

TWENTY-THIRD DAY.

Sioux Falls, S. Dak., July 26th, 1889.

Nine o'clock A. M.

Pursuant to adjournment, Convention re-assembled with President Edgerton in the Chair.

Prayer was offered by Rev. Mr. Lee as follows:

Most holy, All Wise and ever to be adored God, Ruler of the Armies of Heaven, and the dwellers upon earth, before whom angels and arch-angels bow in reverence and godly fear; we thank Thee that Thou hast made us but little lower than the angels, and endowed us with intellectual faculties whereby we can take a retrospective view of the past, consider the present, and by a lively faith anticipate the joys to come. Great God, as we have met to consider the greatest question that may come before this Convention we ask for strength mentally, physically, and morally that we may do right by our constituents and the inhabitants of South Dakota without fear or favor. Oh God, bless all our loved ones at home, ward off disease and accident, let nothing thwart our pathway that shall lead us astray, and finally save us all in Heaven where we may enjoy each other's society, refer to the acts of this life well done before, and after we are a million years old. We ask all in the name of Christ, our Mediator and Redeemer,

AMEN.

The Clerk reads the Journal of the preceding day.

The President: I do not know that I understand fully the order made yesterday by the Convention as to the purpose of this morning's session; I shall decide unless objection is made that this morning's session is for the purpose just as named in the motion for the session this morning, and that the afternoon's session will take place as usual with the regular order of business; if I am correct in that, the first business for the consideration of the Convention is the report of the Committee on Schedule.

Mr. Van Buskirk: I asked leave yesterday to submit a report

of the minority of the Judiciary Committee upon the question of the power of this Convention to prepare for the election of a Clerk of the Circuit Court. While I would have been glad to have deferred it a few minutes longer, as some members of the Committee who are not present desire to sign it, I will say I do not desire to discuss this question now until the Schedule Committee report as they may agree; otherwise I wish to be heard on this report.

The Clerk reads as follows:

MR. PRESIDENT:—

The undersigned members of the Judiciary Committee would respectfully represent that we have carefully examined the Sioux Falls Constitution and the Omnibus Bill, and we are unable to find any provision or authority in either by which this Convention can provide by ordinance or otherwise for the election of any other than State officers at the election held for the adoption of the Constitution. That neither the Clerk of the Court, Register of Deeds, or any other of the County officers are by the said Constitution or the Omnibus Bill, considered as State officers, nor have they been treated as state officers in the administration of the affairs of government, but especially does the said Constitution treat and consider these officers as county officers and provides for their election at the next general election after the admission of the State into the Union. We therefore beg leave to dissent from the opinion of the Committee heretofore submitted.

S. B. VAN BUSKIRK,
GEO. C. COPPER,
H. F. FELLOWS,
THOS. STERLING,
SAMUEL A. RAMSEY,
H. W. EDDY,
A. J. BERDAHL.

The President: Are there any further reports from Standing Committees?

Mr. Stroupe: I have a report from the Committee on Name and Boundaries and Seat of Government to which was referred the resolution of Mr. Goddard, of McCook County, relative to the Seventh Standard Parallel.

The Clerk reads the report referred to as follows:

Sioux Falls, July 26, 1889.

Your Committee on Name, Bounadries and Seat of Government, to whom was referred the resolution presented by Mr. Goddard, of McCook County, relative to the Seventh Standard Parallel, have considered the same, and beg leave to report, that in the opinion of your Committee the Constitutional Conventions of North and South

Dakota are not authorized by the Omnibus Bill to determine what constitutes the true Seventh Standard Parallel. We therefore respectfully recommend that no action be taken on the resolution.

Respectfully submitted,

M. P. STROUPE, Chmn.
S. A. WHEELER,
JONATHAN KIMBALL,
W. T. WILLIAMS,
E. G. EGERTON,
W. M. VAN EPS.

The President: What will you do with the report?

Mr. Stroupe: I move that we adopt the report.

The motion prevailed and the report was declared adopted.

The President: A matter went over yesterday and has not been adopted yet; that was the report of the Committee on Printing with reference to the publication of 200,000 supplements containing the Constitution. Is the Convention ready for the consideration of that report?

Mr. Sherwood: I move an amendment to the report, that in the place of the amount of 10,000, shall be printed in German and 10,000 in the Scandinavian language, it shall read twenty thousand be printed in each.

Mr. Zitka: I move as an amendment that ten thousand copies be printed in the Bohemian language.

The President: The gentleman from Clark moves an amendment to strike out "10" where it occurs and insert the word "twenty" with reference to the publication of this in the German and Scandinavian languages; and the gentleman from Bon Homme proposes an amendment to the amendment by adding thereto ten thousand in the Bohemian language; is the Convention ready for the question?

Mr. Sterling: I wish to say a word on this proposition in reference to what the Committee had under consideration; it was proposed in Committee that the distribution of these copies of the Constitution be as newspaper supplements; we estimated the number of newspapers that would probable convey these copies to the people speaking those languages, the Scandinavian and the German and allowing the largest possible estimate we could figure it out that there would be more than ten thousand conveyed in that way to the Scandinavian and Germans, and that that was the reason for making the amount ten thousand in each case. But if there are others who are better informed as to the number who will be reached

in this way through the newspaper supplements,—the people speaking those different languages, I suppose the Committee would not object; I wished simply to state that for the consideration of the Convention.

The President: The question before the Convention is upon the adoption of the amendment to the amendment, that ten thousand copies be printed in the Bohemian language.

The motion prevailed and the amendment was declared so amended.

The President: The motion now recurs upon the amendment as amended.

The motion prevailed and was so declared by the President.

The President: The motion now recurs on the report as amended; as many as are of the opinion that the report as amended be adopted,—say aye.

The President: The ayes have it; the report as amended is adopted.

Mr. Wood: I understood the chair to announce that this meeting was called for the purpose of considering the report of the Schedule Committee; I do not so understand the proceedings of yesterday; in order to bring the matter before the Convention, I move you, Mr. President, that the report of the Committee on Judiciary relative to the right of the Convention to provide for Clerks of the Circuit Court, be now considered.

The President: It is moved by the gentleman from Pennington that the Convention proceed to the consideration of the majority and minority report upon the powers of the Convention to provide for the Election of Clerks of court. Are you ready for the question?

Mr. Van Buskirk: There are some of the members of that Committee who are engaged this morning on other matters in committee; I think they would desire undoubtedly to be present; I would therefore move as amendment that it be postponed until afternoon, so they might be heard on this matter.

The President: The way to reach that is to vote it down; as many as are of the opinion that the motion prevail say aye. I am unable to determine. As many as are of the opinion that we now proceed to the consideration of the majority and minority report of the committee relative to the Circuit Court Clerks will rise and stand until counted.

The President: The motion is lost. I will proceed then under the order of the Convention.

Presentations of Communications and Petitions.

Mr. Spooner: I have a petition to put in from the legal voters of Kingsbury County with relation to a modified Australian system of voting. (Sent to desk of Clerk.)

Unfinished business of preceding day?

Reports from Standing Committees? I will ask the Clerk to read the list of Standing Committees to see how many Committees have still reports that have not been presented to the Convention; and if the Chairman will announce as the list is read whether they have any further reports to make during the Convention.

The President: Under the special order, are the two reports or partial reports from the Committee on Schedule; first, the report upon Minority Representation.

The Clerk reads the report as follows:

Sioux Falls, S. D., July 24, 1889.

MR. PRESIDENT:—

Your Committee on Schedule and Ordinance to whom was referred Article XXV of the Constitution, entitled, "Minority Representation" having had the same under consideration, beg leave to report that no changes or amendments are necessary to comply with the provisions of the Omnibus Enabling Act.

And we herewith report Article XXV as found in the Constitution, and respectfully recommend the re-submission of the same.

SCHEDULE AND ORDINANCE COMMITTEE,
By L. H. HOLE, Chairman.

The report by vote of the Convention, was adopted.

The President: The next report for our consideration is the report on Prohibition.

The Clerk reads the report as follows:

Sioux Falls, July 24, 1889

MR. PRESIDENT:—

Your Committee on Schedule and Ordinance, to whom was referred Article XXIV of the Constitution, entitled, "Prohibition," having had the same under consideration, beg leave to report that no changes or amendments are necessary to comply with the provisions of the Omnibus Enabling Act.

And we herewith report Article XXIV as found in the Constitution and respectfully recommend the re-submission of the same.

SCHEDULE AND ORDINANCE COMMITTEE
By L. H. HOLE, Chairman.

