

## SEVENTH DAY.

Sioux Falls, Dakota, July 10, 1889.

Two o'clock P. M.

Convention called to order by the President.

The Chaplain: Oh Lord, our God, Thou who art the Ruler of the Universe, who are the God of nations, we thank Thee, that Thou hast given us the privilege of taking a part in this the formation of a government that shall be worthy the name of the children of a living God. We do ask Thee, that Thou wilt help each individual member of this Convention, that in our going out and coming in before this people we shall reflect credit upon those who have sent us here, and in the work that Thou hast intrusted to our hands may we do great good for humanity; in the name of Jesus Christ we ask these favors,

AMEN.

The President: The suggestion that I made yesterday afternoon I think will expedite matters somewhat and tend to stop encumbering the record; that where the Journal shows a clerical error only, for the delegates to call at the Clerk's desk afterwards and it will be corrected without taking the time of the Convention and without incumbering the records. If it is a substantial error needing the attention of the Convention, it may be better to call the attention of the Convention to it, but if a clerical error it can be changed by the Clerk at the Clerk's desk at any time.

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

Which motion prevailed by a rising vote of thirty ayes, to nineteen nays.

Mr. Spooner: I desire to present a resolution for the purpose of memorializing Congress upon the development of our artesian system, and request that it be referred to the Committee on Federal Relations and Internal Improvements.

Mr. Sterling: I ask for the reading of the resolution:

Thereupon the Clerk read as follows:

A Memorial to the Congress of the United States requesting the appointment of a Commission for the purpose of making a geological and hydrographic survey of the State:

TO THE CONGRESS OF THE UNITED STATES:

The Constitutional Convention of the State of South Dakota duly assembled, would respectfully represent to your honorable body that it has been demonstrated that within the limits of South Dakota there exists what is known as an artesian basin or system, but that its extent has not been fully determined. And that a desire is being generally expressed by the people of South Dakota that the matter be investigated and the extent of the system fully determined and its availability for the purposes of agriculture and manufactures be determined.

Now, therefore, the said Convention would respectfully memorialize your honorable body and request you to appoint at the earliest possible time a Commission for the purpose of making, and with power to make, a thorough and complete geological and hydrographic survey of the State, including the mineralogical formation of the Black Hills and the artesian basin of South Dakota, and that you make the necessary appropriations therefor.

The President: It will be referred as requested.

Mr. Jolley: I have a report from the Committee on Rules; I will read it.

Sioux Falls, Dakota, July 10, 1889.

MR. PRESIDENT:

Your Committee on Rules have instructed me to report that they recommend that Rule 33 shall be amended to read as follows:

RULE 33. All motions and resolutions not pertaining to the current business of the Convention, shall be, upon being read, referred by the President to the appropriate committee without debate, and such motion or resolution shall not be printed in the Journal until reported from the committee.

And I am further instructed by the Committee on Rules to report that they recommend an additional rule for the government of this Convention, to-wit;

RULE 45. That the President of this Convention is authorized and empowered to grant leave of absence to any member of this Convention for a period not to exceed three days.

JOHN L. JOLLEY,  
Chairman.

Mr. Jolley: I move the report of the Committee on Rules be adopted.

Which motion prevailed.

Mr. Caldwell: I would ask if this that has been just done means an amendment to the Rules?

The President: I understand it means an amendment of the rules in this: One rule is amended and a new rule added.

Mr. Jolley: Rule 33 is amended, and Rule 45 is a new rule.

Mr. Caldwell: I believe it is required that for an amendment of the Rules it is necessary that there be a two-thirds majority?

Mr. Jolley: The gentleman from Minnehaha is correct.

Mr. Caldwell: I raise the question that there is nothing but a roll call or registering the vote would show a vote to be a two-thirds majority. Where a special number of any deliberative body is required in order to adopt any measure we must do something which is documentary evidence of the fact that a sufficiency is secured,

Mr. Jolley: If there is no individual objects and no ayes and nays or division called for it is presumed that two-thirds are voting in the affirmative on a measure under consideration.

The President: There is a rule which reads differently in some of the states; in some of the states the constitutional provision is that in certain duties, it shall take two-thirds of all elected to the office to constitute a quorum; this is two-thirds of those present. I apprehend the usual rule is, that all those that are voting are the only ones considered voting, unless it lacks a quorum; and if all vote aye, and none vote no, it does not need a roll call to decide that two-thirds are voting aye. This will be the ruling of the Chair unless the Convention orders otherwise.

Mr. Sterling: I have a resolution I desire to present.

WHEREAS: It is provided by Section 11 of Article VIII of the Constitution that all moneys belonging to the school funds may be under such restrictions as the Legislature may direct, be loaned and

WHEREAS, Section IX of Article VIII of the Constitution provides no lands mentioned in this article shall be leased except for pasturage and meadow purposes.

BE IT RESOLVED: That said Section IX of the Constitution be so amended that said school lands may be leased for pasturage, meadow and agricultural purposes.

The President: What committee do you ask its reference to?

Mr. Sterling: The Committee on School Lands.

Mr. Price: I desire to present a resolution, and desire to have it referred to the Committee on State Institutions; and here is another I desire to go to the Legislative Committee.



The President: The Secretary will read for the information of the Convention.

The Clerk: A proposition to amend Section III of Article III of the constitution of 1885:

RESOLVED: That Section Three of Article Three of the Constitution of 1885, be amended by striking out "who shall not have attained the age of twenty-five years" where they appear in the first and second clause of said Section Three.

The President: That is referred to the Legislative Committee.

