCusick, McGillicuddy, Murphy, O'Brien, Peck, Ramsey, Ringsrud, Scollard, Sherwood, Smith, Spooner, Stoddard, Sterling, Stroupe, Thompson, Van Tassel, Wescott, Wheeler, Whitlock, Williams, Williamson, Wood of Spink, Zitka and Mr. President. (56).

NOES: Couchman, Diefendorf, Fowles, Goddard, Kellam, McFarland, Price and Wood of Pennington. (8).

The vote upon the adoption of the memorial resulted as follows:

AYES: Atkinson, Berdahl, Buechler, Clough, Cook, Corson, Culver, Davies, Dickinson, Downing, Eddy, Edgerton of Yankton, Gifford, Houlton, Huntley, Humphrey, Lee, Matson, McGillicuddy, O'Brien, Peck, Ringsrud, Sherwood, Smith, Spooner, Stoddard, Sterling, Stroupe, Thompson, Wescott, Wheeler, Willis, Williams, Williamson, Wood of Spink, and Mr. President. (36).

NOES: Boucher, Caldwell, Cooper, Couchman, Diefendorf, Fellows, Fowles, Goddard, Harris, Hartley, Heninger, Hole, Jolley, Kellam, McCusick, McFarland, Murphy, Price Ramsey, Scollard, Van Tassel, Whitlock, Wood of Pennington, Zitka. (24).

So the memorial was declared passed.

The President: The special orders appointed by the Convention, yesterday, will now be considered unless otherwise ordered by the Convention; there are two special orders for this hour.

Mr. Corson: With the consent of the second, I will withdraw my motion to reconsider.

The President: There being no objection it will be withdrawn; the Chair hears no objection, the motion is withdrawn.

Mr. Williams: If it is now in order, I have a motion which I would like to present to the Convention and have it read by the clerk, and upon such reading I will move the adoption of the motion.

Mr. Jolley: We are under a special order of business; unless the Convention shall order otherwise, it cannot be heard, if that refers to that special order of business it may be, otherwise it cannot be received,—except by unanimous consent.

Mr. Williams: I withdraw it at this time.

The President: The Clerk will read,—I have forgotten what we reached yesterday.

A Voice: Article 22.

Mr. Humphrey: I would ask consent of the Convention for an opportunity for the introduction of a motion that will dispose of this matter without the re-consideration of the proposition yesterday; I would like to read it and would like to ask unanimous consent for its introduction.

A Voice: I object.

The President: The Clerk will proceed.

Article 24, Prohibition.

The President: What committee will you have?

Mr. Atkinson: I move that it be referred to the Committee on Rights of Married Women.

The President: It will be so referred unless objection is made,—it is so referred,

Article 25, Minority Representation.

The President: It will be referred unless objection is made, to the Committee on Amendments and Revision of the Constitution.

Schedule and Ordinance,—referred to the Committee on Schedule and Ordinance.

Mr. Caldwell: I would object to this reference of the article on Minority Representation.

The President: It is too late; it is referred.

Form of Ballot,—

The President: Mr. Zitka, what will you have that referred to?

Voices: To the Committee on Election,—Schedule.

The President: It will be referred to the Committee on Schedule unless otherwise ordered by the Convention.

Mr. Clough: I move you that the motion by which Article 24 was referred to the Committee on Rights of Married Women be reconsidered. Would not the people of this Territory take that as an insult? I think that when it was so referred it was thoughtlessly done.

Mr. Atkinson: I disclaim any intention of making a joke of this matter; I was in earnest; it belongs to that Committee, who is more interested in these matters than married women?

Mr. Clough: I would add to my motion that it be referred to the Committee on Schedule.

The President: It is moved that the reference of Article 24 to the Committee on Rights of Married Women, be re-considered by the Convention and that it be referred to the Committee on Schedule.

Which motion prevailed.

Mr. Williams: I have a motion here which I would like read by the Clerk and then move its adoption by the Convention.

RESOLVED: That a committee of five be appointed by the President of this Convention, whose duty it shall be to procure from the custodian, the original Sioux Falls Constitution of 1885, and carefully compare the same with the Omnibus Bill and report to this Convention the changes therein authorized by the Omnibus Bill together with recommendations.