The President: The Chairman of the Committee moves the adoption of the report; is the Convention ready for the question?

The report was declared adopted by the President.

The Clerk under direction of the President, reads the report of the Committee on Revenue and Finance, as follows:

Sioux Falls, Dakota July 24, 1889.

MR. PRESIDENT:—

Your Committee on Revenue and Finance, to whom was referred Article XI entitled "Revenue and Finance", have considered the same and have compared said Article XI with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill", and have instructed me to report the following as Article XI of the Constitution and that the same is in accordance with the Sioux Falls Constitution and the changes thereto authorized by the Omnibus Bill.

W. H. GODDARD, Chmn.
C. A. HOULTON,
JOSEPH ZITKA,
C. J. B. HARRIS,
A. O. RINGSRUD,
L. T. BOUCHER,
W. M. VAN EPS,
Committee.

The President: The Chairman of the Committee moves the adoption of the report; are you ready for the question?

The report was, by the President, declared adopted.

The President: The resolution of the Judiciary Committee concerning the Circuit Clerks, is next under the special order; what is the pleasure of the Convention?

I would state for the information of the members of the Convention who were not present a short time ago, it was moved that we proceed to the consideration of the majority and minority report of the Judiciary Committee on election of Clerks of Court; the Convention refused then to consider the question; it is now reached under the special order,

Mr. Jolley: Was the report made a special order? I find it here upon the desk, that is all I know; the motion was made to refer back to that order of business yesterday and the Convention refused; do I understand that it was made a special order this morning?

The President: I am informed that it was not made a special order.

The President: The next I have of the reports not acted

upon is the report of the Committee on Legislative Department.

The Clerk reads the report as follows: (Here insert it).

The President: The Chairman of the Committee moves the adoption of the report; what is your pleasure?

The report was, by vote of the Convention, adopted.

The President: What is the further pleasure of the Convention? We have adopted all the reports I believe except the report of the Committee on Judiciary, in which there is a majority and minority report with reference to the elections of Clerks of Circuit Court and the report of the Committee on Schedule and Ordinance, which the Chairman announces that they are not ready this moment to make.

Mr. Dickinson: I move we take up the proceedings of the report of the Judiciary Committee. Motion seconded.

Mr. Jolley: I object; we cannot refer back without unanimous consent.

Mr. Wood: This comes up in regular order.

Mr. Jolley: The order is passed.

Mr. Wood: It was moved to take it up out of its order; the report comes in in its regular order.

Mr. Jolley: That order is passed, Mr. President.

The President: The order Consideration of Reports of Standing Committees has passed; I called it and there was no response. Then I proceeded to the special order which we have usually taken up after the regular order has been passed. I think the objection is well taken; but by two-thirds vote it may be taken up at this time, that the rules may be suspended and the order taken up and unless otherwise directed by the Convention I shall decide that in order to carry this, it is necessary that two-thirds vote be in the affirmative. As many as are of the opinion that we proceed to consider the majority report of the Committee on Election of Clerks of Court say aye. Call a division.

A standing vote was accordingly taken and resulted as follows:

The President: The ayes are 26, the noes are 23; the vote does not prevail; the rules are not suspended.

Mr. Hole: By some oversight I think the substitute report of Article XXVII has not been adopted by the Convention, in regard to the compact with the United States. I suppose it will be necessary to return to that order of business. I call it up.

The President: Chairman of the Committee on Schedule and

Ordinance moves the rules be suspended in order that the Convention may consider the report made by the Committee on Schedule and Ordinance, with reference to a compact with the United States; are you ready for the question?

The motion on reaching a vote, the President declared "The ayes have it and the rule is suspended".

The Clerk read the report.

Mr. Lee: I move the adoption of the report.

Which motion prevailed and the motion was declared adopted by the President.

Mr. President: I will state for the information of the members who were absent that my understanding of this morning's session was that it was a special session to dispose of the business brought before it that the afternoon session, commencing at two o'clock was the regular session of the day. I stated that that was the motion as to the order of the Convention. If I am correct we proceed at our regular routine work at two o'clock this afternoon. What is the further pleasure of the Convention?

Mr. Dickinson: I move we do adjourn

Mr. Hole: The Committee on Schedule is ready to report. If it is in order now we will hand in our report. I was in doubt as to whether it is in order.

Mr. President: My own interpretation was that we met for that specific purpose, that the report of the Committee on Schedule might be made this morning.

Mr. Hole: The Committee is ready to report.

The President: Is objection made to receiving the report of the Committee on Schedule and Ordinance? It will be received if no objection is made.

Mr. Van Buskirk: I understood that there was a motion before the house to adjourn. I was desirous that this report be on the table of all the members, but I think perhaps we will get along about as fast if we look these over carefully. I would move that we adjourn until two o'clock this afternoon, at the regular time.

Received a second.

Mr. Hole: Bear with me a moment. The printed report as on the desks has been amended by the session this morning and it might be well to read that over and call attention to those amendments and mark them and to that end I suggest that it be read

first and the amendments marked and you can study it at your leisure.

Mr Van Buskirk With the consent of the second and with the privilege of renewing the motion to adjourn, I have no objection to that.

The Clerk here reads the report of the Committee on Schedule and Ordinance, as amended, according to the report of the Chairman of the Committee.

Mr. Van Buskirk: I renew the motion to adjourn.

Which motion prevailed.

The Convention stood adjourned until two o'clock this afternoon,—2 P. M., July 26th 1889.

Two o'clock P. M. Convention reassembled pursuant to adjournment.

The President: The Convention has under Consideration the report of the Committee on Schedule and Ordinance.

Mr. Hole: Do we undersand that this is the first order of business? Is this an adjourned meeting or the regular meeting?

The President: I understood this morning that the Convention adjourned last night for a specific purpose to this morning, but upon further examination of the Journal I am persuaded that it was adjournment till nine o'clock this morning. I think the session commenced this morning at nine o'clock of this day and that this is part of the morning session.

Mr. Hole: Then if I understand the report of the Schedule Committee is properly before the Convention. I would move its adoption and wish to add to that motion a few remarks just now. We have entered the danger field and it is with much timidity that I stop upon this thin ice for I know the water is deep. But in submitting this report I refer with no little pride to the work of your Committee. On the superstructure that is to bear us safely over the period of change from a grand Territory to a grand State. Whether or not we have well builded, time alone can tell; we may have left out a brace here or failed to tighten a burr there which may result in weakening our structure. But whatever misfits or mistakes the future may develop will be found to be the outgrowth of our peculiar and difficult environment with powers abridged beyond all parallel or precedent in the history of the Constitution. Our task has been to dove-tail togethertwo distinct mechanisms far separated as to political size. It will not be sur-

prising then if some judicial fillings may be found to be necessary to perfect the symmetry of our work. Be this as it may, your Committee will ever remember having worked in harmony at times on different lines but to one common end and looking for one common light and your Committee believes, in submitting this report, they furnish you for your consideration a safe chart to statehood. We agree upon all matters but one; wherein we do agree we ask that no radical change be made without careful and painstaking consideration by this Convention, as this Schedule which we have submitted is the outgrowth of much deliberation and thought, and wherein we differ we ask that there may not be haste. But may every delegate carefully consider the responsibility and possibilities of his vote and act as becomes the dignity and importance of this subject. May it be put in the minds of every member of this Convention to ask wisdom from that unerring source to guide us to rightly consider our duty to our God, to ourselves and to the great State to be; Mr. President, I move the adoption of the report.

Mr. Peck: I beg to move, seconded by Mr. Williams, the following resolution, that Section 7 of the report of the Committee on Schedule and Ordinance be amended by adding the following thereto:

Amendment sent to the desk of the Clerk.

Mr. Peck: I do not propose, Mr. President, to occupy any time at all in discussing this resolution that I have just submitted; That amendment we offered has so fully been gone over by every member, and I think so fully understood, it would be a piece of presumption on my part to expect to enlighten any of the members. I am simply acting as representative of the people who sent me here. I was instructed to get as near the Australian system of voting as I could. That is not the Australian system; I do not claim for it perfection, it is the principal we are after and if the principle of it is adopted we can then go into Committee of the Whole and submit the revision of the resolution, and as I will ever pray. I shall simply confine myself to correcting any person who has mistaken any of the provisions of this resolution; I shall simply claim in the end, the right to explain them and no more; I want no more.

The President: I would ask the gentleman if he prefers to take it up now? I suggest to the Convention I think a more proper and parliamentary method would be to read it section by section

and let this amendment be made as we reach the section. Unless I am directed otherwise, I shall direct the Clerk to read it section by section.