The Clerk: Proposition to amend Section I of Article XIV:

RESOLVED: That the charitable and penal institutions of the State of South Dakota shall consist of a penitentiary, insane hospital, a school for the deaf and dumb, a school for the blind, a school for feeble minded children, a reform school, and such other charitable and penal institutions as may be provided by law.

The President: That is referred to the Committee on State Institutions.

Mr. Clough: I offer the following resolution:

RESOLVED: That in all counties where no Auditors exist, one shall be elected in conformity with the Constitution at the October election.

The President: Referred to the Committee on Schedule.

Mr. Dickenson: Have we not a special order for today—reading of the Constitution?

The President: The Secretary will proceed to read the Constitution under the order of the Convention, yesterday.

The Clerk: Article 1, Name and Boundary,—

Mr. Zitka: If the Convention wishes to signify certain portions, I am willing.

The President: Do I understand that as the Clerk finishes reading one section or article that he waits for the members of the Convention to make any suggestions with reference to referring such propositions to certain committees?

Mr. Zitka: I think that would be better; the Clerk will read, and at the end of each article, wait just a moment.

Mr. Caldwell: I would suggest that the Constitution be read merely by captions of the various articles; it would be sufficient to indicate the proper committee to which the body of the article be referred, as the purpose of this reading is merely for reference by title it seems to me it will be accomplished faster; I make that motion, Mr. President.

Which motion was duly seconded.



Mr. Goddard: Have we any authority to copy anything that we know is unreliable as the copy of the Constitutions are?

The President: I suppose if its accuracy is questioned it will have to be compared with the official copy of the Constitution which will probably reach here tonight. I shall place the other at the disposal of the Chairman of the proper committee.

Mr. Lee: Would not it be wise to postpone this reading until the other comes, and save reading it twice?

Mr. Caldwell: However desirable it might be for general purposes to have a correct copy of the Constitution, it can hardly be regarded as necessary for the purposes for which the motion is made,—which is merely that the various portions of the Constitution may be referred to the proper committee.

The President: The motion before the Convention is that the Constitution be read by separate articles so that the Convention may be informed that certain propositions may be referred to proper committees; the gentleman from Minnehaha moves an amendment, that instead of the articles being read, that the captions of each article be read for the information of the Convention; it is upon the amendment the Convention will now act.

The amendment prevailed.

The President: The Secretary will proceed and read the captions of each article.

The Clerk: Article 1: Name and Boundary.

Mr. Caldwell: The reference will be made by the President of the Convention without a formal motion from the body of the House.

The President: What did I understand?

Mr. Caldwell: That the reference to the proper committee will be made by the President of the Convention; as the caption of the article is read, the President will announce the Committee to which it is referred. At least that is the ordinary practice.

The President: If it is the ordinary practice, it is where I never have been; this is the Constitution that the people have ratified. This does not have to be referred except as the committee itself may act upon it. If it is a resolution that comes in, it may be referred.

Mr. Caldwell: It was the purpose as stated by the gentleman who made the motion and by the gentleman who moved the amend-

ment, that it be read merely for the purpose of dividing up the Constitution among the various committees, in order that it may be regularly and formally in the hands of these bodies that are to consider it and report their action to this Convention. It does not stand here therefore in the nature of a constitution that has been adopted by the people. Merely as an ordinary document for the consideration of this body and its reference would therefore simply be properly taking the course which ordinary matters for the consideration of the body to take.

The President: I would suggest to the gentleman from Minnehaha County, that I differ with him entirely as to the powers of this Convention; if the Convention so orders I shall make the reference.

Mr. Clough: I then move that at the reading of each one of these captions it be assigned to the proper committee.

Mr. Hole: It has been my understanding, and I think it is the common understanding that the fact when this was submitted to the people, it fixed this as the constitution of the State of Dakota, with few exceptions. I see no purpose, no object other than merely for comparison that this Constitution be referred to any committee.

Mr. Davies: I think we are placing a great responsibility upon our worthy President in naming the committees in this way. It seems to me it will be a very difficult task for the President to refer these without any aid without placing the work in conflict with the work done yesterday where this same work has been referred to committees.

Mr. Caldwell: If I may be excused for speaking so many times, I would say, that of course these various committees, (for instance, on Name and Boundary) all these various committees have been appointed but they can act only upon such matters as are definitely and regularly referred to them by this body. While it is true that this Constitution has been adopted by the people, still there are many portions of it other than those enumerated in the Enabling Act which will require some sort of fixing and change, in order that they shall agree with the requirements of the Omnibus Bill. I find there are some provisions in this Constitution, which will not need to be changed or amended, still nevertheless they ought to go to the various committees to be reported back to this House and then be incorporated in a definite official formal document

which shall be prepared by this body to be submitted to the people next October. It does not make any difference whether any particular proposition has any change in it whatever; it nevertheless has to be voted upon, has to be first submitted by this Convention; the fact of the provision having been approved at the election in September, 1885, does not give it any standing as a part of the fundamental law of this commonwealth at this time, and as stated by the gentleman from Bon Homme the purpose of this reference is to refer this document to the various committees in order that it may be properly reported to this body; I would therefore again respectfully refer to the motion which has been made.

The President: The question before the Convention is whether these separate articles shall be referred to the separate committees; the Constitution called the "Sioux Falls Constitution".

The motion prevailed.

Mr. Huntley: As the Secretary proceeds to read the captions, I move that the President assign it to the various committees.

The President: I have no idea that this Convention can amend one of these articles except that it comes within the requirements of the Omnibus Bill; I want it to be understood that this reference is by the Convention.