Mr. Williams: I move the adoption of that resolution.

Mr. Caldwell: I simply desire to say that the appointment of such a committee, with such powers as that, would practically wipe out every committee that has been appointed; it is the business of each standing committee to compare such parts of the Constitution as has been referred to it, and report to the Convention.

Mr. Williams: There was quite a discussion here yesterday as to what was the proper method of procedure in this Convention, in reference to this Sioux Falls Constitution. It was contended by some that this Convention is authorized and that it is its duty to submit an entire new Constitution if I understood the remark of the gentleman from Minnehaha County I take it this Convention is not yet lawfully in possession of the document before the people on the 14th day of May nor that this Convention may come into possession of this document in order to ascertain any further changes ordered to be made by the Omnibus Bill. Now that these matters may be brought before the Convention, and then referred to the proper committee is the object of the resolution. I find on looking through and reading a copy of the Constitution as presented in this pamphlet there are more than twenty changes authorized and there are other questions, that there is a difference of opinion. That those changes may be pointed out and those doubtful changes may be discussed is the purpose of this Committee, not to usurp any power or duty of the other Committees, the purpose of this

Committee is only to point out and indicate the section and line where changes are authorized; then these sections or portions will be referred to the proper Committees which is already appointed and not take away their power. It does seem to me that there ought to be a committee whose duty it would be to designate in a brief form the changes that are authorized and the powers that are granted or prohibited so that the special committee to which this subject of the Constitution is referred, may look into that matter. I have asked for a committee of five that each subject might be thoroughly discussed and disposed of in that way.

Mr. Price: I move that the motion be indefinitely postponed.

The motion coming to a vote was by rising vote, of forty ayes to eighteen naves declared indefinitely postponed.

Mr. Williamson: I move that the committees to which the several articles and sections of this Constitution have been referred, report to this Convention what changes, if any, must be made in such articles and sections in order that the same may comply with the provisions of the Omnibus Bill or Enabling Act.

Mr. Davies: I would like to ask the question for information, is not it already supposed that each committee is already authorized to report whether to make these changes or not and would a report be considered complete without reporting to the Committee on Phraseology all the changes required by the Omnibus Bill? That is the understanding is it not?

Mr. Williamson: My understanding is, that in this matter this Convention has no power to make any changes whatever in that Constitution except such as are required by the Enabling Act. The question came up in the discussion yesterday as to what powers was given to these committees by referring the several sections to them. Leaving the committees without any instruction upon that point leaves the implication upon the records of this Convention that these committees have power to make other changes than such as are contemplated in the Enabling Act. The inference might be drawn that this Convention assumed the power to make any other changes. Of course none believe any such thing, but that all the changes that can be made by this Convention, are only such changes as are required by the Enabling Act. I cannot conceive what duties the several committees to which these several sections are referred can have, except simply to refer back to this

Convention what changes are required to be made, report what those changes are, how these articles must be amended to conform to the requirements of the Enabling Act. If they were left without any instruction whatever, it might lead to confusion and uncertainty. I had intended if this original motion had been re-considered to offer this amendment to the original motion. I think now we have instructed the committees in this respect, that not even by implication do we attempt to assume any power and will amend no article or section except as directed by the Omnibus Bill. Simply instruct the committees about what their duties and powers are in that matter.

Mr. Humphrey: I am in favor of the motion; of the principles embodied in the motion, and if the motion to reconsider the reference of the Constitution had not been withdrawn I should have presented a similar motion to this Convention; it was the motion that I asked the consent to present; it embodied the same principles as that read to you with the exception that in its wording it is a little more general, and that we may choose between the two, I will move it as a substitute; permit me to read it.

Moved that the several committees provided for by the Rules of this Convention be directed to proceed to the discharge of their several duties, and report to this Convention only such changes and amendments to the Constitution as in their judgment are directed by, or are necessary in order to comply with the provisions of the Enabling Act, known as the Omnibus Bill, under the authority of which we are here convened, and by the provisions of which we must be guided and controlled.