Mr. Peck: As long as my motion stands there I have no objection.

Mr. Van Buskirk: Inasmuch as there are two reports, I would move that the consideration of the report of the Schedule Committee and the two reports of the Judiciary Committee be taken up and considered together.

Motion received a second.

The President: If I remember this report from the Judiciary Committee, it was only their opinion as to a legal question—possibly it may be a recommendation as to the election,—I do not remember.

Mr. Sterling: The Committee did express it as their opinion that the Convention had the power to provide for the election of Circuit Clerk and recommended that to the Schedule and Ordinance Committee and that a provision to that effect be put into the Schedule and Ordinance. That was the report of the Judiciary Committee on that question.

Mr. Jolley: By adopting or rejecting either the majority or the minority reports we can decide one thing or the other and when the Schedule is amended if the majority of this Convention are in favor of electing the Clerk this fall, then it becomes a part of the rule adopted.

Mr. Wood of Pennington: I would suggest there is a carefully prepared amendment.

The President: I think that covers the whole ground.

Mr. Van Buskirk: All I care for is simply to expedite the business of the Convention.

Mr. Wood: I would suggest that we now have the amendment at this time, that would present the question in the proper light before the Convention.

The President: It seems to me the more regular way of reaching these amendments would be in Committee of the Whole, reading it section by section; otherwise we will never get through to the consideration of the report of the Schedule Committee. Unless otherwise directed by the Convention the Clerk will read section by section and when the amendment pertaining to any section, as it is read, the amendment can be offered. The gentle-

man from Hamlin presented his amendment to Section 7 when we read Section 7, I will instruct the Secretary to pause long enough that it may be heard and considered by the Convention.

Mr. Fellows: I move that we go into Committee of the Whole upon consideration of the report of the Committee on Schedule.

Which motion did not receive a second.

The President: Proceed with the reading.

Clerk reads Section 1.

Mr. Young: I move the adoption of this section.

The President: There is pending a motion which is the adoption of the whole report by the Chairman of the Committee.

Mr. Young: The motion is withdrawn.

Mr. Hole: As we will strike a place directly where we cannot agree but will diverge into a long discussion, if it will facilitate matters I will change the motion to adopt it section by section and then we will clear this up as we go. I will, with the consent of the second withdraw the motion to adopt the report as a whole.

The President: The question before the Convention is, shall Sec. 1 be adopted by the Convention.

This question on reaching a vote, the President declared the result to be as follows: "The ayes have it Sec. 1 is adopted."

The Clerk read Section 2.

Mr. Hole: I will make the same motion as to Section 2.

Which motion prevailed.

Section 3 read by the Clerk.

Mr. Sherwood: I rise to ask an explanation of the words "Within the boundary of the State of South Dakota". It seems to me in that provision, a bond executed any place outside of the State of South Dakota, even by residents of the State, would be entirely null and void.

Mr. Van Buskirk: I have thought of that and suggest that as far as the officer is concerned that it states as to any office therein,—and move that the word "therein" be inserted after the word "officer".

The motion received a second.

Mr. President: It is moved by the gentleman from Codington that the word "therein" be inserted in the eighth line, after the second word of the eighth line. Those of the opinion that the motion prevail say "aye"; those of the contrary opinion say "no".

The ayes have it and Section 3 is amended by inserting the word "therein" after the word "officer."

Question recurring upon the adoption of Section 3, as amended was adopted.

Clerk reads Section 4: All officers, civil and military, now holding their offices and appointments in this Territory under the authority of the United States, or under the authority of the Territory of Dakota, shall continue to hold and exercise their respective offices and appointments until superseded under this Constitution.

Provided; That the provisions of the above sections shall be subject to the provisions of the act of Congress providing for the admission of the State of South Dakota, approved by the President of the United States, on February 22, 1889.

Mr. Hole: I move the adoption of the section just read.

The President: The Chairman of the Committee moves the adoption of Section 4; as many as are of the opinion that the motion prevail, say aye; the ayes have it, Section 4 is adopted.

Mr. Williams: I have one or two amendments prepared concerning this section and before I offer it I wish to suggest verbally an amendment in the second paragraph from the last, after the word "and" in the first line,—

Mr. Hole: That is a mere clerical error in this line and also the last line.

Mr. Williams: I have an amendment which I offer further and I will say that I have a number of amendments to offer to the different sections and they are all fastened together on the same paper. I will read them. I move that the report of the Committee on Schedule and Ordinance be amended as follows: That Section 5 be amended as follows: After the word "State" in the fourth line of the 7th paragraph insert the words "and county" so it will read "for the following State and county officers" and at the end of paragraph 8 of said section add the words "and Clerk of Circuit Court". I move the adoption of the amendments.

Which motion received a second.

The President: It is moved to amend Section 5 by inserting after the word "State" the words "and county" and at the end of paragraph 8 "and clerk of the Circuit Court".

Mr. Williams: That is the question referred to by Mr. Van Buskirk. It is a question upon which members of the Convention

have differed and a question upon which, while differing, we are very desirous it should be settled in accordance with the Constitution and the Omnibus Bill, and what is right and just. Of course this question is confined there in the Omnibus Bill; does it provide by Ordinance for the election of Clerk of the Circuit Court? Those who favor the proposition that we have authority under the Omnibus Bill for the election of Circuit Clerk, base our belief upon two different parts of the Omnibus Bill. Section 9—I will read all of Section 9 so as to get the commencement,—“Sec. 9. That until the next general census, or until otherwise provided by law, said States shall be entitled to one representative in the House of Representatives of the United States, except South Dakota, which shall be entitled to two; and the representatives to the fifty-first Congress together with the Governors and other officers provided for in said Constitutions, may be elected on the same day of the election for the ratification and rejection of the Constitutions; and until said State officers are elected and qualified under the provisions of each Constitution and the States, respectively, are admitted into the Union, the Territorial officers shall continue to discharge the duties of their respective offices in each of said Territories.”

Now I take it that that means this: The words “other officers,” that without any stretch of construction, this Convention under that is authorized to provide for the election of every officer of the State and county provided for in this Constitution. And though we do not carry it to that extent, I believe we have that authority; that it is not only the duty and privilege of this Convention, and power, but it is the duty of the Convention to provide for this office; why?

I believe it is generally conceded that the Clerk of the District Court under the present system that we have when the State government comes into existence and the District Court going out of existence that the Clerk will follow and that we will have the office and election of the Judge of Circuit Court as provided for; but there is no provision made for the clerical work of that Court; then we will have a court without any clerk; that is conceded by some as being the condition in which we will find ourselves after we are admitted. Now that being the case in our view it is necessary to fill that office. While this Convention may by ordinance have power to fill it as the Convention of 1885 did by providing that the Clerk will held over, I think it is very doubtful. The Constitution adopted in 1885 by which we are bound, provides that the Clerk

of the Circuit Court is an elective office. I hold, that being an elective office that the Clerk of the Court must be elected before an appointment can be made to fill a vacancy. Sec. 32 of Art. V of the Constitution reads as follows: "There shall be a Clerk of the Circuit Court in each organized county, who shall also be clerk of the county court and who shall be elected by the qualified electors of such county. The duties and compensation of said Clerk shall be as provided by law and regulated by the rules of the court consistent with the provisions of law". Then the Constitution unequivocally provides for that office. We have another section of the Omnibus Bill that is still more sweeping in its terms and expresses this view. Sec. 24 reads as follows: "That the Constitutional Convention may by ordinance provide for the election of officers for a full State government."

For the election of officers for a full state government! We hold further that the phrase "full state government" does not mean the officers usually denominated State officers, only, but officers that will make a state government complete in all its parts. Not only does it say in my judgment entitled by this instrument, but this, including county officers, and other officers that are provided for in this Constitution. I believe that phrase will include all of them. Taking these two sections there is no question but what the power is provided for us to provide for the election of the Clerk of the Court.

Sec. 5 of Article IX of the Sioux Falls Constitution we have the reason for some objections that are raised to the position that I maintain with others. That section reads as follows: "In each organized county at the first general election held after the admission of the State of Dakota into the Union and every two years thereafter there shall be elected a Clerk of the Court, etc. It says at the first general election there shall be elected a Clerk of the Circuit Court. This Constitution, while it provides and defines when and what a general election is, in a certain way, the term general election is used there; there was a definition of the term "general election", in cases of all general elections occurring on even numbered years.