Mr. Zitka: I made the motion that the different provisions of this Constitution be referred so that those which might be changed may be considered by the proper committees and that those committees may turn to their work or proceed to work. Some of us are anxious to get home, and they do not know as yet what their duties are with reference to the Convention; therefore let the Constitution be referred to the different committees, that each committee may make their report after examination; if there is anything to do; let them do it,—if they cannot do anything, that ends their work. The captions in each and every one of these articles in this Constitution indicates to which committee that portion of the Constitution shall be referred, and I do not think there will be any difficulty whatever on the part of the President.

Mr. Young: I move the Preamble be referred to the Committee on Phraseology.

Mr. Caldwell: Not desiring to be captious, I would question that as being the proper reference; it seems me that it should go to the Committee on Bill of Rights. The very name, is the declaration



as to what is the purpose of this Committee on Arrangement and Phraseology; its functions comprise only the work of getting together in proper shape the matter which has finally been adopted by this Convention.

Mr. Young:: There is certainly nothing in this Preamble that interferes with any rights or that grants any of our personal rights; the subject matter is certainly now within the scope of the duties of the Committee on Bill of Rights. The changes to be made in the Preamble is simply to change the name of the state; it seems to me that comes purely within the scope of the duties of the Committee on Arrangement and Phraseology.

Mr. Boucher: It seems to me as I look at it, that as the President is to assign these captions, that this motion is out of order.

Mr. Sterling: I second the motion; it is my idea that there was no committee now to which this might be assigned; there is no committee given us by the Committee on Rules on Preamble; hence I think as the gentleman moved that the Committee on Arrangement and Phraseology is the proper Committee to which this might be referred, for the reasons stated.

Mr. Williams: It seems to me the only change that is necessary to be made is in the name of the State, that the proper committee would be the Committee on Name, Boundary and Seat of Government. Perhaps I am not informed.

Mr. Fellows: I move as an amendment, that it be referred to the Committee on Bill of Rights.

Which motion was lost by a rising vote of forty-one ayes, and fourteen nays.

The original motion prevailed, by a rising vote of thirty-eight ayes and ten nays.

The President: The Preamble stands referred to the Committee on Arrangement and Phraseology.

Clerk: Article 1, Name and Boundary.

The President: Unless otherwise directed, this will be referred to the Committee on Name and Boundary.

Clerk: Article 2, Division of the Powers of Government.

The President: Will the gentleman from Bon Homme indicate what committee he desires that referred to?

Mr. Zitka: I will leave it to you Mr. President, to indicate the Committee.

Mr. Caldwell: In order that the tail may go with the hide, I move that it be referred to the Committee on Arrangement and Phraseology.

Motion was not seconded.

Mr. Spooner: I move that it be referred to the Executive and Administrative Committee.

Which motion prevailed, and the President declared it so referred.

Clerk: Article 3, Legislative Department.

The President: Referred unless otherwise ordered, to the Legislative Committee, No. 3.

Clerk: Article 4, Executive Department.

The President: Unless otherwise ordered, to Committee No. 2, Executive Department.

Clerk: Article 5, Judicial Department.

The President: Committee No. 1, unless otherwise directed,—Judiciary.

Mr. Caldwell: I would call attention to the fact that part of Article 5, refers to apportionment of the Judicial Circuits of the State, and would ask if it might not be proper to refer so much of it to the Committee on Apportionment.

Mr. Caldwell: I withdraw the suggestion.

Clerk: Article 6, Bill of Rights.

The President: What committee will you have that referred to?

Mr. Westcott: I move that it be referred to the Committee on Bill of Rights.

The President: Referred to Committee No. 4, Bill of Rights.

Clerk: Article 7, Election and Right of Suffrage.

The President: Unless otherwise ordered, to Committee No. 5.

Article 8—Referred to Committee No. 8, Education and School Lands.

Article 9, County and Township Organization. Referred to Committee No. 11, County and Township Organization.

Article 10, Municipal Corporations. Referred to No. 9, Municipal Corporations.

Article 11, Revenue and Finance. Referred to No. 13, Revenue and Finance.

Article 12, Public Accounts and Expenditures. Referred to Committee No. 14.

Article 13, Public Indebtedness. Referred to Committee No. 12.

Article 14, State Institutions. Referred to Committee No. 15.

Article 15, Militia. Referred to Committee No. 22.

Article 16, Impeachment and Removal from Office.

Mr. Caldwell: I suggest the Judiciary Committee.

Mr. Zitka: I think the Legislative Committee is the proper Committee. The Legislature is the body that tries impeachments.

Mr. Price: I move that it be referred to the Legislative Committee.

Which motion was duly seconded.

Mr. Caldwell: Impeachment is certainly a judicial proceeding, and not legislative; it seems to me the original suggestion ought to prevail, that it be referred to the Judiciary Committee, not the Legislative; I offer as an amendment, that it be referred to the Judiciary Committee.

Which motion received a second.

Mr. Spooner called to the chair, and President Edgerton took the floor.

Gentlemen of the Convention: I do not concede for a moment that under the provisions of the Omnibus Bill, this Convention has any authority to adopt the course we are now pursuing. The interests at stake are far too momentous to make any mistake in this matter. It is for that reason that I present these views. I may not represent a majority of this Convention. It is my opinion that we cannot change a branch of this Constitution; we have these questions that have been ratified by the people and there is no power in this Convention to alter, or change or add to this article on impeachment. That is the question you are now referring. Taking from the Constitution and referring it to a committee they must act upon it; that is annulling the Constitution.

