

are indebted to us; the total between those accounts would be so much. We say—here, you have your institutions, we have ours; you assume yours, we assume ours, as settlement in full; we take our personal property, you taking yours; you are indebted to us so much, we are indebted to you so much.

Mr. HARRIS. I second the motion of Mr. SCOTT.

Mr. KELLAM. The motion of Mr. SCOTT is that each section of this Commission submit, at the next joint session to-morrow morning, a proposition of settlement involving all matters except the distribution of the archives and records of the Territory. The question is upon this motion. Are you ready for the question?

Question.

Mr. KELLAM. The Clerk will call the roll.

All members voted in the affirmative. Messrs. SPALDING and NEILL absent.

Mr. KELLAM. The motion is carried.

Mr. HARRIS. I move we adjourn until 9:30 o'clock to-morrow morning.

The motion was seconded and carried, and  
The Commission adjourned.

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## N I N T H   D A Y.

BISMARCK, *Thursday, July 25, 1889.*

The Commission met at 10 o'clock a. m. E. W. CAMP in the Chair.

Mr. CAMP. The Clerk will call the roll.

All members present except Messrs. HARRIS and SPALDING.

Mr. CAMP. There were to be two propositions submitted this morning—one from North and one from South Dakota.

Mr. McCLARREN, Clerk of the South Dakota Commission read the following proposition of the South Dakota Commission, as follows:

## PROPOSITION OF SOUTH DAKOTA COMMITTEE.

Public Institutions. Each State shall take the institutions located within its boundaries, with its appurtenances, furniture, etc., and shall assume the payment of all indebtedness against the Territory, on account of such institutions respectively.

That any unexpended balances, either from bonds or direct appropriations, remaining in the Territorial Treasury at the date of dissolution of the Territorial government, shall follow the institution on whose account such bonds were issued or appropriation made, and go to the State which takes such institution.

Miscellaneous Property. All other items and articles of personal property, except the Territorial library and records, shall be divided equally between North and South Dakota.

Territorial Library. Each Commission shall submit a sealed proposition stating a sum certain at which it is willing to take said library, including such books, records and volumes as may be added thereto up to the time of the dissolution of the Territorial government, and the library as aforesaid shall go to the section whose bid as above provided, is the highest, and at the amount so bid, and such sum shall be accounted for in the settlement to be made by the Joint Commission. This disposition shall also include the library in Auditor's office.

An arrangement shall be made by this Commission with the Territorial Auditor by which he shall keep and abstract the assessment returns from the several counties of the Territory in two classes or groups, putting and keeping the counties of North Dakota in one class, and the counties of South Dakota in another class, and such distinction and separation shall be maintained and preserved through the Auditor's and Treasurer's office, to the end that all taxes paid into the Territorial Treasury, from such assessment, by the counties of North Dakota and South Dakota respectively, shall be kept separate and distinct from each other.

Any and all claims of the Territory against counties on account of delinquent taxes shall go to and belong to the State within which such counties shall be located; and all credits for taxes overpaid by counties shall likewise go to the State within which such counties may be situated.

And balances of cash remaining on hand at the termination of the Territorial government, and not otherwise covered by this proposition, or appropriated by law, shall be equally divided between North and South Dakota; and all indebtedness, except as otherwise herein provided, shall be assumed and paid by North Dakota and South Dakota, share and share alike.

Mr. PURCELL. Read that first statement again.

Mr. KELLAM. " Each State shall take the institutions located within its boundaries, with its appurtenances, furniture, etc., and shall assume the payment of all indebtedness against the Territory on account of each institution respectively. That any unexpended balances, either from bonds or direct appropriations remaining in the Territorial Treasury at the time of dissolution of the Territorial government, shall follow the institution on

whose account such bonds were issued or appropriation made, and go to the State which takes such institution.”

Mr. HAYDEN read the following:

PROPOSITION OF NORTH DAKOTA.

*To the Joint Commission:*

The Committee from North Dakota makes the Joint Commission the following proposition:

All public institutions and buildings located in South Dakota shall be the property of South Dakota, which State shall assume and pay all the bonded indebtedness arising out of and issued for their construction, and the same as to North Dakota, except the Capitol at Bismarck. All personal property and miscellaneous effects now in South Dakota, except militia outfits and accoutrements, shall be the property of South Dakota; and all of the same in North Dakota, except militia outfits and accoutrements, and also excepting the furniture and fixtures of the Capitol at Bismarck, shall be the property of North Dakota. The State of South Dakota shall pay to the State of North Dakota, as a full settlement of unbalanced accounts, and of all claims against the Territory arising out of the unlawful taxation of the Northern Pacific Railroad lands, which claims shall be assumed by the State of North Dakota, the sum of \$60,000. Should South Dakota desire the State of North Dakota to assume the ownership and control of the Capitol at Bismarck with its furniture and fixtures, including all claims against the Territory arising out of the acceptance of the grant of lands made to the Territory for capital purposes, and further to assume its bonded indebtedness, the State of North Dakota will do so upon the payment by South Dakota to North Dakota the sum of \$40,000. All other unascertained and unliquidated debts of the Territory of Dakota shall, when proved, be borne equally by the States of North Dakota and South Dakota. And all claims in favor of the Territory shall accrue to the benefit of the respective States in like proportion. The State of North Dakota shall be entitled to all delinquent taxes due the Territory at this date from counties located in North Dakota, and the same as to South Dakota. From and after March 11, 1889, the State of South Dakota shall be credited with all taxes collected from counties within its boundaries, and charged with all moneys paid out by the Territory for appropriations made to the public institutions situated therein and one-half of all other expenditures, and the same as to North Dakota.

Mr. PRICE, How about the Public Library? I presume that is generally understood?

Mr. CALDWELL. That would come here on report of the committee.

Mr. CAMP. We are perfectly willing to let the Public Library go as suggested.

Mr. SCOTT. Yes, that was the understanding.

Mr. CAMP. I think it was.

Mr. KELLAM. Suppose you read that again.

Mr. CAMP. Gentleman requests that the offer of North Dakota be read again.

Mr. BROTT. Please read it a little slower.

The proposition was re-read.

Mr. CALDWELL. I suppose, Mr. CHAIRMAN, of course there will be necessity for each side to have time to consider the proposition made by the other side; and I would move you that further consideration of the propositions be postponed.

Mr. SCOTT. I suggest our Clerks be instructed to make copies for the use of the respective members of the Commission.

Mr. PRICE. Each member would like to have one.

Mr. CALDWELL. Yes.

Mr. KELLAM. Now we have a definite proposition from each side, and, of course, the propositions will be more fully and intelligently considered after they have been discussed by each side by ourselves, and it occurs to me perhaps we better take a recess, or adjourn until such later hour in the day as we can agree upon meeting, giving each side an opportunity by itself, to discuss these propositions.

Mr. PRICE. We might take this report of Messrs. CALDWELL and HARRIS.

Mr. KELLAM. If we can dispose of these propositions and reach an agreement upon the grounds covered by these propositions, why we have got the greater part of our work accomplished. I don't care particularly how it is done, but it occurs to me that we have got to give more thought and attention to this than to any one subject; and that the Library being disposed of as we have subsequently agreed, it leaves only the matter of the records. Now, I suggest that we better put it in the shape of a motion, but I would like to hear how the gentlemen of the other side feel about the matter.

Mr. NEILL. How long would you want to take that recess for?

Mr. KELLAM. My thought was until sometime this afternoon when these other gentlemen would be sufficiently at leisure to make an appointment.

Mr. SANDAGER. Would it be well to hear from the subcommittees who were to look into some of the affairs, such as the Library?

Mr. PURCELL. There is no question about that, Mr. SANDAGER; we have practically agreed, and we are to bid for it and the highest takes it.

Mr. KELLAM. Might we hear this report of Mr. CALDWELL,

and HARRIS. Mr. HARRIS isn't here. Probably during the afternoon by discussing these propositions amongst ourselves we can reach, upon each side, some point to which each side would be willing to go in coming together, but as I say, I am not captious, and don't care which plan we adopt, only Mr. HARRIS is not here and there are a good many questions arising in the discussion of that report, and we should like to hear from Mr. HARRIS. I am in the same condition Mr. CAMP is in regard to the military property. My idea was it did not belong to the Territory. There may be a liability to the general government on account, for these, but I suppose these arms still belong to the general government.