Then under this provision the Clerk of the Circuit Court will be elected in June, 1890. Now how are we to bridge over until

1890? That is a point that is interesting many of us. We want to provide for that office until November, 1890. Looking at the Omnibus Bill we have found in two sections ample authority for this Convention to provide for that. I believe not only that we have authority, but it is our duty to do so and it is generally demanded by the people we represent to provide for this election.

A Voice: Let us hear the section under consideration, read.
The Clerk reads Section 5.

Mr. Van Buskirk: We have with some other members of the Committee reached a somewhat different conclusion with reference to the position which we occupy upon this particular subject. I have supposed that when Congress was dealing with the question that they were taking into consideration what usually in the history of the administration of the law as it had existed in other states would be made to apply here and to that history we may refer for the purpose of determining what offices are referred to here and included within the provisions of the Omnibus Bill. I will call the attention of the members to the Second Article of the Constitution of Dakota, known as the Sioux Falls Constitution. I do this for the purpose of their observing that all state constitutions like ours contain this provision. I do it for the purpose of ascertaining who are state officers in particular.

"The powers of the government of the State are divided into three distinct departments, the Legislative, Executive and Judiciary. And the powers and duties of each are prescribed by this Constitution". Now we will remark that while we have theoretically a State possibly without any difference in the administration of law, practically we have no State government without the election of State officers. And that when they are speaking in the Enabling Act of "State officers," they are referring to officers who fill these different positions necessary to the exercise of the powers of the State government. The government of the State can be exercised by officers filling these particular positions in existence. The members of the Legislature would make the law of the State the courts would determine the meaning and interpretation of them and issue their process and put them into the hands of the Executive Department and they would be executed; and certain of the other officers like the Treasurer, would constitute a branch which would be called the Executive, the Legislature would be the Legislative Department; the Judicial officers would exercise the

Judiciary functions; when you have got those you have got all that is perhaps absolutely necessary to constitute a whole state government. As I have said, I apprehend that when Congress was using the terms which they have used in the Omnibus Bill they were using them in the light of the provision that was contained in this, and which provision is contained in all other constitutions. Now, let us proceed a little further and consider this Omnibus Bill. The Section 9, to which my Brother Williams has referred, "That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the House of Representatives of the United States, except South Dakota, which shall be entitled to two; and the Representatives to the Fifty-first Congress, together with the Governors and other officers provided for in said Constitutions, may be elected on the same day of the election for the ratification or rejection of the Constitutions; and until said State officers are elected and qualified under the provisions of each Constitution and the States, respectively, are admitted into the Union, the Territorial officers shall continue to discharge the duties of their respective offices in each of said Territories."

Now, I suppose by a familiar rule when we speak of other officers, we are referring to a particular class, to-wit: The State officers, among which the Governor is one; that when they state other State officers they refer to that class which immediately precedes, to-wit: The Executive Department of the Government, and do not refer to county officers. And I am further, by that section, inclined to that belief. We find before we conclude that section, "and until said State officers are elected" the Territorial government shall remain.

Taking the first part even without the other, I should arrive at that conclusion; I am confirmed in the belief that that was what was meant from the fact that they state "until the State officers are elected" and qualified, etc. I do not see how, under that, you can rationally reach any other conclusion, but that they are speaking of the governors and Treasurer and Auditor and perhaps the Superintendent of Schools; that those are the officers denominated State officers.

Now, I understand very well in the early legislation of this country we had no difficulty in separating the State from the county officers. If an individual inquires "Who are the State officers. I do not think anybody ever thought of stating they included Mr.

Register of Deeds, or Constable, or Mr. Pathmaster; but he would say the Governor and Treasurer and Judges of the Circuit Court were State officers. Here is another matter stated perhaps in most all of our constitutions; it is found in this one; a provision which says in case of a vacancy the Governor shall appoint all these officers down to the County Judge; the other officers are to be appointed by the Board of County Commissioners. It seems that in our Constitution,—and I assume that Congress drew that line right through there separating the officers of State from the county officers. It seems to me that is what it means. We may proceed to another provision of this Omnibus Bill, which adds force to this conclusion. I read it: "That the Constitutional Convention may by ordinance, provide for the election of officers for full State government including the members of the Legislature and Representatives of the Fifty-first Congress". It seems a little singular to me that if all other officers aside from those that are determined State officers were included within those terms they should have taken so much pains as to have said "including the members of the Legislature". Now that circumstance, using that language forces me to the conclusion that they intended when they spoke of the officers of the State government to have in mind those which I have mentioned, and to have no question about it they say including the members of the Legislature. It seems to me that if they had intended that every officer down to Pathmaster was to be denominated a State officer, they would not have taken pains to have used that language at all. We read a little lower "But that said State government shall remain in abeyance until the States shall be admitted into the Union, as provided in this act".

Now this Legislature, together with another rule which Congress had no doubt in mind, (it seems they had confined themselves to the Constitution of 1885 a great many times) they indicate a provision which reads in this way, that there shall be elected at the first general election after the admission of this State into the Union, county officers, which includes this Clerk of the Circuit Court. I say I assume from the circumstance that they had had this Constitution before them so many times and so long that these provisions were in their minds and before them when they drew this Omnibus Bill; they anticipated or intended that that should be correct and that that should be the result of it and that that was the construction they put upon it from the language used in this

Omnibus Bill that perhaps constitutes the principal legal objection to the introduction of this amendment into the ordinance. It seems to me remarkable that we should stoop in this Convention,—that we should stoop to provide for one solitary county officer as a matter of policy.

It is simply a question of whether or not we have got the power; I take it under the provisions of this bill that these county officers hold over; and the very fact that they say in this Constitution, "Clerk of the Circuit Court"; I cannot think that that has any significance, because if we take what they do in some of the other states, where the courts are denominated "District Courts", just as many of the States instead of taking the term "Circuit Court" continue the original,—in the State of Iowa, they continue the name, "in District Court". The mere circumstance that a Court exercising the same jurisdiction under the Constitution is to be called Circuit Courts here with the same jurisdiction that was exercised under the law previously in existence, to-wit: The District Court and which is the same Court, and which exercises the same jurisdiction succeeds to all the powers and succeeds to all the unfinished business contained therein,—the mere fact that they state this shall be called the Circuit instead of the District Court can have no significance so far as the Clerk being a County officer. I think you will find also that so far as our statute is concerned, it provides for a Clerk of the District Court. We have a statute upon our books passed by the Legislature of the Territory, in which it was considered a county office just as much as the Register of Deeds, and perhaps many of us will remember at the next general election that in many counties of this Territory they went to work and elected Clerk of the District Court. It seems to me that the circumstance that the Legislature of this Territory in the next session after the adoption of the Constitution of 1885, provided for the election of this officer, Clerk of the Court as a county officer, must settle in the mind of every careful citizen the fact that they are not State officers, but simply county officers who hold over under the laws of the Territory.

Mr. Williams: I do not wish to prolong this debate, but I wish to correct an error. He reads Article second of the Constitution in support of his doctrine; I wish to read it: "The powers of the government of the State are divided into three distinct departments,—the Legislative, Executive and Judicial, and the powers

and duties of each are prescribed by this Constitution". He goes on to say the powers of each are distinct and separate. Now the Ordinance does not say that we can provide by ordinance for the election of the officers of each of these departments! It goes on to say the powers of the government are divided into three classes,—three distinct classes,—that is what Article II is; it provides that the powers of government enacted there and exercised by the will of the people is divided into three departments laid down, and in order that these three departments of government, as laid down, may not fail, we will turn to another article. Article V and see what is necessary to complete these three powers of government.

The Judicial powers of the State, except as in this Constitution otherwise provided, shall be vested in the Supreme Court, Circuit Courts, County Courts, and Justices of the Peace, and such other courts as may be created by law for cities and incorporated towns.

According to his own doctrine, in order that the full State government may be filled, we must elect the Justices of the Peace. I want the members of the Convention to think of that, I want to correct another mistake; that is this: The gentleman from Codington said, after the adoption of the Constitution in 1885 that the Legislature went to work and provided for the Clerk of the District Court; my understanding of that is that the Clerk of the District Court was provided by Act of the Legislature prior to that, because I have a distinct recollection that the question came up in 1884 and 1885 and the attempt was made in our town to elect one; and that it was overruled; that it was decided by the bar of this Territory that the Legislature had no power; the point I wish to make is this, that the statute was not passed in pursuance of this Constitution of 1885, but was an act of the Legislature without reference to this.