Mr. Caldwell: While I agree perfectly with the gentleman from Davison, that it is beyond the province of this Convention to order anything not contemplated by the Omnibus Bill, it is nevertheless a fact that this Convention will very much expedite its business if it shall refer these various subjects to proper committees and allow them to inform the Convention by their examin-



ation as to whether or not there be anything contained within any particular Article that may or may not come within the scope of the Enabling Act. The Enabling Act, in addition to providing certain specific changes, such as those referring to the name of the state, and such as referring to the boundary of the state, and such as referring to apportionments, also requires that there shall be such other changes as shall be necessary to make this Constitution comply with the requirements of the Enabling Act. Now whether or not there be anything in the particular Article, needing change, this Convention cannot at this time determine, and it could scarcely determine otherwise than by having it read; a much better way, and the way which was contemplated by the gentleman who offered the motion which prevailed here, was that these various portions of the Constitution should be referred to these several committees, not that changes which are necessary be reported by such committees but that such committee should determine whether or not there is anything in the respective provision that does need changing. This is a matter which it seems to me is freely within the scope of the powers of this Convention and of its Committees. Take for instance the Preamble; now there is nothing in the Enabling act which refers to any change in the Preamble; nevertheless a change in the Preamble is necessary, because it reads, "We the people of Dakota". There is to be a change in the name of this commonwealth, and that name must be stated,—at least suggested or best brought before this Convention for action, by having it come in the way of a report from a committee. As I say with regard to this particular Article 16, whether or not there be anything in that that necessitates a change in order that it shall comply with the provisions of the Enabling Act, how is the Convention to know; each member may know by reading whether or not that be the case, but this Convention as a body cannot know it until it be communicated to it and that particular part be before it; it therefore seems to me to be perfectly practical, and absolutely necessary that every article,—that every part and parcel of this Constitution and the Schedule and Ordinance, should be referred in order that the action or non-action may come before this Convention regularly and properly.

Mr. Jolley: I do not see for the life of me, why there is to be any value attached to this document, the Constitution of the

Convention of 1885, outside of the fact that they did their work and signed it. The people last May said they would support by a large majority the Sioux Falls Constitution and that a constitutional convention should meet here to make such changes as should be made under the Enabling Act. That constitution so passed by a constitutional convention in 1885 was an instrument signed by men composing that Constitutional Convention, who then submitted it to the people; that instrument, as an instrument, has nothing at all to do with this Convention; we do not know what it is; it can't come before us, it is something that has to be referred to our Committees here in order to know what it is. How can it more properly be done, than in this manner? For instance the question, Impeachment and Removal from Office, is submitted to a committee; there possibly may not be any changes in it; there certainly is not that I have seen from reading it through since this discussion began. But, Sir, when that committee comes in, and says that that is the Article that we report as your committee on Impeachment and Removal from Office, and it is adopted and ratified by this Convention, then it is the act of this Convention. There is no other way that we can tell whether changes can be made; and there is no member on the floor of this Convention that will watch any closer not to violate the provisions of the Omnibus Bill, than I will. I have lived too long in this country as a territory to risk again, the chance of voting. I will go as far as the gentleman from Davison; as far as he can possibly do to avoid overstepping our powers under the Omnibus Bill, but I cannot possible see how this Convention can take action without these propositions are referred to committees, and they may make their report to this body for their final action. That constitution that was passed in 1885, is in the hands of the President of this Convention to remain there until he places it in the hands of the Secretary of the State of South Dakota. He is the custodian of it now. It is not before this Convention in any way; but it can be brought before these committees and they can by comparison decide whether it is the same constitution adopted at that time,—and then report to this Convention, and this Convention then votes on those articles. We cannot adopt a Constitution not in the hands of this Convention; we cannot say what it is; we cannot sign an article if it remains in our President's hands; it cannot be enrolled in his hands. It cannot

be brought before this body in any other way than by reference; it cannot be considered by committee without reference.

Mr. Edgerton from Davison: I may have been in fault; I stated my opinion fairly upon this floor as a lawyer; I have no doubt upon the proposition; not the least in the world, but if it will satisfy the gentleman, I will withdraw all opposition; but for myself I do not think Col. Jolley and myself will differ upon that, that it is impossible for this Convention to alter a single phrase of that Constitution except upon the grounds made in the Omnibus Bill; it cannot be done; but if it will satisfy these two gentlemen that they vote upon it again, I am satisfied. I thought the reference might possibly imply the right to change, so I interposed this objection, but if it will satisfy anyone that it shall be referred, I have no objection. This may be said in its favor; I didn't know yesterday, when I made the long list of committees, that many of them would not have much to do, and if this will exalt the character of these committees that I appointed yesterday and give them more prominence before this Convention, and in the State, I would be the last one to throw a straw in their way. I do not know how many of my friends are upon these committees, but in order that those committees may be exalted, I withdraw all objection and let all these articles go before these committees as if they had never been ratified by a former convention, elected by the people of 1885, as if it never had been ratified by Congress, and yet not ratified by the people on the 4th of May last; I withdraw all objection and let it come before the committees.

Mr. Jolley: So far as I am concerned myself; I hope I am not so foolhardy as to set myself up upon so bold a proposition as stated by the gentleman from Davison,—if he supposes that is my position. I supposed, Sir, that the gentleman from Davison, and myself were both delegates in this Convention, each entitled to an opinion, and if we differ, we can differ as gentlemen, and that is the way we do; I state it is, as far as I am concerned. I will state again to the gentleman from Davison, that I will go as far as he will not to change any article in the Constitution that the Omnibus Bill does not allow us to change; I will oppose dotting an "i" or crossing a "t" that the Omnibus Bill does not unqualifiedly allow; yet I do contend that the only way we can get at it is by referring it to committees and have the committees report.