Mr. SCOTT. It is a fact the general government appropriates so much each year. I was talking to the Colonel of the First Regiment here—North Dakota—and he stated to me there was an appropriation of \$6,000 from the general government each year. We had received about \$19,000 or \$20,000 material from the general government that had been charged up to the Territory, but had not been paid. He thought about \$6,000 due from the federal government to the Territory, provided we looked out for it and got it before we went in as a State, because then the appropriations cease.

Mr. SANDAGER. I believe these appropriations are all due to the several companies, wherever located. I know our company at Lisbon are expecting an appropriation.

Mr. SCOTT. That is from the Territorial government.

Mr. PRICE. The Committee on Military Affairs might wire the authorities at Washington.

Mr. MCGILLYCUDDY. I had a letter yesterday from the Adjutant General.

ADJUTANT GENERAL'S OFFICE,  
REDFIELD, July 23, 1889.

V. T. MCGILLYCUDDY, BISMARCK, DAKOTA:

DEAR SIR: Yours of the 22d is received. Will write Gen. Carpenter, Chief of Supply, Watertown; Col. R. J. Wood, Chief of Ordnance, Sioux Falls, and Major Joseph Hare, Ordnance Officer, Bismarck. There was no report made last year. Will be *impossible* to make a *true* one now.

Respectfully yours,

J. S. HUSTON,  
Adjutant General.

I don't suppose when we get that report we will know any more than we do now.

Mr. KELLAM. I suppose Mr. CAMP—I noticed the reading of

this by Mr. HAYDEN—I suppose this exception of military outfits applies to both sections?

Mr. SCOTT. Yes, it says the same as to South Dakota.

Mr. KELLAM. That probably will cover it.

Mr. PRICE. It occurred to me this might be added “equally divided between the two States.”

Mr. SCOTT. I am informed there are eight pieces in the First Regiment in North Dakota, and thirteen pieces in South Dakota.

Mr. KELLAM. Twenty-one pieces?

Mr. PRICE. Yes.

Mr. SANDAGER. Telegraph to the Secretary of War at Washington, and try and see what is coming and what has been delivered.

Mr. MCGILLYCUDDY. Is there anything we can refer to? There ought to be some way of finding out. At the Capital of Dakota there ought to be some way of finding out.

Mr. SCOTT. The Adjutant General ought to know.

Mr. MCGILLYCUDDY. Unless we have something it will take a very long telegram to send it intelligently, unless we have some basis to go on. I think the shortest way would be for the Commission to go to Redfield.

Mr. CALDWELL. He don't know anything about it.

Mr. MCGILLYCUDDY. Is it not strange there is nothing in the records here?

Mr. CAMP. I think the Adjutant General could tell how many arms had been delivered to the Governor and other officials of the Territory of Dakota; how many had been debited to the Territory, and how much appropriations the Territory had been credited with.

Mr. PRICE. You certainly can get that information by wire from Washington.

Mr. MCGILLYCUDDY. Wire the Secretary of War, then. These arms—do they become the property of the Territory?

Mr. PRICE. That is what we appointed you for.

Mr. SCOTT. Get their arms from the Territory.

Mr. CALDWELL. Not their arms—it is just the clothing. Here is the law: Resolution approved July 3, 1876.

*Resolved, etc.,* That the Secretary of War is hereby authorized to cause to be issued to the Territories, and the States bordering thereon, such arms as he may deem necessary for their protection, not to exceed 1,000 to said States each; *Provided,* That such issue shall only be from arms owned by the govern-

ment which have been superceded and no longer issued to the army; *Provided, however,* That said arms shall be issued only in the following manner and upon the following conditions, namely: Upon the requisitions of the Governor of said States or Territories, showing the absolute necessity of arms for the protection of the citizens and their property against Indian raids into said States or Territories; also that militia companies are regularly organized and under the control of the Governors of said States or Territories, to whom said arms are to be issued, and that said Governor or Governors of said States or Territories shall give a good and sufficient bond for the return of said arms, or the payment of the same at such time as the Secretary of War may designate.

Mr. CAMP. That is not the law we want.

Mr. MCGILLYCUDDY. Then these don't cost the Territory anything unless they are lost. If North Dakota has not got enough you——

Mr. KELLAM. Mr. CAMP suggests this is not the law under which these arms are obtained.

Mr. SCOTT. South Dakota has more than we have.

Mr. MCGILLYCUDDY. That comes right down to the same proposition.

Mr. CALDWELL. Here is another law approved February 28th, 1887:

That the Secretary of War be, and he is hereby directed to cause the Territory of Dakota to be credited on its ordnance account with the sum of \$27,650 upon the delivery to the United States, at such place as the Secretary of War may direct, of all such arms and other ordnance stores remaining in the custody of said Territory of issues thereof under said act.—Approved February 28, 1887.

Mr. MCGILLYCUDDY. Has that been complied with?

Mr. CALDWELL. There is nothing in the possession of the Territory——

Mr. MCGILLYCUDDY. I don't see what we are trying to get at. There is something back of this, and why don't somebody come out and state it. There is an idea that somebody has got ahead on this arm business.

Mr. CAMP. I think there is another provision of the law we have not found yet.

Mr. SCOTT. Do you claim, Mr. CALDWELL, that these arms the companies have do not belong to the Territory?

Mr. CALDWELL. Yes, they don't belong to the Territory.

Mr. SCOTT. To whom do they belong?

Mr. CALDWELL. To the government.

Mr. SANDAGER. They are charged up to the Territory.

Mr. CALDWELL. They are charged to the government.

Mr. MCGILLYCUDDY. Who gave the bond?

Mr. CAMP. Governor Ordway.

Mr. CALDWELL. That has been released.

Mr. MCGILLYCUDDY. While Church was Governor?

Mr. CALDWELL. Yes, Governor Church got these.

Mr. CAMP. We understood that there was another matter; that there was \$6,000 appropriated to the Territory every year for arms. That is what we have understood.

Mr. CALDWELL. It is an original appropriation—I think \$3,500 to South Dakota and \$2,500 to North Dakota. It has been divided already.

Mr. CAMP. When was it made.

Mr. CALDWELL. Why, just this year, appropriation by the general government to all the States having a militia. It has been divided between the States.

Mr. BROTT. I think we better follow Mr. KELLAM's suggestion and have a recess.

Mr. KELLAM. If we can develop anything here we will have that disposed of. It is a matter I don't know anything about.

Mr. CALDWELL. That is not for arms, it is for general maintenance, as I understand it.

Mr. MCGILLYCUDDY. Who did you purchase the arms from?

Mr. CALDWELL. All the arms used by the militia in the Territory are United States arms, of whatever date. No other used. I don't think the United States government ever issues arms not in use.

Mr. SCOTT. I don't believe—but I believe they give the latest style of rifle.

Mr. MCGILLYCUDDY. The old '63.

Mr. SANDAGER. We have a better one down home.

Mr. HAYDEN. Those are different from what the companies have now.

Mr. SCOTT. Can't you look it up Mr. CALDWELL and see if that \$6,000 has been received, and whether North Dakota has her share and South Dakota her share?

Mr. CALDWELL. An Act to amend section 1661 of the Revised Statutes, making an annual appropriation to provide arms and equipments for the militia:



*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1661 of the Revised Statutes be, and the same is hereby amended and re-enacted so as to read as follows:*

SECTION 1. That the sum of \$400,000 is hereby annually appropriated for the purpose of providing arms, ordnance stores, quartermaster's stores, and camp equipage for issue to the militia.

SEC. 2. That said appropriation shall be apportioned among the several states and territories under the direction of the Secretary of War, according to the number of Senators and Representatives to which each state respectively is entitled in the Congress of the United States, and to the territories and District of Columbia such proportion and under such regulations as the President may prescribe; *Provided, however,* That no state shall be entitled to the benefits of the appropriation apportioned to it unless the number of its regularly enlisted, organized, and uniformed active militia shall be at least 100 men for each Senator and Representative to which the state is entitled in the Congress of the United States. And the amount of said appropriation which is thus determined not to be available shall be covered back into the Treasury.

This appropriation of \$400,000 to the states and territories is to be distributed according to the judgment of the President. It was divided between North Dakota and South Dakota, and I think it was something like \$2,700 to North Dakota and \$2,300 to South Dakota.

Mr CAMP. Do you know how it was the year before?

Mr. CALDWELL. No, I don't.

Mr. CAMP. There was a bond of \$19,000 put up.

Mr. CALDWELL. There is that \$27,500.

Mr. CAMP. I don't think that covers it.

Mr. CALDWELL. Covers all charges against the Territory up to that date, February 1, 1887.