Mr. Wood of Pennington: I desire to say a few words on this question and for two reasons; I am mistaken in my understanding of the proposition or else the gentleman who resisted the election of the Clerk of Court at a common election was mistaken. This is a matter that we should get right upon, if we can. In the first place the report of the Committee provides in section four, "All officers, civil and military, now holding their offices and appointments in this Territory, under the authority of the United States, or under the authority of the Territory of Dakota, shall continue to

hold and exercise their respective offices and appointments until superseded under this Constitution”.

We are told here by the gentleman from Codrington that it is the same court; let us see about that. These courts, under the Constitution will be State Courts; there will be no issue raised upon that proposition. Now we take that for granted and I think it is granted that they are State Courts. Hardly the District Courts of the Territory of Dakota; they are Federal Courts, that is with this difference; they have the jurisdiction conferred by our Statute upon the District Courts and in addition to that they have the Jurisdiction of the United States Circuit and District Courts conferred upon them by the United States Circuit and District Courts and they have the jurisdiction of those courts conferred by law.

Will the gentleman contend for one moment, can anyone contend on principle that our Circuit Courts, after we are admitted into the Union, and these Courts are organized, will it be contended that they are the same grade or successor of the District? Why, it is the creation of a different and distinct tribunal and Court! Not the same at all. Every one of these District Courts of the Territory, get their life not from any law of the Territory; I apprehend in the first instance they get their life and authority from the Organic Act. Hence, they are not Territorial Courts in the sense of being merged into State Courts; their Clerks are appointed by the Courts themselves; we have the same provision relative to the Clerks of the Supreme Court and the reporters of the Supreme Court: “There shall be a Clerk and also a Reporter of Supreme Court who shall be appointed by the Judges thereof and who shall hold their office during the pleasure of the Judges”. It is not even an elective office. What business have we to provide for other offices not to be superseded by the State government? Is the office of Sheriff to be superseded? Or Coroner or Probate Court? That Court is superseded by the County Court in other words there is a merger into the county courts.

Who will contend that a County Judge is a State officer? We are cited to the Second Article of the Constitution, which defines that departments into which the State government is divided,—the Legislative, Executive and Judiciary. Who will say all Judiciary officers are State officers? I think the gentleman will not contend that a Justice of the Peace is a State officer, yet the Constitution in enumerating the places under the judicial powers,

names the Justice of the Peace as one of them. He is not a State officer in any sense. Where do we hear of a Justice of the Peace being superseded by the State government?

They have been elected, qualified and gone about their business as provided under the laws of the Territory; they are not superseded; that is, their business is not affected by the terms of the Constitution.

Now, it is plain, one of the first questions that will arise unless we provide for the election of the Clerks of Circuit Court; they are ex-officio Clerks of the County Court. For fear that will not be understood, I refer the Convention to Sec. 32, of Article V, and you will see that they are ex-officio Clerks of the County Court. The section referred to reads as follows: "There shall be a Clerk of the Circuit Court in each organized county, who shall also be Clerk of the County Court, and who shall be elected by the qualified electors of such county. The duties and compensation of said Clerk shall be as provided by law and regulated by the rules of the Court consistent with the provisions of law".

The Schedule report has provided for the election of the County Judge; it is contended that he is a State officer. Turning to Section 19 of Article V it reads as follows: "There shall be elected in each organized county a County Judge who shall be Judge of the County Court of said county, whose term of office shall be two years, until otherwise provided by law." What is the Constitution defining in that office? It is a county office. "There shall be elected in each organized county" what? A state officer, to be known and termed County Judge? Not at all! But, in each county shall be elected a county Judge. His office is a County office, known as County Judge. You are to provide for the election of a County Judge, yet you pretend that he is a State officer; whereas the Clerk of his Court, being a Clerk ex-officio, is not a State officer but a county officer--now where do you draw the line?

Mr. Dickinson: "All officers provided for in this Article shall respectively reside in the district, county, precinct, city, or town for which they may be elected or appointed"?

Mr. Wood: Very well. Gentlemen of the Convention; Notaries Public are appointed by the Governor; they are not elected at all; are they considered Territorial officers? I think you will find with the exception of the States of California and Kentucky that the courts hold that they are State officers. A different rule pre-

vails in some of the states they are authorized to perform the duties and functions of that office simply in the county where their certificate of appointment is recorded. They can of course have it recorded in each county in the State, but until so recorded they can only act on the county where it is so recorded. Then the distinction in the appointing power to fill vacancies; the distinction is as to whether the office is a county or a State office. "Vacancies in the elective offices provided for in this Article shall be filled by appointment until the next general election as follows: All Judges of the Supreme, Circuit and County Courts by the County Board of the county where the vacancy occurs; in cases of police magistrates, by the municipality." The Governor is told to fill the vacancy in the County Judge's office by appointment; but does that determine to your satisfaction, and from that reasoning can you say it creates and makes the Judge of the County Court and his Clerk a State officer? If a State officer, why is not his salary paid by the State? We do not find any provision of that kind in the Constitution; whereas the Circuit Court Judges receive their salary from the State. I find this: I think, and I think the majority of the Convention will agree with me that the Judges of the County Courts are county officers and not State officers at all, under this Constitution,—that the Probate Court is superseded or will be superseded by the State government; at least the Committee took that view of the matter that the Clerk of the Circuit Court is ex-officio Clerk of the County Court. The election of these Judges was provided for, but these Judges of these courts are to be provided according to the provisions of this Constitution with a Clerk; he is an officer distinctively of that Court and without we provide for that Clerk, your Court is incomplete isn't it, under the Constitution? Is not that true? I say, unless we provide for the election of the Clerk, having elected your Judges you have not fully provided for the organization of these Courts; and not having fully provided for the organization of these Courts, then they do not, and cannot exist in their entirety as contemplated by the Constitution. They say if we elect the Clerk of the Court we have got to go right down through the list and elect all the other county officers; that is true, if you can show where these officers will be superseded by the State government; but we find on the contrary, they are continued straight through. In fact, these officers are continued not only in power, but in name, as existing under the laws of the Ter-

ritory; the laws of the Territory are continued right forward; nothing superseded excepting those of which it can be said by reason of there being a provision displacing them, under the State Constitution, they are superseded; everything else is continued.

I turn to the office of Sheriff and Register of Deeds, but there is a difference between those and the Clerks of the District Court. That is not an elective office under our law at all; the Legislature passed an act of that kind, or a certain Legislature did attempt to. While that question never went to the Supreme Court of this Territory the question was raised in this very district; the District Court of this District, I think in this county, held that the Legislature had no such power; at any rate the question was determined in some of the counties of South Dakota; we elected a Clerk of the District Court in Pennington County, but by reason of that decision, which we obtained, he never qualified and the old Clerk went on by virtue of his appointment. I think from these various provisions it will appear to the Convention clearly that we should elect all the officers proper to be elected in order to set the State government in full motion under Section 9 of the Omnibus Bill. Commencing with line five of Section 9, "And the Representatives to the Fifty-first Congress, together with the Governors and other officers provided for in said Constitutions (providing for all four States in the act) may be elected on the same day of the election for the ratification or rejection of the Constitutions; and until said State officers are elected and qualified under the provisions of each Constitution and the States, respectively, are admitted into the Union, the Territorial officers shall continue to discharge the duties of the respective offices in each of said Territories". That is they may be elected on that day or they may be elected on some other day, but they must be elected. Some gentlemen may contend that there is an appointing power somewhere. Is there an appointing power for an elective office before that office is filled by an election? There is no such thing known as a vacancy in an elective office until an election has been had unless the law provides that the first incumbent can be appointed; you cannot have such a thing as a vacancy until an election has been had. It will be contended perhaps that this same section has a provision obviating the difficulty "until such State officers are elected". It is contended by reason of that language that our power is confined to State officers

only. It is one of the incomprehensible things how anyone can contend that that is true. Look at the language again.

Mr. Stroupe called to the chair by the President.