Mr. Hole: I have no special objection that this go to the committees; that may be the best way to facilitate the work of this Convention, but I think it should be distinctly and unqualifiedly understood that that part of this constitution that has been ratified by the people, and wherein we have no manner of right to charge that that stands as the people have adopted it; we do not need to adopt that over again.

Mr. Caldwell: In my judgement it makes no particular difference that the people of this commonwealth have adopted this Constitution, except that we have it here now; the fact that it is the Constitution of 1885, would make no particular difference; it would be as incumbent upon this body to take up every line of it, and re-adopt it now, as it was for it to have been adopted first, because, when this document, the Constitution of 1889, shall go out from this body, not only must go out that part which may be ratified by this body, but there must go with it and with the seal of this Convention upon it, also, that part which may have been brought over from the Constitution of 1885, which was re-adopted on the 14th of last May; and those who maintain here the idea of the reference to committees, do not have any idea whatever of changing a single jot or tittle of that which ought not to be changed. But it is claimed by them, that in order that this body may have the action of the Convention of 1885 properly before it, that the Constitution of 1885, should be taken and allotted to these respective committees that have been appointed that they make the examination. It would be perfectly proper if this Convention should see fit, to go to work and examine it itself; it is necessary, however, that this Convention shall examine and shall know officially what was the action of the 1885 Convention; what is the document that Congress has said shall be preserved here; it is necessary that this Convention shall do it; it is necessary that this Convention shall do it as a body,—determine what there is in the action of the Constitutional Convention of 1885, that shall remain,—and the very much easier and better way, is to allot the various portions of this document to the committees which have been appointed and allow them to report and thus bring the matter before this body; and if any other idea than this should prevail, what would be the result? There would have to be submitted to the people next October, two documents,—at least two parts of documents;

there would have to be submitted to the people next October for their re-adoption such parts of this Constitution of 1885 as were not changed, and there would have to go also such parts of this Constitution as were necessarily qualified by this Convention; the result would be that there would be twins presented to the people of this commonwealth for their adoption. It seems to me no such thing as that was contemplated by Congress; the object was that this Convention should frame a document out of what had already been ratified by the people with such limitations as were prescribed by this Enabling Act.

Mr. Edgerton, of Davison: I ask the indulgence of this Convention. The gentleman says, that unless all of these articles are re-adopted by this Constitutional Convention they have no place in the fundamental law of the State; that is not my understanding. I ask him this; suppose the majority of this Convention do not agree upon this article now under consideration, Impeachment and Removal from office, can this Convention blot it out after the people have ratified it twice, and after the Congress of the United States have sent it here under the existing circumstances? I deny that this Convention has got the power to blot out that article on impeachment. I had supposed that all objections were withdrawn; I withdrew all that I had; I want it referred to the separate committees so that every committee may have something to do; I announced to the Convention fairly that I withdrew all objection; it was only in answer to that one proposition that I asked the indulgence of the Convention.

Mr. Lee: I ask the Convention if Congress has not made a will, complete, signed, sealed and delivered? The Honorable Judge at my left, is right; we have no occasion or right to prate about the will; I do not believe we have any business to take up this matter and refer it to committees at all; it is already fixed; we cannot change it; we can take the whole business and look it over and come back and make a half a dozen changes that must be made, here in white and black. What is the use of spending our time for nothing?

Mr. Davies: I think this discussion will settle this point as to future points; it is not wasted time; it is something that is liable to come up at any time until the question is settled. I see no way out of this without reconsidering our work of yesterday. With

reference to the gentleman from Davison, and the other gentleman whose countenance I do not remember at once, I do not think there is that conflict which it might appear. It is true that we have light from both these sources; the Omnibus Bill is our authority; the moment we get out of that we find rough sailing. The Omnibus Bill contemplates that this Convention take every line and adopt it as it is when not necessary to modify it according to the directions of the Omnibus Bill,—to modify it when and where we are told to do so by that bill. In my opinion every line of this Constitution must have the stamp of this Convention upon it before we can present it to the people for their vote next October; that it is now understood that every article as presented to the committees,—that these committees understand that they are not to change only as the Omnibus Bill directly tells them so. This work will be simplified, and we can hasten on with it. The question, it seems to me, is one of reference to the committees. I shall favor reference to the Legislative Committee, if that is the motion before the House.

Chairman: Is the Convention ready for the question?

Mr. Zitka: The motion was, that Article 16 be referred to the Legislative Committee: "The House of Representatives shall have the sole power of impeachment. The concurrence of a majority of all members elected shall be necessary to an impeachment". What would be more proper than the Legislative Committee for this reference? Impeachments are tried by the Legislature, and every member of the Legislature is judge. Therefore, I insist as far as my vote is concerned, that it be referred to the Legislative Committee.

Mr. Caldwell: I ask that the gentleman will look at Section 3; while of course Section 1 refers to Legislative Impeachment, there is a good deal more under the order of impeachment than impeachment of the members of the Legislature; Section 3 reads:

(Here insert Section 3, Article 16.)

Certainly that is judicial matter.

Mr. Wescott: I move an amendment to the amendment before the House

The Chairman: The previous question is called for; I think the time for an amendment is passed; are you ready gentleman for the question?



Mr. Davies: Please state the question.