Mr. CAMP. Now what page is that, that Act of February 28, 1887?

Mr. CALDWELL. Here is a preamble to that act:

WHEREAS, It appears from the records of the Ordnance Bureau of the War Department that the Territory of Dakota stands charged with the sum of \$27,650 for ordnance and ordnance stores issued to said Territory during the year 1887, under the provisions of the act of Congress approved April 7, 1886, entitled "An act to provide arms and ammunition for the defense of the inhabitants of Dakota Territory," all of said ordnance and ordnance stores having been drawn by the Territory of Dakota and used for the purpose of aiding the general government in the protection of the borders of said Territory against Indian invasions and depredations; and,

WHEREAS, Said ordnance was issued to the inhabitants of said Territory as in said act directed, and all of the same has been lost and rendered useless in service; therefore,

*Be it enacted, etc., That the Secretary of War, etc., etc.*

Mr. CAMP. Ordway's bond was given in 1882, so this credit was on those old arms.

Mr. ELLIOTT. Mr. CHAIRMAN: In order that the Commission may have time to consider the propositions submitted this morning by North Dakota and South Dakota, I move we adjourn until 3 o'clock this afternoon.

Mr. PURCELL. Make it 3:30.

Mr. ELLIOTT. Well, 3:30.

Mr. CAMP. That motion seconded?

The motion was seconded.

Mr. CAMP. You have heard the motion; all in favor say aye.

Carried. The commission stands adjourned until 3:30 o'clock p. m.

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The Commission was called to order at 3:40, Mr. CAMP in the chair. South Dakota members all present. North Dakota members all present except Mr. SPALDING.

Mr. CAMP. Gentlemen of the Commission, the time to convene has arrived.

Mr. CALDWELL. Mr. CHAIRMAN: I have been giving considerable time to considering this proposition as submitted by North Dakota, and, as is always the case in consideration of any document, there may arise questions as to construction, and, so far as I am concerned, I would like to request a more complete explanation of certain portions of this proposition, in order that I may know exactly what the proposition may be.

Mr. CAMP. It would be well to state——

Mr. CALDWELL. Yes, I was going to say, for instance, I would like an explanation of this paragraph: "The State of South Dakota shall pay to the State of North Dakota as a full settlement of unbalanced accounts and of all claims against the Territory arising out of the unlawful taxation of the Northern Pacific railroad lands, the sum of \$60,000."

Mr. PURCELL. Mr. CALDWELL, I think I stated the matter, which, perhaps, has been incorporated in the proposition, that numerous lands belonging to the Northern Pacific Railroad Company had been sold by different counties in North Dakota for taxes. In many of the counties the county treasurer was enjoined from selling those lands, which actually belong to the rail-

road company now. To some lands the injunction did not apply, but those lands which had been sold by the Northern Pacific Railroad Company to actual settlers was taxed and sold; and the purchasers at these sales in some of the counties have instituted actions against the treasurers to recover back the taxes paid. An estimate has been made of the amount of taxes that the Territory has received during the period, and by a rather conservative estimate we fixed upon the sum of \$60,000, as our statement shows. In my county suits are pending against the county treasurer; in the County of Stutsman suits are pending, and in other counties in North Dakota suits are now pending against the county treasurers to recover back the taxes which were realized from the sales. The \$60,000 is not alone for taxes; it is for the balance, as I understand, or difference in direct appropriations made between North and South Dakota, and other things.

Mr. CAMP. I will state in regard to the matter of taxes. In the first place, sales of lands for the taxes of 1880 and 1881 were enjoined, and the temporary injunction was dissolved and the lands sold in the fall of 1882, and in Stutsman county the sales and interest up to date amount to somewhere between \$70,000 and \$80,000 claims against the county. The case of Wallace vs. Stutsman county, which involves \$35,000 of these taxes, went against the county in our Supreme Court, and it is now upon appeal to the United States Supreme Court, and if the United States Supreme Court sustains the Supreme and District Courts of the Territory, Stutsman county will have to rebate to the holders of these tax certificates, between \$70,000 and \$80,000, and it may be a little over \$80,000. Of course, a portion of that money was for Territorial tax and was turned into the Territorial Treasury; Stutsman county made a claim against the Territory for that, at least a claim by a credit of that amount. That amount so paid to the Territorial Treasurer will probably be from \$7,000 to \$12,000. I cannot give the figures now although I did know them two years ago. And the same way with Barnes county and other counties along the line of the Northern Pacific railroad.

Mr. CALDWELL. How many counties are there involved that way?

Mr. CAMP. The counties of Barnes, Foster, Griggs, Steele, Traill, Richland, Ransom, Eddy, Wells, and I think Logan, little of Eddy, Burleigh, part of Emmons and Stark.

Mr. PRICE. Makes twenty counties.

Mr. CAMP. Then there is another claim which those counties have. Taxes now delinquent from the counties of North Dakota are on account of these same taxes levied upon railroad lands, never collected; some years the lands were sold for taxes and some years the tax was not collected. Of course if not collected they stand against the county, so it makes our delinquent tax list from North Dakota very large—equal to the whole delinquent taxes of South Dakota which has been running for years back. Probably two-thirds of the delinquencies are on account of these railroad lands which were assessed upon the assessment on which we are charged in the Territorial Treasury and never collected, the courts having enjoined us from collecting.

Mr. CALDWELL. Up to what time do you say this condition—

Mr. CAMP. Until now, because after the lands had been made taxable by act of Congress, the railroad companies, under the gross earnings law, enjoined the sales of the lands last fall, and the case was before the court at the last term at Yankton and is still pending. It may be we can collect these taxes for 1887; but prior to 1887 they were not taxable. And for 1887 and 1888 the railroad claims they were non-taxable by virtue of the gross earnings law. That is the way the case stands.

Mr. HARRIS. I would say the railroad companies enjoined the county treasurers from selling these lands for taxes at public sales for delinquent taxes, and that the tax of 1887 against the counties along the line of the Northern Pacific Railroad to-day is the bulk of their public taxes.

Mr. CALDWELL. If that be the case, we of South Dakota are asked to remunerate North Dakota to the extent of \$60,000 for unbalanced accounts and claims against the Territory, arising out of unlawful taxation of the Northern Pacific Railroad lands, and the difference is included within this proposition—a provision that in case of payment of the delinquent taxes they shall go to North Dakota.

Mr. CAMP. Yes, where the land tax will never be paid. There are delinquent taxes from Barnes and Stutsman counties which are legal; but the Territory can never collect those taxes which are illegal and which the courts have enjoined from collecting and cancelled the certificates.

Mr. CALDWELL. Then this provision in regard to the allowance to North Dakota for taxes unlawfully assessed against

the Northern Pacific Railroad lands is to apply, then, only to monies that is actually paid by the respective counties to the Territory?

Mr. CAMP. Not only that, but if you deduct from the delinquent taxes of North Dakota those which are delinquent because illegal, there will be a large balance due North Dakota from South Dakota on account of the difference in delinquent taxes.

Mr. CALDWELL. Well, it is possible that might have been the case. At the same time admitting that to be the case, I would not see what figure it would cut. But in regard to one county, Lawrence county, which owes the Territory, according to the taxes of the Territory a very large balance, some \$35,000, it is a fact that Lawrence county has, in regard to that matter, almost an entire set-off. That is to say: That owing to the fact that the charge of the Territory against any county for taxes is based upon the original assessment as made by the assessors and returned to the clerk without any deduction as made by the Equalizing Board; that return thus made is sent to the Auditor and is the basis for the Territory's claim against the county. The Equalization Board may then come in, as it has done upon the application of parties assessed, and make deductions from the assessments as returned by the assessor. At the time I was Auditor of the Territory, I sought to get these delinquencies off the books, such delinquencies as were attributable to the difference between the original assessment and the equalized assessment, and in a large number of counties I succeeded in doing so; and in some of these counties you speak of, in some of these counties, I arranged with them so they took the account up. They got credit for all these irregular assessment of railroad lands. And I urged Lawrence county, its clerk and the treasurer and the chairman of the board of supervisors, that they should likewise take the steps which are necessary in order to have the books of the Territory show the actual, legitimate condition of the accounts, but they simply neglected to do so. I was, however, personally assured by the chairman of the board of supervisors, and by the clerk of the county, that there had been instances in which over \$1,000,000 had been stricken from the county tax list subsequent to the time at which the return had been made by the county to the Territory. So that this delinquency in the case of Lawrence county, and in the case of many other counties, does not show any real claim against the Territory—against the

county, but merely show that there was a difference between the original assessment as made by the assessor and returned to the Territorial Auditor, and the assessment as corrected by the Board of Equalization.