Mr. Davies: Another question, I would ask, it is my understanding that the report of these committees comes before this Convention and that before that report is disposed of at all, there must be a vote of this Convention, either for or against it? If that is the understanding of the Convention, quite a number of members will be satisfied on this point. Quite a number seem to doubt, or to be at sea whether these reports are final, as I understand it the Convention as a body, will act upon each report before it is authentic. Am I right in this?

Mr. Williamson: I am perfectly willing to accept the substitute of the gentleman from Faulk County.

Mr. Caldwell: I think that there is no gentleman upon the

floor who will dispute the proposition that there can nothing go into this Constitution, as the one formed by this body, which does pass by a majority vote of this body, and that the action of the various committees are merely preliminary, the same as any other committee report has to be adopted before it is the action of the body.

Mr. Wood: It occurs to me that this resolution is simply to instruct the committees how to proceed. I do not know whether the committees that I form a part of, understand their business or not, but the chances are we will come somewhere near it and the other committees will perhaps understand their duties about as well as they will be informed by this resolution or any other of its kind. We ought not to pass a resolution of this character.

The interpretation of the resolution is simply exponent of the law and our convictions and what we propose to do here.

Mr. Price: Mr. Wood (of Pennington) expresses my views exactly upon this question. This Convention has been duly organized for business; we have a distinguished gentleman to preside over its deliberations; we have confidence in the honesty, integrity and competency (if you please) of the members who constitute this body, and I think as the President of this Convention stated yesterday he has made no mistake in the selection of his committees. These matters have been referred to these committees for consideration, and as has well been stated by the gentleman from Minnehaha County no part of this Constitution can become a part of the Organic law of this new State unless it is adopted by a majority vote of this Convention, and I say, Sir, without any disrespect to the gentleman who has introduced this resolution that it is an insult to the integrity, and competency and honesty of the gentlemen who compose this Convention, especially the committees to whom it has been referred. This resolution ought not to prevail.

Mr. Lee: I move that the resolution be laid upon the table. Which motion prevailed.

Mr. Boucher: I have a resolution I wish the Clerk would read. Clerk reads as follows:

That the people of the State of South Dakota hereby ordain and declare:

FIRST: That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this state shall ever be mo-

lested in person or property on account of his or her mode of religious worship.

SECOND: That the people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and the said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States, that the lands belonging to citizens of the United States residing within this State shall never be taxed at a higher rate than the lands belonging to residents of this State; that no taxes shall be imposed by this State on lands or property therein belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing herein shall preclude this State from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation but that all such lands shall be exempt from taxation by this State so long and to such extent as such act of Congress may prescribe.

THIRD: That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of the State and free from sectarian control.

Mr. Corson: I move that that be referred to the Committee on Schedule and Ordinance.

Mr. Sherwood: I move that it be referred to the Committee on Federal Relations; I propose it as an amendment to the gentleman's motion.

Which motion prevailed and the resolution was referred to the Committee of Federal Relation. By the President.

Mr. Clough: I have a little matter in the nature of a communication or resolution from a Sioux Falls Preacher's Meeting,—which upon being read will explain itself.

Clerk reads:

TO THE SOUTH DAKOTA CONSTITUTIONAL CONVENTION:
GENTLEMEN:—

This certifies that the following resolution: "Resolved that we call upon the Constitutional Convention to be held at Sioux Falls, July 4th, 1889, to be put about the election to be held in

October, such safeguards as shall insure an honest vote and to prevent colonization of voters, and we also ask that the election of state officers be, if possible, put on a different day from the vote on the Capital and Constitution". was unanimously passed at the Sioux Falls District Meeting of the Dakota Conference, held at Parker, May 21st to 23rd, 1889. This District includes twenty-three pastoral charges in the southern part of your rising commonwealth.

L. HARTSOUGH, President.

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

Mr. Sherwood: I would like to have the original motion, as amended, just preceding this last communication.

The President: The amendment made was in the nature of a substitution,—in effect a substitution clearly, but if the gentleman prefers the original motion put as amended, I will put it; I considered it as a substitute, and so ordered the reference.

Mr. Sterling: I move we do now adjourn.

Which motion prevailed.