Mr. Wescott: Amendments are always in order. My amendment is that this question be referred to the Committee on Bill of Rights. The impeachment is the right of the general public; but at the same time there are rights on both sides. I move the question be referred to the Committee on Bill of Rights.

Mr. Jolley: What is the condition of the motion; how many amendments are there, please?

The Chairman: I believe there are two; there is no second to the last motion.

Mr. Jolley: I move an amendment to the amendment, that this bill be referred to the Committee on Military Affairs; my reason, Sir; for moving this Committee is, that the Chairman of that Committee is a man who during one day of the week preaches the Gospel, and he does all he can to preach religion in its purity; the other six days he is stirring up war and destruction and everything that's bad; the Chairman of the Committee that I ask that this be referred to is the fighting parson from Codrington County. (Laughter.)

Mr. Atkinson: I second the amendment to refer it to the Committee on Bill of Rights.

Which proposition to so refer was, upon coming to a vote, lost.

The Chairman: The question recurs upon the amendment to refer it to the Judiciary.

Mr. Dickinson: I rise to the point of order; if the main amendment or the original motion is now before us; the gentleman from Minnehaha County moved an amendment which was lost and the motion now refers to the original question.

The Clerk: Our record shows Mr. Price moved Article 16 be referred to the Legislative Committee and Mr. Caldwell moved to refer it to the Judiciary, which we are acting upon now.

A division of the House being called for the amendment was lost by rising vote.

The question recurring upon the original motion, the motion prevailed and Article 16 was referred to the Legislative Committee.

The Clerk: Article 17, Corporations.

The Chairman: Will the President assume his seat; I do not wish to refer these myself.

The President of the Convention again occupied the chair.

The President: What committee, Mr. Zitka, do you wish this referred to?

Mr. Zitka: Number ten, Corporations Other Than Banking and Municipal.

The President: It is so referred.

Article 18, Banking and Currency, was referred to Committee No. 21, Banking and Currency.

Article 19, Congressional and Legislative Apportionment was referred to Committee No. 16, Congressional and Legislative Apportionment.

Article 20, Seat of Government, was referred to Committee No. 6, Name, Boundaries and Seat of Government.

Article 21, Miscellaneous, was referred to No. 27, Miscellaneous Subjects.

Mr. Willis: I object. This Committee will have to be occupied with Section 5. I foresaw the trouble a moment ago that we would get in a squall like this; some women are not married—

The President: Does the gentleman ask this reference to any special committee or do you ask that a portion of it be referred to one Committee and a portion to another.

Mr. Willis: All I ask for is, that the Committee on Rights of Married Women have their portion of this Article, and if it is necessary, ask that it be substituted.

The President: If I understand the gentleman it is this, that Section 5, of Article 21, be referred to Committee No. 20 on Rights of Married Women.

Mr. Willis: Perhaps this motion should cover the whole ground that the different sections of this Article be referred to the Committees that are named.

Which motion prevailed.

The President: Section 1, of Article 21, is referred to Committee No. 25, Seal of State, Coat of Arms, and Design of Same.

Section No. 2 is referred to Committee No. 28, Compensation of Public Officers and Members.

Section No. 3,—to what committee will you have that referred?

Mr. Caldwell: I would suggest No. 27.

The President: It will be so referred.

Section 4, of Article 21, is referred to Committee No. 19, Exemptions and Personal.

Section 5 is referred to Committee No. 20.

The Clerk: Article 22.

The President: It is referred to Committee No. 7, Federal Relations.

Articles 23, Amendments and Revision of the Constitution, is referred to Committee No. 23, Amendments and Revision of the Constitution.

Article 24, Prohibition.

Judge Corson: I move that further consideration of this matter be postponed until two o'clock tomorrow; I propose to move a reconsideration of this matter in order to have this question discussed this afternoon and re-discussed tomorrow. I think we ought to have a full understanding of this matter before proceeding any further.

Mr. Hole: I second the motion of the gentleman from Lawrence.

Mr. Atkinson: I move we make this the special order tomorrow at ten o'clock and that when we do adjourn it be until ten o'clock.

Mr. Davies: There are committees to meet tomorrow and it will be impossible to do committee work and be here at the same time.

Mr. Dickinson: It seems to me that after the discussion of this subject that we have had now that we should go into a committee of the whole and discuss the proposition.

Mr. Corson: I object to that motion because this motion to postpone until two o'clock tomorrow is made for the express purpose that the members may look into this matter carefully. I desire to look into it myself a little more; I desire to examine it; it may be a very important question; I see by the Omnibus Bill that the Constitution adopted is to be re-submitted. Not the Constitution that we may make here, but the Constitution framed in the Convention of 1885, and adopted, it is to be re-submitted; not some other Constitution,—not something that we may make here; not such amendments as we may desire to make. In order that we can proceed intelligently we had better take one day to consider this matter. That we get into no false position in regard to this subject; hence I desire time to examine it; I think every mem-



ber here desires to examine it carefully and proceed with care in this matter because it is a matter of too much importance to proceed hastily; hence I hope the gentleman will not press the motion to take it up now because the motion is made to postpone it until tomorrow that every gentleman in this Convention may himself examine it, and among ourselves compare notes and get at the true methods on which we are to proceed. I therefore suggest again that it is an extremely important matter how this Constitution is to be handled in this Convention. To know what to do with the Constitution adopted in 1885 to be re-submitted in October. If we are ready to make a new one that is not the Constitution of 1885, it is another and different constitution, and there is doubt if we have any authority or power to make it. I merely throw out the suggestion for the purpose of showing the importance of the question before the Convention.