Mr. PURCELL. Is it not a fact the bonded indebtedness of Lawrence county to-day exceeds \$100,000.

Mr. SCOTT. I thought the law says they don't change the list sent in by the assessor.

Mr. CAMP. You mean to say the county auditor of Lawrence county sent in to the Territorial Auditor the abstract of the assessment rolls of that county previous to the equalization?

Mr. CALDWELL. Yes; and that is so with regard to many counties, and that fact was called to the attention of the Legislature in the report of the Auditor in 1886.

Mr. PURCELL. You speak of counties similarly situated in South Dakota.

Mr. CALDWELL. Yes, sir. I don't remember the counties whose accounts with the Territory were credited as I have explained.

Mr. PURCELL. Is it not a fact that one of the counties is Minnehaha?

Mr. PURCELL. There must be certainly, I should say, twenty counties whose accounts were thus corrected.

Mr. SCOTT. I notice the Barnes county list was not corrected. She appears to be delinquent about \$8,000 now, and nearly all of that delinquency is caused by the illegal assessment of Northern Pacific Railroad lands. I don't think the Territory will ever get \$1,000 out of it.

Mr. CALDWELL. The matter was called to the attention of the Legislature in the report of 1885. It is further directed that the county board, after the return has been made to the Territorial Auditor and the account of the Territory against the county has been determined by the amount of our assessment as thus returned, that the county board may, by exercise of specific power given them by the statute, abate assessments in particular instances. These abatements have not been reported to the Territorial Auditor and there has been no credit to the county. The county is merely the collection agent of the Territory.

Mr. KELLAM. Now, Mr. CHAIRMAN, I don't know whether or not this will lead us to a solution of the difficulty, but is this what you want or what you mean by your proposition, that whatever

loss the Territory sustains by reason of the illegal assessment of the Northern Pacific Railroad lands should be borne equally by both sections of Dakota, by North and South Dakota?

Mr. CAMP. That, perhaps, would be part of it, but part appears as already lost, that is those claims for delinquent taxes which have never been paid in. That is all lost and has increased our list so it is equal to that of South Dakota. Remove from that delinquent list the part that cannot be collected by reason of the illegal assessment, and our delinquent taxes are much smaller than those of South Dakota. We think this should be a claim in our favor against South Dakota.

Mr. KELLAM. If the counties within which these illegal assessments have taken place have on that account failed to contribute their share towards the Territorial revenue, how has it been to the disadvantage by the overpayment from the southern counties towards the revenue of the Territory?

Mr. CAMP. Each part of the Territory has been contributing taxes, but we say South Dakota is delinquent in its contributions \$60,000.

Mr. PURCELL. In other words, the Major's statement would be true if taxes were apportioned for a certain territory, but where they are apportioned generally, and North Dakota pays her taxes and South Dakota doesn't, it increases the rate on North Dakota as well as for South Dakota counties who have paid them. If the taxes were levied with regard to the dividing line between North and South Dakota, and we each had a proportionate share to raise, then your proposition would be true; but we are taxed generally throughout the Territory. Now, there is a certain portion of that district in each State, or Territory, that does not pay its taxes, and consequently leaves so much more to raise, and, therefore, whatever goes to make up the deficiency comes out of the whole Territory in a body, and we pay our proportion of that.

Mr. KELLAM. Is that equally true on account of the illegal assessment of railroad lands?

Mr. CAMP. There is no other way of looking at it.

Mr. PURCELL. Because we were under no legal obligation to pay those taxes.

Mr. CAMP. The way I look at it is this: We are dividing the assets and liabilities of the Territory. One of the assets is this claim for delinquent taxes. That claim appears upon the books

to be equal between the counties of North and South Dakota; that is, if the assets were divided and we were given the claims against the North Dakota counties and you the claims against the South Dakota counties we would have equal claims; but in figuring we must deduct from the claims against the counties of North Dakota so much as is due to illegal assessment and taxation. That would leave us a claim against the counties of North Dakota, we will say for example, \$25,000, while you have a legal claim against the counties of South Dakota of \$60,000, so the assets would not be divided equally so far as that is concerned, but would result in a charge in our favor of one-half of \$35,000.

Mr. HARRIS. These illegal taxes have been declared illegal by the Supreme Court of the United States.

Mr. KELLAM. Yes; I understand a part of this question has been disposed of by the court, but not entirely. My thought was this: Conceding that there was to be a loss, to make an agreement upon the part of both Commissions that whatever loss occurred to the Territory on account of these illegal taxes having to be rebated, that that should be borne by the Territory at large. It is evident that no calculation can at this time be made by either, because one part of the question is still pending in the court. Now in that situation of affairs it would occur to me to be the only way to dispose of the question, if it is agreed that it is a proper matter to be taken into account, to make a general agreement that whatever loss occurred to the Territory by it being compelled to refund these taxes, that they should be entailed upon the two States share and share alike. If we were to sit here for two weeks we could not make any mathematical calculation of the amount of that loss. In the first place there is this undetermined question in the Supreme Court that stands in the way, and in the next place it is one of those things we cannot tell because it is to be developed in the future.

Mr. SCOTT. This question arises to my mind, and it is this, that undoubtedly the suits will be determined against the counties, and if they are determined against the counties, I don't know that there is any particular method of procedure that the county can take against the State or Territory as a whole in which to recover for the amount that they paid to the Territory; and, of course, it would be our duty here, knowing this state of facts, to make some provision by which that can be done, and that amount returned to the counties that paid their proportion into the Territorial Treas-



ury. Supposing the suits were determined and the county had a judgment against them for \$50,000 or \$60,000, and supposing that the pro rata they paid into the Territorial Treasury was \$5,000, what way would the county have of compelling the Territory to refund that amount? But supposing we are divided into States of North Dakota and South Dakota, what claim in law has that county to have that money refunded? They would have to sue their claims and leave it to the Legislature to fix it. Suppose the Legislature of South Dakota said, "It is a matter we don't feel disposed to pay;" what power would there be in the county to compel South Dakota, or even North Dakota, to refund that money? I am satisfied in the estimate we have made we have placed it very much lower than the true results will be found to be when the matter is determined. I know, myself, of suits aggregating full \$80,000, and that is not nearly all of the claims against Barnes county for lands which were sold on which the taxes have been illegally assessed and the purchasers hold tax certificates. And the same state of facts exist in all the counties referred to. Of course the item of \$60,000 was not all made up of that, and I am satisfied we have got it a great deal lower than it actually is.

Mr. CAMP. Then you are doing yourselves an injustice.

Mr. SCOTT. I take this into consideration, that some of these taxes—a party owning a tract and he finds \$150 taxes against that, rather than bringing his action to clear the title and set the taxes aside, he will pay the taxes and, of course, some of the taxes will come in that way.

Mr. PURCELL. Our county has paid back already over \$8,000.

Mr. SCOTT. Our county has paid \$5,000.

Mr. KELLAM. What question is involved in that suit?

Mr. CAMP. It depends entirely upon the construction of one section of the statute. Of course, in this case the treasurer, having paid over the money he is not liable, and the suits are brought against the county.

Mr. PURCELL. That is the same suit that is brought in our county, and I presume in your county.

Mr. HARRIS. You can readily see where this matter will run to—at least we can approximate it. In Stutsman and Barnes counties alone there is at once \$150,000 involved in these suits, and there are eighteen other counties included, some of the

largest counties in Dakota, Cass, Richland, Traill, Eddy, Foster, Burleigh, two-thirds of Emmons, McLean, Billings, Stark, Ransom, part of Sargent and all of LaMoure, part of Dickey, all of Logan, part of McIntosh, some north of the track. You can readily see that the amount of these taxes which has been sold, on which suits have already been or will be brought, will run up in the neighborhood of half a million dollars, and while this matter is undetermined finally, it has been determined by the District Court, and that has been affirmed by the Supreme Court of the Territory of Dakota, and has been carried to the Supreme Court of the United States, and we, at present, can only take it for granted, or presume, that the United States Supreme Court will affirm the decision of the courts below.

Mr. KELLAM. What question is now pending in the Supreme Court of the United States?

Mr. HARRIS. It is—the gentleman from Stutsman county can state it better than I can.

Mr. KELLAM. I understood his claim was still undetermined—

Mr. CAMP. It is in the Supreme Court of the United States.