Mr. Wood: "And other officers provided for in said Constitution may be elected on the same day of the election for the ratification or rejection of the Constitution". Now, they do not continue the discussion relative to the officers or all of the officers contained in the first provision; they are simply now proceeding to define what shall take place, or what shall be done when the States are admitted, and what shall be true until they are so admitted; they are not limited in any sense, the language is simple and distinct that all officers provided for in the Constitution shall be elected, and we may provide for their election at the coming election. Since we have provided for the election of these Courts it seems to me it will be our duty also to provide for the election of these Clerks because until you provide for the election of these Clerks you cannot organize the Courts; and until the Clerk is elected the appointing power cannot be exercised because no vacancy can exist in an elective office until there has been an election unless the law creating the office provides the first incumbent may be appointed. Then I say, there being no such provision that an incumbent of the office of the Clerk of the Circuit Court can hold by appointment; there must be an election before there is any vacancy in that office. There is no doubt in my mind but what the State government will supersede everything connected with the district court, then you will not have a Clerk of the Court at all; he cannot hold over, he has no authority under the State government, it all comes from the Judge, not through the people and until you elect a Clerk you will have none and I contend there is no appointing power other than the County Commissioners and they are judges themselves. The Circuit Judge might contend that he had the appointing power, the County Judge might contend that **HE** had the appointing power, and so as well, the County Commissioners might contend that they possessed the appointing power. You will have a row in every county in the State; there will be a regular scramble. In some localities they will have a dispute as to the appointing power, then, then if we pass this without providing for the election of the Clerk you will see the magnitude of the error committed; you will see where the criticism will fall and from whom; it will be all the Clerks and everybody everywhere and they will say that the Constitution pro-

vided for the election of the Judge, why didn't it provide for the election of a Clerk as well?

Mr. Sterling: A great deal of the argument has turned upon the necessity of the election of the Clerk of the Circuit Court upon the ground that there will be no person to fill that position and that there is no vacancy that can be filled by an appointment. This position was taken by some of the members of the Judiciary Committee and it was insisted that that being an elective office, no election being first held, the office was, so to speak, not organized. Therefore there was no vacancy that could be filled by an appointment. On the other hand it was contended that the Constitution created the office, that if there was an incumbent in the office there was a vacancy and that there was power to fill that vacancy by appointment under the Constitution. I was somewhat surprised by the position taken by some of the members of the Committee in that respect. I took a little occasion during our adjournment to look up upon that point and as to whether there was any peculiar meaning to that word vacancy, in this connection, which would render such an important office as this vacant, because there was no election under the Constitution. In Dillion on Municipal Corporations, Sec. 161 it is said (I am just reading from pencil notes; I will refer later to the decision that is referred to in this case). In this case it is said that a resignation takes effect and vacates for all time. "There is no technical nor peculiar meaning to the word vacant, it means empty, unoccupied; as applied to an office without an incumbent. There is no basis for the distinction urged that it applies only to an office vacated by death, resignation or otherwise. An existing office without an incumbent is vacant whether it be new or an old one. A new house is as vacant as one tenanted for a year which was abandoned yesterday. We must take the words in their usual plain sense". I am reading from the case of Stocking vs. the State, found in the 7th Indiana, page 326. I have examined the case since we have convened, since recess today. It was a case where a party was indicted for murder and in a district which had been newly created. It provided for the electing of the Judge of that district. There was a failure to elect; there was a failure to even attempt an election of Judge and under the appointing power given, the Governor of the State comes in and fills the vacancy in that office. The Judge was appointed, the man was tried, these questions were raised upon the trial of the party

for murder. This is word for word from a decision that was rendered from the Supreme Court of the State of Indiana, and there is an Indiana case following this which is precisely similiar. A case where election was provided by General Assembly. The General Assembly did not elect, the Governor filled the office by appointment. Now, is there any right to fill this office of Circuit Clerk by appointment? I say that there can be no question absolutely but what there is a vacancy. Sec. 37, of Article V, provides: "All officers provided for in this Article shall respectively reside in the district, county, precinct, city, or town for which they may be elected or appointed. Vacancies in the elective offices provided for in this Article shall be filled by appointment until the next general election, as follows: All Judges of the Supreme, Circuit and County Courts by the Governor. All other judicial and county officers by the County Board of the county where the vacancy occurs; in case of Police Magistrates, by the municipality." There is other authority for the election of the County Judge at this particular time than is found in Section 37. It is said because this officer is appointed by the Governor that he is a State officer, that as the Omnibus Bill authorizes the election of State officers, that the County Judge being a State officer may be elected now. Section 26, of the same Article V, provides that the Judges of the Supreme Court, County Court and Circuit Courts shall be chosen at the first election held under the provisions of this Constitution. So I contend that the makers of this Constitution plainly contemplated the election of the County Judges as well as the Supreme and Circuit Judges at the first election held under the provisions of this Constitution. Now, gentlemen say that because we are authorized under the Omnibus Bill to elect, what? Not all the officers as the gentleman said, provided in the Constitution, that is not in the Omnibus Bill respect of all officers necessary for a full State government. Now when they made this Constitution and provided for the election of officers at particular times the makers of the Constitution knew, and I do not believe Congress intended to indicate with any uncertain tone what they knew. They knew all officers would be necessary to carry on State government; they had in mind that if there was a vacancy in this office of County Judge that it would be filled by the Board of county Commissioners; they provided all the other county officers should be elected when? Not under the provisions of the Constitution when they got a case in the Courts, but at the first general election held

after the admission of the State into the Union. These different county officers should be elected. So I think, Mr. Chairman, that there is in the first place under this Constitution, no authority for the election of the Circuit Clerk, we have no warrant for it and I think in the second place that there is no necessity for it.

Mr. Jolley: So far as the Omnibus Bill is concerned I do not think that Mr. Springer or anyone else who had that measure under consideration got so far down in elective officers as to provide for the election of county officers. All that they did provide for was the State officers. So far as the argument made by the gentleman from Pennington is concerned, while very ingenious and presented in a very able manner, falls flat. His premises are not correct. There is now, and will be until we are admitted under this Constitution, if we are admitted under it, a provision by which the Clerks of Court can be appointed in the several counties in this Territory by Judges of the District Court. They are now, they will remain there until we are admitted as the State of South Dakota under this Constitution, that is the District Courts of the Territory of Dakota. And just as soon as we are admitted under this Constitution, if we are admitted, the provisions for these changes under the provisions of the Constitution are amply full and complete as to what course shall be with reference to the office of Clerk of the Court and there is no doubt, not any ambiguity as to how that officer shall be appointed and what his powers are. Sec. 32 read: "There shall be a Clerk of the Circuit Court in each organized county, who shall also be Clerk of the County Court, and who shall be elected by the qualified electors of such county. The duties and compensation of said Clerk shall be as provided by law and regulated by the rules of the Court consistent with the provisions of law." Under this Constitution we are attempting to thrust the provisions in Sec. 32 that there shall be a Clerk of the District Court that shall be elected by law. If the position taken by the gentleman from Pennington is tenable then you have here a rule by which you can deceive the will of the people and do great injustice as long as you see fit to do so. Why? It is soberly contended that before there is a vacancy in any office created by law, there must be an incumbent to fill that office. Taking that rule, where are we? Suppose at

the next general election we had elected a gentleman as Governor of this Territory before the State is admitted. This Governor dies, there is no vacancy in that office and it can not be filled, according to the proposition laid down by the gentleman from Pennington, before that Governor has been sworn in, that then there becomes a vacancy and then can it be filled. It must necessarily be a vacancy, his office is created, at the same time the duties; there is a vacancy in that office; that is law. To show what the intention of the framers of this Constitution was, Sec. 5 of Art. IX reads: "In each organized county, at the first election held after the admission of the State of Dakota into the Union, and every two years thereafter, there shall be elected a Clerk of the Court, Sheriff, County Auditor, Register of Deeds, Treasurer, States Attorney, Surveyor, Coroner, and Superintendent of Schools, whose term of office, respectively shall be two years, and except the Clerk of the Court, no person shall be eligible for more than four years in succession to any of the above named offices. This Constitution by Sec. 32 says, Art. V says: "There shall be a Clerk of the Circuit Court in every organized county, who shall also be Clerk of the County Court, and who shall be elected by the qualified electors of such county. The duties and compensation of said Clerk shall be as provided by law and regulated by the rules of the Court consistent with the provisions of law." Sec. 5, Art. 9, says that we shall not elect the Clerk until the first election after we are admitted as a State under this Constitution. Sec. 37 says, as read, that where there is a vacancy in the county offices that that office shall be filled by the County Commissioners. What can be more plain, clear and distinct than that? That there must be, just as quick as we are admitted, the office of the Clerk of the Circuit Court and we are prohibited by this Constitution from electing a Clerk of the Circuit Court until the first election after we are admitted, into the Union That instead of making these acts conflict by electing a clerk of the Court would but just add to the complication. There is no court in Christendom could take that to be the law, plain in its details in the

place of an act which would fly in the teeth and eyes of this Constitution, and against the rules laid down by it. No sir, the Constitution says there shall be a Clerk of the Court and the Constitution says we cannot elect that Clerk of the Court until the general election after we are admitted into the Union under this Constitution. And the Constitution further says that where there is a vacancy in the county offices it shall be filled by the Board of County Commissioners and that is all it says. It is plain and clear.