Mr. Lee: I think after we have all slept one more night we shall be satisfied to go by the Omnibus Bill, without any further debate.

The President: The gentleman from Lawrence moves the further consideration of this reference be postponed until tomorrow at two o'clock and made a special order for that hour. An amendment is proposed, that it be made a special order for tomorrow at ten o'clock, and when this Convention adjourn, it adjourn to meet at that hour. I would suggest Rule Thirty-four, unless it is changed makes the hour of meeting at two o'clock tomorrow; unless it is changed and the rule modified. If the Chair is right the amendment is not in order.

Mr. Atkinson: I withdraw the amendment.

The President: The motion before the Convention is, shall the further consideration of this order of business be postponed until tomorrow at two o'clock and made a special order for that time.

Which said motion prevailed.

Mr. Corson: I now move that the vote by which we adopted the resolution to read the Constitution and refer the different subjects to the proper committee be re-considered, and that motion be made the special order for tomorrow.

Motion duly seconded.

Mr. Dickinson: I believe in a full discussion of any matter

upon which we differ; it seems to me that there is no difference of opinion; I hear no suggestion from any of the speakers that they contend for an amendment of the Constitution. We only differ as to the methods of procedure in doing our work. I am for one very anxious that we get our work done and delay no longer than necessary; I wish we might accomplish more each day, in session and get through quicker; for that reason, I am opposed to this motion. My own understanding is that we have simply to deal with two documents, that we have no power of amendment at all; that we have our requirements in the Omnibus Bill to carry out, and this is a reference to the different committees only in order that if there is any change in accordance to the requirements of the Omnibus Bill, they can so report it. It seems to me a delay until tomorrow is an unnecessary delay; we might just as well settle that here as tomorrow.

Mr. Hole: As I understand the question, there is a radical difference; the one side assumes the necessity of re-adopting the Constitution; of going through and referring it to committees and having the report of the committees which pre-supposes the adoption of it. While upon the other hand the few that I have talked with is of the opinion that the reference is simply for the purpose of comparison; that we cannot adopt it; we have no such right as that; our only right is to review it and compare and see if it compares with the other, and is the Constitution of 1885 which has been voted upon by the people. All we have to do, and all we can do under the Omnibus Bill is merely to compare that and then make the necessary additions and carry out the intention of the Omnibus Bill. There is a direct confliction in this House and that question should be settled. I think if we have time to consider it I am satisfied we will settle it right; I do not want to see it settled this afternoon; I want to give it some study, for it may be very important.

Mr. Zitka: There was no intention on my part when I made this motion to revise the Constitution, nor do anything of the kind; simply to comply with the Omnibus Bill; to refer the Constitution to the different committees so that they may see what changes should be made according to the Omnibus Bill. That there are no portions of the Constitution which had no provision in the

Omnibus Bill; and if there is any parts of the Constitution which has no provision in the Omnibus Bill, to leave it alone without touching it; without doing anything with it; and what parts there are that require any changes—to make them. That was the only object. The only way to get at this was to refer the Constitution to the different committees; because if we took time in Committee of the Whole, or in Convention, it would take from one day to another and I think we would not get through this summer. As far as my experience goes, that is the only proper way to do it, and that we are far from unanimous upon that point and that this motion should prevail.

Mr. Caldwell: I would simply call attention to the Enabling Act, in Section Four: "Whereupon the said Convention" (referring to the four states proposed) "shall be, and are hereby authorized to form constitutions and state governments for said proposed states respectively." And then with regard to South Dakota particularly: "It shall be the duty of the Convention which may assemble at Sioux Falls, as herein provided, to re-submit to the people of South Dakota for ratification or rejection at the election hereinafter provided for in this act, the Constitution framed at Sioux Falls and adopted November 3, 1885, and also the articles and propositions separately submitted at that election, including the question of locating of the temporary seat of government, with such changes only as relate to the name and boundary of the proposed state, to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this Act."

There is to be a constitution formed; the powers of this body include that; and it is to be re-submitted; so that such submission as has been had heretofore, cuts no figure whatever. As I said previously, this Constitution of 1885, or one like it, might have been submitted annually for a thousand years and it would not have made any difference; would not have given it a single particle of validity, now or hereafter. The Congress of the United States has required this Convention, that it shall go to work and frame a Constitution; that it shall re-submit such parts of this Constitution of 1885 as may be brought over, or re-adopted by this Convention. Of course if this Convention, in its foolhardiness should see fit to run counter to the requirements of the Enabling Act, or the people



would, and to suppose that it is the purpose of any committee of this body or of this body itself to jeopardize statehood and all blessings which we have hoped from it, by attempting to enact here for submission to the people, something which is outside the province of this body as fixed by the Congress of the United States, is to suppose a foolhardiness, which I do not believe the history of this body will prove to have been just. The reference to a committee is certainly neither by implication nor by necessity nor upon any other consideration, any attempt whatever, or can be construed into an attempt to change anything; but as I said before it is necessary for this body to have regularly before it, what are the provisions of this Constitution of 1885, and the only way to do that is to take what purports to be the Constitution of 1885 and to submit or refer to these various committees these things which purport to be the provisions of the Constitution of 1885, and when these respective committees examine and compare them they will be able to notify and inform this Convention as to whether or not these various parts are contained within the document and by no other way can this information be secured unless this body itself shall go to work and make the comparison.