Mr. KELLAM. You spoke of the Supreme Court. I thought you meant the Territorial Supreme Court.

Mr. CAMP. No.

Mr. PURCELL. There is another claim. Auditor Ward instructed his assessors to assess every acre of railroad land. It was and the treasurers were enjoined from collection and sale, and that is the question I understand was argued in the Supreme Court at Yankton which stands against these lands.

Mr. CAMP. I would like to say as to the probabilities of the case, I think there is hardly a case in which the United States Supreme Court have reversed a state court, where the question involved was the construction of the local statute. This is entirely on the local statute.

Mr. KELLAM. I want to say, gentlemen, that I do not wish to be understood as questioning the statements you gentlemen make. My suggestions were simply to meet any square, equitable claim, as it would be. Suppose we make this allowance of \$60,000, and then the Supreme Court of the United States reverses the decision of the Territorial Supreme Court; then in what position would that leave us? How could we justify ourselves? It seems to me if we make an agreement that whatever

the Territory does lose on account of these illegal assessments, we (South Dakota) shall bear one-half, and North Dakota, one-half. That is, we would leave matters just as we would be if the Territorial existence continued.

Mr. PURCELL. That would leave a matter upon which we have not settled the liabilities.

Mr. KELLAM. Well, it is contingent now.

Mr. PURCELL. If the Supreme Court of the United States should hold these taxes were legal, or they should hold they must pay back, then we have got to come to your Legislature and appeal to them.

Mr. KELLAM. Suppose they hold the other way we have to give you \$60,000. I say we ought not to be asked to settle a liability that is contingent in existence and undetermined in amount, by an agreement upon any sum; but that the fair thing is to say, "Here is a contingent liability of undetermined amount; if proved to be an actual liability, whatever the amount is, we will pay half of it." I don't see any escape from that being a fair proposition. Because if you ask us to agree upon paying a specified amount, you ask us to assume that amount you gentlemen give us, while we have no doubt it is the best you can make at this time—presume it is a fair estimate—still it puts in a disadvantage with regard to contingent—as actual liability, and if it should eventually turn out it was not a liability, then where would we be?

Mr. PURCELL. These claims exist to-day because the counties have paid back.

Mr. KELLAM. Yes, but that is all covered by the agreement I have suggested, that whatever the loss to this Territory, it would be treated the same as if the Territorial government had been continued.

Mr. PURCELL. For the payment of this \$60,000, it can be understood that in case the Supreme Court of the United States holds that the taxes were not due, should not be refunded, of course, the Territory or State of North Dakota would return to you your portion of it. But there is already a claim in our favor from South Dakota for that part of it which the counties have already refunded, and, of course, many of the counties relying upon the decision of the Supreme Court of this Territory, have paid back much of these taxes, so we are out that money.

Mr. KELLAM. It looks to me if we now, here, undertook to

pay one-half of the liability, whatever it is, that this would be fair.

Mr. PRICE. It seems the objection of Mr. PURCELL could be covered by incorporating in the Schedule and Ordinance of the proposed Constitution an article empowering the Legislature to refund to North Dakota any sum that may be determined to be due her.

Mr. PURCELL. You see it leaves the whole question open for discussion, and there is no settlement of it whatever. I think, as the most of those attorneys do who have investigated this question, that perhaps the Supreme Court of the United States will sustain the Territorial court.

Mr. PRICE. You know how uncertain it is.

Mr. PURCELL. If they do, we have got to establish that claim to the satisfaction of South Dakota; we have got to come to your Legislature and do everything necessary to get that bill through to get the money. Now, it may cause us to do all that, \$9,000 or \$10,000 to recover back this money from South Dakota; and the purpose of offering it here in that manner, is that while we are here, to settle up all these matters. The Supreme Court of this Territory having said they shall refund the money of the county, and having refunded at least part of it, establishes the fact that the claim is just and we have shown our good faith and are entitled to the amount paid back. So here is our claim against South Dakota.

Mr. KELLAM. You speak of the difficulty and expense of proving the claim before the Legislature of South Dakota. Would you think this Commission would be justified in doing—in allowing this claim?

Mr. PURCELL. The purpose of making it here was putting it in such shape it can be verified. Whatever evidence is necessary.

Mr. PRICE. I don't think, Mr. PURCELL, you should advocate such a plan until judgment was recovered.

Mr. PURCELL. There is judgment, Mr. PRICE, in this case.

Mr. PRICE. But it is pending in the Supreme Court of the United States.

Mr. PURCELL. Many counties have refunded.

Mr. CALDWELL. When was it decided by the Territorial court?

Mr. PURCELL. May, 1888.

Mr. CALDWELL. Has there been any claims against the Territory for such money as was rebated in the payment of Territorial taxes?

Mr. PURCELL. I don't know.

Mr. CAMP. Our county has not made a claim because they appealed, you know.

Mr. SCOTT. Our county has a claim, but I don't know if it has been presented. They have been talking about it.

Mr. CALDWELL. It is not a claim against the Territory as the county—

Mr. SCOTT. It is.

Mr. HARRIS. When the Supreme Court of the United States disposes of the matter.

Mr. CAMP. In equity they ought to get it back from the Territory. Our county board at first admitted their liability for the amount paid, and were willing to settle it at a certain per cent. with our clients.

Mr. CALDWELL. Well, in any event, a large part of this liability would be interest, penalty and cost on the delinquent taxes.

Mr. CAMP. It would be, of course, a good deal interest.

Mr. CALDWELL. Penalty, too?

Mr. CAMP. Penalty.

Mr. KELLAM. There is nothing allowing penalty to go to the Territory.

Mr. SCOTT. Of course, the amount refunded would be the amount actually paid.

Mr. CALDWELL. That would involve the original tax and penalty for non-payment, and, also, the interest which delinquent taxes draw, and likewise the cost of advertising and selling the same.

Mr. CAMP. They are small, however.

Mr. CALDWELL. It would be the usual proportion.

Mr. CAMP. These lands are sold in large tracts.

Mr. CALDWELL. The costs apply to each forty acre tract; the penalty applies to the amount, and the interest to date.

Mr. PURCELL. The Territory would only have to pay back what it received.

Mr. CALDWELL. The proportion which the Territorial tax would bear to the sum total which the county would have to refund, would probably not be over one or two per cent.

Mr. SCOTT. I think probably one-eleventh—

Mr. CALDWELL. It could not be one-tenth, because the rate of taxation—average rate for Territorial purposes, even the sale of the taxes—the average rate of taxation for Territorial purposes is at the greatest only but one-tenth of the total that has to be paid. Taking 30 per cent. interest and the penalty, all that would make the amount that would have to be refunded double the amount of the original tax.

Mr. SCOTT. Of course the interest on the money paid into the Territory should be—that would have to be paid back.

Mr. CALDWELL. No.

Mr. SCOTT. I don't see why it should not.

Mr. CALDWELL. Well, the matter of taxes having been thus generally discussed—I infer from an observation of Mr. PURCELL that this expression here, although it would seem at first—this expression, “unbalanced accounts,” so coupled with the word “claims,” and referring to the taxation of the Northern Pacific Railroad lands—I infer, however, that “unbalanced accounts” means something else.

Mr. PURCELL. There was a difference in direct appropriations of about \$22,000 you had more than we had. We charge you with half of that.

Mr. KELLAM. What is that? I remember the \$22,000 you spoke of.

Mr. PURCELL. That is the difference in the direct appropriations.

Mr. CAMP. Yes, taking out the \$22,000 for Capitol, then it would be \$44,000 difference.

Mr. PURCELL. Of course \$22,000 difference; but in addition to that you had charged us with appropriations of \$22,000 for the furniture of this building.

Mr. CALDWELL. That was one of the points that was questioned when we came to examine this. I was of the opinion that the paragraph meant that the State of South Dakota should pay to the State of North Dakota as for settlement of unbalanced accounts against the Territory.

Mr. PURCELL. It means unbalanced accounts of any claims.

Mr. CALDWELL. I don't know; but, nevertheless, if Auditor Ward would not infer that the record, that the unbalanced accounts has reference to the unlawful taxation of Northern Pacific railroad lands—

Mr. HARRIS. But this—

Mr. CAMP. It don't make any difference, we understand it.

Mr. KELLAM. They have told us what they mean by it.