Mr. Sherwood: I desire to add one or two points to those of the gentleman from Pennington; I think that we have a right to elect a Clerk of the Court. I apprehend that the only question at issue here is the question of power. I do not think there will be any doubt among the majority of this Convention as to the expediency or necessity of it. I desire to call attention to the remarks of the gentleman from Spink in the case which he read. In relation to election under the Constitution, I desire to say that the election on the 1st day of October next is not under this Constitution. When the Constitution of 1885 was adopted, all the powers granted were the powers granted under this Constitution. Today we stand in a different position. The powers we are moving under are the powers that emanate from Congress. Referring to Article 24 of said Omnibus Bill does it not provide in terms that all officers provided for under said Constitution might be elected? I desire to read a portion of Sec. 9: "Representatives to the Fifty-first Congress together with Governors and other officers provided for in this Constitution." Now, in so many words it says "All other officers provided for in this Constitution". Either those words mean nothing or they mean something. "The other officers." No one will contend for a moment but what the Clerk of the Court is one of the other officers, provided for under this Constitution, expressly is designated as one of the officers provided for under this Constitution. Now I say that these words mean something or they mean nothing. I desire to say further that the power to elect these various officers carries with it the power to provide for their election; that is the common rule in relation to the interpretation of statutes.

That must not be interpreted as follows: The intent of the statutes indicated by the framers of it must be taken into consideration so, if possible, to give a meaning to all portions of the statute. Now, to give it the interpretation that has been given it here today wipes out Sec. 9 and leaves Sec. 24 intact. Interpreted as we interpret it blends Secs. 9 and 24 and gives power to elect all of the State officers.

Mr. Sterling: I stand corrected as to the words of the Omnibus Bill. I contend that that subject, the election of officers provided for under this State Constitution must be construed in reference to the Constitution itself at the times of the election provided for in the Constitution and that by instructing this Convention to re-submit this Constitution to the people they said, or expressed the meaning that the Clerks of the Court shall not be elected.

(Calls of question from all over the house.)

Mr. Willis: I am beginning to conclude that we who are not lawyers cannot stand much more information on this subject. I am about the opinion of the old lady, that she believed the Scriptures would still throw some light on this subject; I shall begin to make a speech probably myself, if this continues.

(Calls of question.)

Mr. President: The question is upon the amendment of Mr. Woods, of Pennington.

Mr. Sherwood: I call for the reading of the amendment.

Mr. Williams: I will read it: "That Section 5 be amended after the word 'State' in the fourth line of the 7th paragraph by inserting the words 'and county' and at the end of paragraph 8 of Section 5, add the words 'and Clerk of Circuit Court.' "

The question on the amendment reaching a vote resulted as follows: Ayes 22; nays 39. The motion was declared lost, by the President, the following gentlemen voting aye: Messrs. Atkinson, Boucher, Clough, Cook, Davies, Fowles Goddard, Hall, Henninger, Huntley, Humphrey, Matson, McFarland, O'Brien, Peck, Sherwood, Smith, Spooner, Williams, Wood of Pennington, Zitka, and Mr. President. 22. And the following gentlemen voting nay Anderson, Berdahl, Beuchler, Coats, Cooper, Corson, Couchman, Craig, Dickinson, Diefendorf, Downing, Eddy, Edgerton of Yankton, Fellows, Gifford, Hartley, Hole, Houlton, Jolley, Kimball, Lee, Lyons, Ramsey, Ringsrud, Scollard, Stoddard, Sterling, Stroupe,

Thompson; Van Buskirk, Van Eps, Van Tassel, Wescott, Wheeler, Whitlock, Willis, Williamson, Wood of Spink, Young. 39.

Mr. President: The question now stands upon the adoption of Section 5.

Mr. Humphrey: I would call attention to the last two paragraphs of the section, the last two paragraphs but one, the paragraph beginning "if it shall appear". The last clause of that paragraph, the last clause of the next, it seems to me, that they are superfluous. I would not move that they be expunged, but I call attention of the Chairman of the Committee and if he thinks they are necessary there I do not object absolutely.

The Chairman: The motion is upon the adoption of Sec. 5. As many as are in favor will say aye. The ayes seem to have it; the ayes have it. Section 5 is adopted. The Clerk reads Sec. 6 as follows:

Sec. 6. At the same time and places of election, there shall be held by said qualified electors an election for the place of temporary seat of government.

On each ballot, and on the same ballot, on which are the matters voted for or against, as hereinbefore provided, shall be written or printed the words, "For temporary seat of government."

(Here insert the name of the city, town or place to be voted for.)

And upon the canvass and return of the vote, made and as hereinafter provided for, the name of the city, town or place, which shall have received the largest number of votes for said temporary seat of government, shall be declared by the Governor, Chief Justice and Secretary of the Territory of Dakota, or by any two of them at the same time that they shall canvass the vote for or against the Constitution, together with the whole number of votes cast for each city, town or place, and the officers, above named, shall immediately after the result of said election shall have been ascertained, issue a proclamation directing the Legislature elected at said election, to assemble at the said city, town, or place so selected, on the day fixed by this Schedule and Ordinance.

Mr. Hole: I move the adoption of Section 6, as read.

This motion received a second.

The President: The question is upon the adoption of Sec. 6. As many as are of the opinion that the motion prevail, say aye. The ayes have it; Section 6 is adopted.

The Clerk reads Section 7.

Section 7. The election provided for herein shall be under the provisions of the Constitution herewith submitted, and shall be conducted, in all respects, as elections are conducted under the general laws of the Territory of Dakota, except as herein provided. No mere technicalities or informalities, in the manner of form of election, or neglect of any officer to perform his duty with regard thereto, shall be deemed to vitiate or avoid the same, it being the true intent and object of this ordinance to ascertain and give effect to the true will of the people of the State of South Dakota, as expressed by their votes at the polls.

Mr. Peck: I ask the Clerk to read my motion which he has possession of.

The Clerk reads: "That Section 7 of the report of the Committee on Schedule and Ordinance be stricken out and the following be inserted in lieu therefore:

RULES REGULATING THE ELECTION TO BE HELD UNDER THE AUTHORITY OF THE ENABLING ACT FOR THE ADOPTION OR REJECTION OF THE CONSTITUTION AND THE ARTICLES SEPARATELY SUBMITTED THEREWITH AND THE REPRESENTATIVES IN CONGRESS; ALSO STATE AND JUDICIAL OFFICERS FOR SOUTH DAKOTA.

SECTION 1. That at the election to be held on the first day of October, 1889, the election laws now in force in the Territory of Dakota shall apply to and govern such election except as hereinafter specially provided.

SEC. 2. Nominations for State officers, Representatives in Congress and Judges of the Supreme Court shall be made by any State Convention and certified to by the Chairman and Secretary of such Convention, according to form number one (1) hereinafter provided, or by any three hundred (300) legal voters in South Dakota attaching their names to a paper nominating candidates and filing the same with the Territorial Secretary.

SEC. 3. Nominations for members of the State Legislature, Judges of the Circuit Court and Judges of the County Courts, shall be made by any Convention held in legislative and judicial districts or county for which any such officer is to be elected, and certified to by the Chairman and Secretary, according to form No. 2 hereinafter prescribed, or by anyone hundred legal voters of any legislative or judicial district or county, by attaching their names to a paper nominating such officers, and filing the same with the County Clerk or County Auditor to which such nominations refer.

SEC. 4. All certificates of nominations and nominating papers provided for in Section two (2) shall be filed with the Territorial Secretary by the fifteenth day of September, and all those provided

for in Section three (3) shall be filed with the County Clerk or County Auditor by the twentieth day of September, 1889, and no certificate of nomination or nominating papers shall be acted upon except accompanied with the consent in writing of the persons or persons therein nominated, provided that in case of death or resignation, the authority making such nomination shall be permitted to fill such vacancy by a new nomination.

SEC. 5. The Territorial Secretary, on the receipt by him of the nominating papers hereinbefore mentioned, shall forthwith transmit true copies of the same to the County Clerks or County Auditors of the several counties in South Dakota.