Mr. Davies: The two motions which have passed this Convention answer the purpose for which it was passed; to give us further time until tomorrow to consider all this, and it is well; but why now go to work and undo all we have done; why undo it until we do know, for we have until tomorrow to consider this very matter; if we find our work today is not right it will not then be too late to change and ask for a reconsideration of this whole matter. We as a convention are to re-consider and examine this Constitution with a view to meet the requirements of the Enabling Act; how? We have appointed the committees, and given this committee a certain portion, and that a certain portion to look over and report, and then we have the Convention as a Committee of the whole, if you please, who can consider every line that comes from every committee. The mere fact that a committee makes a report does not make the Constitution—does not take from this Convention one iota of power or authority. I see no reason therefore, why we should not sustain this second motion, and undo all we have done. Let us go on with whatever business is before us,

and if necessary tomorrow if this is to be the understanding, then re-consideration will be in time.

Mr. Corson: My motion was simply a motion to reconsider and postpone that until tomorrow, so that if we find we are proceeding regularly, it can be withdrawn and voted down; it delays nothing; there is no reason why the motion to reconsider should not stand until tomorrow; I think we had better make it today and let them go over together.

Mr. Willis: Give us time to consider whether or not we want this motion to reconsider, before us or not; let it remain as it is.

The President: The motion to reconsider the resolution by which the Constitution was ordered to be read section by section and referred to proper committees, that the consideration of that motion to reconsider may be postponed until tomorrow at two o'clock, until the time of the special order, if there is no objection that will be the order of the Convention; the Chair hears no objection; it is postponed until tomorrow at two o'clock.

Mr. Humphrey: I have a resolution I wish to offer, and a motion. I move that a committee of three be appointed to carefully proof read and compare the copy of the Constitution as found in Long's Legislative Hand Book, with the original copy now in the hands of the President of this Convention and report any and all errors or discrepancies existing between them.

Which motion was duly seconded.

Mr. Humphrey: My object in moving this covers a portion of the ground, which as I understood it, lead to the adoption of the motion yesterday, that we should read to this Convention the original copy of the Constitution; I had understood it was the purpose of some to have a proof read copy furnished every member of this Convention, of the Constitution a corrected copy,— so that whether it was referred by sections, or whether it was not referred, whenever a committee reported every member of this Convention would have in his possession a verified copy of the original document with which he could compare every report and every alteration proposed, and settle in his own mind and judgment whether it comes within the provisions of the Omnibus Bill. That we have no right to make any alterations whatever except as required by that bill, I believe is the judgment of every member of this Convention. It is for the purpose of placing in the hands of every member

of this Convention, the errata showing any changes or alterations that may exist; then if they are few they can be made with the pen, but if many, it may be proper for the Convention to provide a re-print of the Constitution proof read and verified, and place in the hands of the Convention.

The motion as made by the gentleman from Faulk prevailed.

The President: The committee provided for in the last motion will consist of Humphrey of Faulk, Mr. Dickinson and Mr. Zitka,

Mr. Caldwell: In order at least to have the matter suggested to the members of this Convention, I would make this inquiry, whether or not in this proof reading,—suppose that a manifest error should be observed in the official engrossed copy,—we will say an error in grammar, an error in punctuation, or an error in orthography, and say further that the aforesaid errors should have been corrected in this Long's Legislative Hand Book, is this Committee understood to be required to report that the correction be changed back to the error in the enrolled copy? And in that connection, while I am not speaking to any motion, I would at the same time, like to call the attention of the Convention to some matters pertinent to the suggestion which I have made; it is that unless this engrossed copy be a much better document clerically than documents of such character usually are, it is unavoidable that there shall have been many errors crept into it. There is one section, in which the change of a single letter in a single word did in my judgment precipitate a greater amount of argument with regard to the provisions of this Constitution during the campaign of last May than was precipitated by any other consideration; that is with regard to bribery, and its punishment. There is the word in the printed form in almost all the copies of the Constitution,—“for” should have been “of”; the language is as I recall it, “The offense for bribery or corruption”,—whether or not the error exists in the official copy I do not know, but it would seem to me and I would state it as my private judgment that it is within the purview of this Convention to make all such changes as that, which may be discovered in that enrolled copy, and I would therefore move that this Committee just appointed, shall be requested to report to this Convention precisely what discrepancy there may be between the copy of the Constitution as contained in Long's Legislative



Hand Book and the copy which is to be regarded as the official enrolled copy, in order that when the action of this Convention shall have been enrolled and engrossed, that no error which may have existed in the original enrolled copy may find its way into our work. It seems to me that changes of that character, while this Convention is not permitted to make amendments of a general character, still it seems to me that it is within the powers of this Convention to change those manifest errors which may exist in the enrolled copy, even in those articles which cannot be amended by this body. I believe that to be the case for the reason, that this Convention is required to prepare a constitution and is authorized to make such changes therein as are necessary in order that the result of this work shall comply with the requirements of the Enabling Act. The requirements of the Enabling Act most certainly are, that there shall be formed a document as free from these clerical errors as possible. Of course all the legal evidence there is of the Constitution of 1885, is the engrossed copy, and all this Committee are requested to do is to notify this body of the discrepancy between the enrolled copy and this copy here, and the matter will be brought officially to the attention of this body, and I will move that the Committee be requested to report every discrepancy of any sort, even in the matter of orthography,—even in the spelling of names of counties to be reported to this Convention.

Mr. Humphrey: I will request the gentleman to read the motion I made; it covers that ground.

Mr. Willis: I suggest that the gentleman from Minnehaha get credit for his speech all the same.

✱ On motion of Mr. Fellows, the Convention stood adjourned until tomorrow, July 11, 1889, at two o'clock, P. M.