Mr. NEILL. I might ask if personal property and miscellaneous effects now in South Dakota, shall be the property of South Dakota? If it means that, some property here in the Capital, for instance, in the office of the Commissioner of Immigration, has been divided, part taken down and part here, yet if it means to allow to take that part down to that office——

Mr. SCOTT. That is what I understood. I suppose it would imply that.

Mr. CAMP. They listed part of it as up here, part down there, NEILL.

Mr. NEILL. If you allow that, the balance of it to be sent down there, then there would be about \$600 out of that \$2,000 in South Dakota, the balance of it in North Dakota offices.

Mr. KELLAM. Now we have discussed that matter of delinquent taxes——

Mr. SCOTT. There is another matter, balance of \$22,000, appropriations for permanent improvements, and then there is that \$9,000 to the Brookings institution.

Mr. CALDWELL. I am glad that this inquiry was—we will see just——

Mr. SCOTT. Well, half of it.

Mr. ELLIOTT. The President says there has only been \$7,000 expended there.

Mr. SCOTT. Mr. PURCELL, isn't it over \$9,000?

Mr. PURCELL. That is what is shown by his report.

Mr. ELLIOTT. But his letters show about \$7,000 as near as he can get at it.

Mr. PRICE. Then this \$60,000 includes the \$22,000 and the \$9,000 to the Brookings College; now is there anything else?

Mr. CALDWELL. \$22,000—\$29,000.

Mr. PURCELL. No, not \$29,000. We put in \$4,000 as the share of the Brookings College; \$4,500, leaves \$26,500.

Mr. CALDWELL. So it makes \$26,500 as the share.

Mr. PURCELL. Difference in appropriations to the Brookings College.

Mr. CALDWELL. That makes \$2,650 to be subtracted from \$60,000—\$33,500 on the score of this railroad land business.

Mr. KELLAM. No, \$22,000 and the \$9,000; if one is divided the other is.

Mr. CAMP. We put the Capitol furniture in another deal, and that is no part of this.

Mr. CALDWELL. Twenty-two thousand dollars excess of construction appropriations for South Dakota?

Mr. CAMP. There is \$44,000 in excess.

Mr. KELLAM. The Capitol is not separate.

Mr. PURCELL. In making up the direct appropriations there was included only amounts \$22,000; for this furniture we took at \$22,000, leaves a difference of \$44,000.

Mr. KELLAM. I understand now.

Mr. HARRIS. The \$44,000 wants to be cut in two in the middle, \$22,000. The difference in the direct appropriations as made by our Assistant Secretaries, \$22,000; then \$22,000 was put into that for furniture and stuff at the Capitol which was charged to North Dakota in this statement. That leaves \$22,000 difference between the two sections. Taking them and putting them together leaves \$44,000; that cut in the middle would be \$22,000; and the \$9,000 cut in two in the middle would leave \$4,500.

Mr. ELLIOTT. That is the way I understand it.

Mr. CALDWELL. Thirty-two thousand five hundred dollars on the question of railroad—Northern Pacific Railroad taxes, exclusively?

Mr. CAMP. Yes.

Mr. KELLAM. Now I want to ask if we all understand respecting claims with regard to delinquent taxes. There was a difference between our propositions with respect to the time of computing settlements and balances.

Mr. CALDWELL. Major, before we go into that we may—well that will come up.

Mr. KELLAM. I don't care—

Mr. CALDWELL. That will come up with regard to another matter. I have nothing to say.

Mr. KELLAM. I was going to make another inquiry. You fix the date of the division of these accounts at March 11th. We fixed it in our proposition at the dissolution of the Territorial existence.

Mr. SCOTT. March 11th, because that was the date the new appropriations for the fiscal year was made; beginning of the year.

Mr. HARRIS. As I understand, the appropriations made at that time, the taxes coming under the assessment which is now



made by the counties, which will be reported here. I think the intention was that the division should be made at the time, as there is nothing coming in on these taxes at all this fall, and they should be kept separate.

Mr. KELLAM. "From and after March 11, 1889, the State of South Dakota shall be credited with all taxes collected from counties within its boundaries and charged with all monies paid out by the Territory for appropriations made to the public institutions situated therein, and one-half for all other expenditures. And the same as to North Dakota." Under that proposition what would become of taxes that don't come from the counties—railroad taxes.

Mr. SCOTT. I presume the railroad tax of North—of South Dakota would go to South Dakota and the railroad tax of North Dakota go to North Dakota.

Mr. CALDWELL. It would not under this proposition.

Mr. KELLAM. The question of—there is nothing said about railroads in our proposition.

Mr. SCOTT. That was my understanding.

Mr. PURCELL. All taxes of the different localities.

Mr. SCOTT. I don't know who would have the best of the deal.

Mr. KELLAM. I don't know, but, of course, there is a large revenue that comes from the railroads, and there is the tax coming from the counties, and that would leave the matter of revenue from railroads entirely undisposed of.

Mr. SCOTT. It was my understanding we should cover the whole tax which accrued anywhere within the boundaries of North Dakota, and the same as to South Dakota.

Mr. KELLAM. Why would that plan have any advantage over the plan of closing up the books at the close of the existence of the Territorial Government, making division as of that time? Wouldn't that be the natural time at which settlement should be made?

Mr. McGILLYCUDDY. What right have we to go back of that time?

Mr. KELLAM. I have no idea, at all, which State would gain or lose by it, but I had no other idea that our agreement would be effective or contemplate its being effective, until the date of the dissolution of the Territorial Government. It seems to me this is the natural and appropriate time for us to figure towards.

Mr. CAMP. Of course, the present officers of the Territory are fair and honorable men; and yet the Auditor and Treasurer are of South Dakota, and they would probably lean towards any benefit they might confer upon South Dakota.

Mr. KELLAM. Do you know in any way in which they could?

Mr. PURCELL. As I understand it, there is no officer that knows the amounts paid in from the different sources except the Treasurer, and there is no check on the Treasurer for the amount he pays except the Auditor when he pays out for appropriations for his warrants. Of course, we are supposed to take his statement as to the amount of monies he receives from the railroads. We cannot do anything else.

Mr. SCOTT. I understand the Northern Pacific Railroad has paid into the Territorial Treasury in lieu of all taxes assessed against its lands, which it now holds, quite a considerable sum of money. Nevertheless those taxes still stand charged against those lands and the delinquent taxes still stand against our counties, so we have quite a large amount of taxes coming due, and if they are to be in lieu of all other taxes against the lands——

Mr. KELLAM. That is coming back to the old question. Will that help us out of the question now?

Mr. SCOTT. It is just a new phase of the question that struck me.

Mr. CAMP. If we leave the question open as to when the settlement should be dated, who is going to make it?

Mr. KELLAM. Date it at a time to give the Territorial officers an opportunity to close their accounts.

Mr. SCOTT. I don't know whether it would be to the benefit of North or South; but is there anything interfering?

Mr. KELLAM. I don't know that there is, but it strikes me to be an unusual thing.

Mr. CAMP. Suppose you make it in the way you propose, and make an agreement that at the time South Dakota shall stand one-half of the indebtedness then existing, and North Dakota the other half. There must be some way of dividing; of ascertaining the exact amount of that indebtedness, and certifying it to the Legislature.

Mr. KELLAM. I don't know as I understand you.

Mr. CAMP. There must be some way of certifying that to the Legislature. If we could make a settlement now, to-day, we would know just what amount of indebtedness there was, and then

any institution we kept separate from now on, why any indebtedness arising on account of South Dakota institutions would be made by South Dakota, and the same of North Dakota.

Mr. CALDWELL. The difficulty would be, we have no control over the Territorial offices, these Territorial officers, whether they come from South Dakota or North Dakota, they are the ones who are to credit with these taxes collected—they are the only persons who could tell whether they are from counties or railroads, or whatever source, and they are the only officers who can indicate what payment was made, and for what and to whom paid. The result of which would be it would require two calculations—one as to the condition on the 11th of March, 1889, and the other at the final wind-up; and it would be no more than fair that taxes were determined at the final wind-up, than part of it now and part then.

Mr. MCGILLYCUDDY. Continue this Commission until that time.

Mr. CAMP. We have got to get something into our Constitution.

Mr. NEILL. Keep us on until that time.

Mr. MCGILLYCUDDY. There should be some provision.

Mr. CAMP. I suggest we draw up a statement covering the contingent liabilities on account of the railroad land taxes paid in, and counties may have to refund.

Mr. KELLAM. I don't know as the members of the Commission would agree with me, but it simply occurred to me it would be a fair way of disposing of the matter, that if there was a liability we should all pay it. My idea is that the nearer we can come to keeping the Territory together as a unit until the time of dissolution, and then each assume its proper share or proportion of its debts and liabilities, providing for contingent liabilities, the nearer we will come to a fair settlement. Now, as suggested by Mr. CALDWELL, I don't see what advantage there would be in making this balance sheet on the 11th day of March, because the same officers would have control of these various departments. After the settlement they will have the same opportunities; they would have the same opportunities for favoring their section under one plan as the other.

Mr. HARRIS. I think not, Major.

Mr. KELLAM. We can't make a new law; we can't legislate; we can't impose duties; we can't furnish new books; we can't im-

pose different duties on these officers than the law now imposes on them. Now the statute even goes so far as to describe the form of some of their books; they can't depart from that under instruction from this Commission.

Mr. NEILL. Simply by getting them up. Just as easy for them to do it one way as the other.

Mr. HARRIS. I think the idea was—the appropriations made at that time and the taxes levied—made by the assessment now coming in, this thing could be kept separated easier now than afterwards.

Mr. KELLAM. We are still a Territory, and may be for ten years yet. All the revenues from the various sources of the Territory still belong to the Territory; and until the Territorial existence is terminated; and for us to undertake to say now they shall be divided six months, or eight months, or a year before that takes place, I doubt the wisdom of undertaking to do it. The railroad taxes belong to the entire Territory; it belongs to the two States made out of it. For myself, and I presume such would be the case with each individual of the Commission, before agreeing that the railroad taxes should be divided in accordance with the locality, each would want to know whether your or my section was at a disadvantage. For myself, I would say, no, for the very reason they belong to the Territory, and it is the property of the Territory. The railroad taxes, and other taxes actually belong to the Territory as a unit.

Mr. PURCELL. Is that so? Part paid to the county?

Mr. KELLAM. Yes, but the 30 per cent. belongs to the Territory.

Mr. CALDWELL. And, furthermore, in regard to this matter of separation of the accounts, etc., with reference to North and South Dakota, I went to the Auditor and requested that he make out an abstract of the assessment roll with reference to the counties of North and South Dakota; but he doubted whether it would be the proper thing to do.

Mr. KELLAM. He said if it was the judgment of this Commission he would make it in the usual form, and also make separate sheets and return to the Treasurer, so any agreement we reached should be carried out. I didn't mean to interrupt you; but the law prescribes the form in which he should do his business. Still, of course, if an arrangement of that sort should be made here he would recognize it. I doubt, friend PURCELL, the pro-

priety of asking any of these three or four officers to separate the sources of revenue in advance of what the statute now requires.

Mr. CALDWELL. In fact it could not be done so as to effect anything because there are many institutions that have to be borne on the part of the entire Territory, and they could not be separated. They could be separated hereafter just as they have been heretofore; that is, all the institutions so far they are concerned payments to them can be determined at once.

Mr. KELLAM. I might say something ridiculous about this matter; I don't know much about methods of doing business. What shall be done with payments for South Dakota and North Dakota payments for current expenses.

Mr. SCOTT. That is charged up half and half.

Mr. KELLAM. There would have to be three accounts.

Mr. CAMP. There is an account kept with each institution.

Mr. KELLAM. If it can be done fairly without disadvantage to each side, I would not be particular.

Mr. SCOTT. Make the settlement as of March 1st, and we will not have to meet again. Suppose we make an agreement; we have got to trust these officers; if we make an agreement that upon the taking effect of the President's proclamation, any money on hand in the general fund, shall be divided share and share alike; if there is any current debts they shall be assumed share and share alike.

Mr. CALDWELL. The officers can only draw what the law provides.

Mr. SCOTT. When the Legislature made an appropriation last they made a certain amount for maintenance and a certain amount for permanent improvements; now the institution has got the right to use the whole of that amount the first year and the second year for the purpose of making permanent improvements.

Mr. KELLAM. Cover that by any agreement you choose, each institution having its ——

Mr. PURCELL. My idea was to figure up to the time of settlement and see how we stood; if South Dakota had an excess, make allowance for that. Of course, we can see advantages that might be taken by the officers.

Mr. KELLAM. I can't see how they would have any better facilities for taking any advantage in one case than another.

Mr. PURCELL. As Mr. CAMP suggests, that is their home

and they expect to return there after their term of office expires. The Secretary has no funds.

Mr. CALDWELL. These appropriations are all for two years, and they could not pay one-half of it in one year.

Mr. SCOTT. That has not been the rulings of the Auditor.

Mr. KELLAM. The appropriations of last winter have not been paid up.

Mr. SCOTT. Yes.

Mr. GRIGGS. In some cases they consume the full amount the first year.

Mr. KELLAM. The appropriations of last year, were they not to be divided? I think the appropriations were made for two years.

Mr. HARRIS. I don't so understand it.

Mr. PURCELL. The law makes no limitation on it, as I understand.

Mr. KELLAM. Of course, if one institution could do it another could. It might not be policy for them to do it.

Mr. CAMP. The Auditor might have an inclination to disallow certain warrants drawn for North Dakota institutions, as possibly he already has.

Mr. KELLAM. Well, I don't know anything about that; still if the law has appropriated that money they have a right to draw it.

Mr. CAMP. They only draw it through the Auditor. He can delay the game a great while if he wants to. They send for their vouchers to the Auditor, and the only way they can get the Auditor to allow them, if he don't want to, is by mandamus. Now, I don't think, Major, the Auditor will do anything of that kind; but at the same time we should leave ourselves at the mercy of the Auditor of the Territory.

Mr. KELLAM. I should be better prepared to vote upon this question when I see how it works.

Mr. SCOTT. I believe you will see that it is absolutely fair and right.

Mr. HARRIS. Mr. CALDWELL and I discussed the railroad matter as to where it could be determined; where it came from, and I believe there was only one railroad, the Milwaukee & St. Paul, and a little branch in Logan county.

Mr. BROTT. The Northwestern does.

Mr. CAMP. The Northwestern only runs up to Oakes.

Mr. CALDWELL. I don't see how this proposition here can in any manner prevent the officers of this Territory from doing that which is intimated they might possibly do. "From and after March 11, 1889, the State of South Dakota shall be credited with all taxes collected from counties within its boundaries." Credited by whom?

Mr. SCOTT. Who would naturally do it?

Mr. CALDWELL. The officers of the Territory. "And charged with all moneys paid out by the Territory for appropriations made to the public institutions situated therein." Who is to do that?

Mr. SCOTT. Who does that now?

Mr. CALDWELL. The Territorial officers.

Mr. CAMP. They get their money from the respective States.

Mr. SCOTT. He could pay out any money, taxes collected from South Dakota for the maintenance of North Dakota.

Mr. KELLAM. Would that be your opinion, to make an agreement binding upon the Auditor and Treasurer?

Mr. SCOTT. I have no doubt the Auditor and Treasurer would do as is requested.

Mr. KELLAM. I don't know but they would.

Mr. BROTT. It would not be binding.

Mr. SCOTT. They can keep the books.

Mr. CALDWELL. They have to do such things; they would be liable on their bond.

Mr. KELLAM. Suppose we do make an agreement of that kind. There is no money in the Treasury to pay the appropriations made to the institution by the Legislature, say the Jamestown Hospital. Suppose the Legislature made an appropriation for the Jamestown Hospital and there is no money in the Treasury coming from North Dakota counties, but there is \$50,000 in the Treasury coming from South Dakota counties; now, should this agreement justify the Auditor in refusing to honor that draft?

Mr. CALDWELL. Certainly not.

Mr. KELLAM. Suppose the Legislature appropriated \$50,000 to the Jamestown Asylum, but it came from the South Dakota counties; now here comes a voucher of the Jamestown Hospital for \$10,000 under that appropriation; now would the Auditor be justified in refusing to pay that voucher?

Mr. SCOTT. What do they do now?

Mr. KELLAM. I say there is \$50,000, but it came from the South Dakota counties.

Mr. SCOTT. But what do they do now?

Mr. CALDWELL. Go to work and issue Territorial bonds.

Mr. KELLAM. Now there is money there, \$50,000; I should pay \$10,000 to the Jamestown Asylum, but on account of that requirement I can't do it. How long would it require; how long would it take to require them to do it by mandamus?

Mr. SCOTT. They could issue the warrant to pay——

Mr. KELLAM. Could they issue a warrant on that \$50,000 in the Treasury?

Mr. SCOTT. The chances are not one in five hundred that the case would happen. The money comes in pretty evenly. About an even number of counties between North Dakota and South Dakota, and this is a supposition case.

Mr. CALDWELL. Well, that matter has been pretty thoroughly discussed; but I would like to ask the basis of the paragraph "Should South Dakota desire the State of North Dakota to assume the ownership and control of the Capitol at Bismarck with its furniture and fixtures, including all claims against the Territory arising out of the acceptance of the grant of lands made to the Territory for Capitol purposes, and further to assume its bonded indebtedness, the State of North Dakota will do so upon the payment by South Dakota to North Dakota of the sum of \$40,000."

Mr. PURCELL. That is made on the basis, Mr. CALDWELL, of the fact that there are \$82,000 worth of refunding warrants issued now, which represent balances due contractors, etc., for work on this building, and, also, \$22,000 which represents the furniture in the building, in all \$104,000, that this Capitol stands to the Territory. Now, of course, we claim in the North, it is a contingent asset; that, the people of North Dakota will vote upon the question as to where the Capital shall be, and in case it is changed from Bismarck, according to the conditions in the deed it ceases to be used for Capitol purposes, that therefore it would revert to the mortgagors; and we take in connection with that, the fact that there has been sold from this grant of land about \$100,000 worth of real estate for which warranty deeds were given, and that money used in the construction of this building. In case this should not continue to be used for public purposes and go back to the railroad company, this land which has been sold, and for which warranty deeds were



given, would be clouded, and the Territory would have to make good to purchasers of that land the purchase price with damages, whatever that might be. So, taking into consideration the contingent liability upon the warranties in these deeds, and the indebtedness already existing, we feel it would be no more than right that South Dakota, who has had the use of it equally with ourselves and during which time she has had the most of the government, should pay to us \$40,000. That is the basis of that proposition. Then, of course, we take upon ourselves the burden of paying the \$80,000, and in case the Capital is removed we take the burden of refunding what is advanced to the purchasers under their warranties.

Mr. SCOTT. I would say in addition to that \$40,000, there is another sum something like \$13,000 that would be South Dakota's share, interest included in the bonded indebtedness. The Capital is located here in North Dakota, and yet, unless the people of North Dakota locate the Capital here it is of no use to North Dakota.

Mr. PURCELL. Then we take into consideration the fact that you have no building situated in a similar condition. There was a claim that we talked about the other day, an interest matter of some \$33,000, that ought to be borne by South and North Dakota alike. We claim that \$33,000 is included in and forms a part of the \$40,000, which leaves about \$45,000 you should pay to us for taking this institution off our hands.

Mr. SCOTT. I will state to the Commission that in justice to Mr. HARRIS, that he is not at all responsible for that part of the proposition, and, in fact, does not agree, that is, as to our standing a part of this; being a citizen of Bismarck, naturally he thinks the Capital should be located here and that North Dakota has no business to change it. The rest of us on the Commission feel entirely different; we all have aspirations, more or less, just the same as you people in South Dakota, and for these reasons I merely desire to place Mr. HARRIS aright before the Commission, that nobody might seem to think he was not doing justice to his own side.

Mr. CAMP. I think it is patent to anybody that has walked up to this Capitol and examined it, that this building will not remain long the Capitol of any State.

Mr. NEILL. You don't hold South Dakota responsible for it?

Mr. PURCELL. You had a majority of the Commission that located it.

Mr. ELLIOTT. That is true, but North Dakota money brought it here.

Mr. HARRIS. North Dakota helped pay for it, too.

Mr. ELLIOTT. I believe I was a member at that time, and tried to keep it at Yankton.

Mr. PURCELL. You can have it if you want it, too.

Mr. NEILL. We have suffered enough already without paying for it any more.

Mr. CAMP. Irrespective of the question of moving the Capital, I don't think anyone will suppose, for a moment, that this building which stands us in for \$104,000 will remain for any length of time the Capital of North Dakota; and if we have to take up those refunding warrants, \$82,000, why, we are paying \$100,000 more—\$105,000 more for nothing.

Mr. PURCELL. Besides our liability on the other deals.

Mr. HARRIS. Of course—

Mr. SCOTT. Of course this is not the Capital of North Dakota—it is the Capital of Dakota. It says the records shall remain at the Capital of Dakota, but it does not say the Capital of *North* Dakota.

Mr. ELLIOTT. But you do assume by act of Legislature you will assume the payment of these bonds.

Mr. PURCELL. You should not assume the Legislature of the Territory would obligate the State. The State of Dakota would not be obligated by it.

Mr. KELLAM. As soon as this matter was suggested the other day I looked up the Journal of the House and Council, and I noticed that when the bill for the assumption of this twenty—I don't recollect the amount—this refunding, amounting to about \$83,000, when that was pending, it was referred to the members of North Dakota, and that the bill was passed upon the understanding, or something in the shape of a tacit agreement that the entire \$83,000 would be assumed by North Dakota in case of division. The Journal discloses that.

Mr. SCOTT. Still, at the same time, as a proposition of law, of course we want to do what is right; but as a matter of law could the Legislature of the Territory legislate the State of North Dakota into that?

Mr. KELLAM. No, but as a matter of law—

Mr. SCOTT. Would that make any difference?

Mr. KELLAM. I think it would make a difference in collection of the indebtedness against South Dakota.

Mr. CAMP. Simply have to go back to the old indebtedness.

Mr. KELLAM. Wouldn't it be in the nature of an ovation—party accepting the contract——

Mr. CAMP. Suppose that contract was illegal?

Mr. PURCELL. Suppose the State of North Dakota refused to accept it; suppose you attempt to enforce one of these warrants against the State of South Dakota, do you suppose it could be done?

Mr. KELLAM. Why I—— It recites on its face that in case of division of the Territory into two separate States, he shall look to North Dakota for payment.

Mr. PRICE. Don't you suppose the bond against North Dakota could be enforced?

Mr. PURCELL. No, sir; not against North Dakota, or anybody. The Major don't claim that.

Mr. SCOTT. Could not enforce them against—could he enforce them against North Dakota.

Mr. KELLAM. I should suppose so. I suppose if I had a note against Mr. MCGILLYCUDDY, and I changed it for a note against Mr. CAMP——

Mr. SCOTT. Yes, but Mr. CAMP don't give that note.

Mr. KELLAM. You had the Territorial note and gave it up to Dakota, and in receipt, in case of division, it should be paid by North Dakota.

Mr. CAMP. Yes, but North Dakota never signed that note.

Mr. PURCELL. In case I neglected to pay he would be entitled to go back to the original claim, and he would be allowed to substitute in the place of the one who had a claim against the whole Territory.

Mr. CALDWELL. The fundamental requirement in this Omnibus Bill is that the debts and liabilities of the said Territory shall be assumed and paid by the said States respectively.

Mr. SCOTT. Yes, sir.

Mr. CALDWELL. Suppose we don't agree—suppose our agreement don't cover all the liabilities and debts against the Territory, I don't suppose there would be any proclamation issued.

Mr. KELLAM. My view would be these would be claims against the Territory up to the time of the division.

Mr. SCOTT. Mr. CHAIRMAN: It is now nearly 6 o'clock, and I move we adjourn until to-morrow morning at 9:30.

Mr. CAMP. Is there a second to the motion?

Mr. NEILL. I second the motion.

Mr. PURCELL. Then make it until 3:30. I second the motion until to-morrow morning at 9:30.

Mr. CAMP. All in favor of the motion say aye. The motion is carried.

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## TENTH DAY.

BISMARCK, *Friday, July 26, 1889.*

The Commission met at 10 o'clock a. m., with Mr. KELLAM in the Chair.

All South Dakota members were present.

Messrs. HARRIS, SPALDING, SANDAGER and PURCELL, North Dakota members, absent. There being no quorum, the Commission agreed to meet at 3:30 p. m.

## AFTERNOON SESSION.

The commission met at 3:30 o'clock and had an informal discussion for a time without a record being made of the same.

At 4:10 o'clock the roll was called, with Mr. KELLAM in the chair.

All South Dakota members present. Messrs. SPALDING and SANDAGER, of North Dakota Commission, absent.

Mr. KELLAM. Gentlemen, there is no special order of business before us. We have this matter of the disposition of this property.

Mr. SCOTT. Suppose we take up that report of Messrs. CALDWELL and HARRIS.

Mr. CALDWELL. Mr. CHAIRMAN: I move that the chairman of these respective delegations, Messrs. KELLAM and CAMP, be requested to confer regarding the matters in difference between