SEC. 6. The County Clerk or County Auditor shall, after the expiration of the time for receiving the nominating papers, forthwith cause to be printed such a number of ballot papers as will be sufficient for the purpose of the election and the number necessary for each polling place shall be bound or stitched in a book of convenient form, and the County Clerk or County Auditor shall cause to be printed in English, in large type, on cards, instructions for the guidance of voters in preparing their ballot paper; such clerk or auditor shall furnish ten copies of such instructions to the Judges of each election precinct, and said Judges shall cause them to be posted both inside and outside of the polling place, and said County Clerk or County Auditor shall as provided by law, cause to be delivered to the proper judges of election the ballot box and all poll books and returns now by law required or by this ordinance required to conduct and complete the election, also the ballot papers, at least two (2) days before polling the vote; and shall cause to be published in each newspaper in the county a true copy of the ballot paper and card of instructions, said publication to be in the last issue of said papers before the day of voting.

SEC. 7. Every ballot paper shall contain the names of all candidates for Representatives in Congress, State and Judicial officers, and members of the Legislature, and the name of the political party to which each candidate belongs; also the form of ballot for the adoption or rejection of the Constitution and the Articles separately submitted therewith as provided in this ordinance.

SEC. 8. Each polling place shall be furnished with a sufficient number of compartments, in which the voter, screened from observation, shall mark his ballot paper, and a guard rail so constructed that only persons within such rail can approach within ten (10) feet of the ballot box, and it shall be the duty of the judges of election in each polling place to see that a sufficient number of such places be provided and shall appoint a person to guard the entrance to such compartments and he shall be paid the same as the judges of election.

SEC. 9. The voters being admitted one at a time for each compartment where the poll is held shall declare his name, and when per-

mitted by the judges to vote his name shall be entered on the voter's list, and he shall receive from one of the judges of election a ballot paper on the back of which the initials of one of the judges of election shall be so placed that when the ballot paper is folded they can be seen without opening it, and the judges of election shall instruct him how to mark his ballot paper.

SEC. 10. The voter, on receiving his ballot paper, shall forthwith proceed to one of the compartments of the polling station and there without undue delay, not exceeding five minutes, mark his ballot paper by putting a cross (X) in the space to the right-hand side of the name of the person for whom he desires to vote and if he desires to vote for any person whose name is not on his ballot paper he may write or paste on his ballot paper the name of the person for whom he desires to vote, and shall then fold up his ballot paper so that the initials on the back can be seen without opening, and hand it to one of the judges, who shall, without opening it ascertain that the initials are on it, and that it is the same ballot paper given to the voter, and shall then place it in the ballot box and the voter shall quit the polling compartment as soon as his ballot paper has been put in the ballot box.

SEC. 11. The judges of election, on the application of any voter who is unable to vote in any manner provided, shall assist such voter by marking his ballot paper in the manner desired by such voter in the presence of the persons permitted to be in the compartment occupied by the judges and no others, and shall place such ballot paper in the ballot box, and when the judges of election shall not understand the language spoken by the voters claiming to vote, they shall swear an interpreter, who shall be the means of communication between them and the voter with reference to all matters required to enable such voter to vote.

SEC. 12. A voter who has inadvertently dealt with the ballot paper given him in such a manner that it cannot be conveniently used, may, on delivering the same to the judges obtain another ballot paper in place of that so delivered up.

SEC. 13. Any voter refusing to take the oath or affirmation of qualification as required by law, when requested so to do, shall not receive a ballot paper or be permitted to vote.

SEC. 14. No person shall be allowed to take his ballot paper out of the polling place, nor, except as in case provided for by Section Eleven (11), to show it when marked to any person so as to allow the name of the candidate for whom he has voted to be known, and any voter who violates or refuses to comply with this ordinance shall not be permitted to vote.

SEC. 15. In addition to the judges and clerks of election one watcher at each polling precinct for each political party presenting a candidate or candidates for the suffrage of the voters and no other person shall be permitted in the compartment occupied by the judges on election day, and such judges, clerks and watchers shall,

before entering upon thier respective duties take and subscribe to the following oath or affirmation:

I, John Jones, do solemnly swear (or affirm) that I will keep secret the names of candidates for whom any voter may have marked his ballot paper in my presence at this election, so help me God.

SIGNED:

J. J.

Sworn or affirmed before me at.....this first day of October, 1889.

Justice of the Peace or Judge of Election.

SEC. 16. Immediately on the close of the poll the judges in the presence of the clerks of election and such of the watchers and voters as desire to be present, shall open the ballot box and proceed to count the number of votes for each candidate; in doing so, they shall reject all ballot papers which have not been supplied by them as judges of election, all ballots by which more candidates have been voted for than there are officers to be elected; also those upon which there is any writing or mark by which the voter can be identified; all the ballots voted and counted, and those rejected, those spoiled, and those unused, shall be put into separate envelopes and all these parcels shall be endorsed so as to indicate their contents, and be placed in the ballot box and a return of the result of the election at the polling precinct shall be made to the County Clerk or the County Auditor, as now required by law for the election of members of the Territorial Legislature.

SEC. 17. All expense incurred under these rules to be a charge against the county and audited and paid as other claims against the county.

Mr. Hole: I think that that does not provide for things that we must provide for. I think if that is added to Section 7 there will be no conflict. This was made up with a view of and expecting that that would be attached, but if you make that take the place of Section 7 it does not provide for what we must provide for, but if you make that as an amendment to it then it comes before the Convention in a way that it can be discussed intelligently.

Mr. Peck: I have no choice whether it is added to the end of Section 7 or takes the place of Section 7, no particular choice as long as it goes through.

The President: Do you make this as an amendment to be added to Section 7? Or is it a substitute?

Mr. Peck: If it be thought desirable to retain Section 7, I do not care about informalities and have no objection that it be added to Section 7 as an amendment.

Mr. Scollard: I move it be laid on the table.

Mr. Jolley: Oh, no!

Mr. Hole: I have no right on the floor but to consider this matter in the Committee Conference. This is a question upon which we all can honestly differ and I ask as a favor, and I think I express the wish of every one of the Executive Committee that that motion might be withdrawn.

Mr. Scollard: I think, Sir, that this Committee is entitled to as much courtesy as any other that has been appointed by the President of the Convention and this matter came up before the Committee and was voted down unanimously.

(Voices of No, No No.)

Mr. Scollard: You will have the floor after I get through, if you please. I think, as a matter of right, that this matter ought to be laid on the table. It don't belong to this Committee after it was voted down. I therefore submit it to the Convention again, that this amendment should be tabled.

The Chairman: It has been moved and seconded to lay the amendment on the table.

(Calls for ayes and noes.)

The President: Those who are in favor of laying the amendment upon the table will vote aye; those opposed vote no.

The ballot resulted as follows:

Those voting aye: Messrs. Buechler and Scollard. (2).

Those voting nay: Messrs. Anderson, Atkinson, Berdahl, Boucher, Clough, Coats, Cook, Corson, Couchman, Craig, Davies, Dickinson, Diefendorf, Downing, Eddy, Edgerton of Yankton, Fellows, Fowles, Gifford, Goddard, Hall, Hartley, Henninger, Hole, Houlton, Huntly, Humphrey, Jolley, Kimball, Lee, Lyons, Matson, McFarland, O'Brien, Peck, Ramsey, Ringsrud, Sherwood, Smith Spooner, Stoddard, Sterling, Stroupe, Thompson, Van Buskirk, Van Eps, Van Tassel, Wescott, Wheeler, Whitlock, Willis, Williams, Williamson, Wood of Spink, Young, Zitka and Mr. President. (57).

The President announced the result of the ballot, two voting aye, and fifty-seven voting nay.

Mr. Peck: I move that Section 7 of the report of the Committee on Schedule and Ordinance be amended by adding the following thereto, that the amendment last read by the Clerk be added as a paragraph to Sec. No. 7.

Mr. Hole: I do not wish to discuss this question more than just to say that it was decidedly the understanding and expectation in the Committee that this should come before this Convention. I think it is fair that this should be considered as an original ques-

tion here without being prejudiced in any manner by any action that the Committee may have taken.

Mr. Van Buskirk: I don't know at this present time the effect of adding this as a section. I would like to call attention at this time so that it would not control some future additions that I would make to it.

Mr. Hole: Would you allow me one suggestion? Why not just number this Section 7 a sub-section?

Mr. Van Buskirk: I will call the attention of the Convention to a few suggestions which have been overlooked. For instance, Sec. 2. Nominating State officers, Representatives in Congress, and Judges of the Supreme Court shall be made by any State Convention and certified to by the Chairman and Secretary of such Convention. After this word Convention"" I would insert the word "substantially" so that it would not stand to be a technicality, and every member of the Committee that I have had an opportunity to confer with they conceded that it would be proper. We read a little further "Or by any three hundred legal voters in South Dakota attaching their names to a paper". Now, there might be three or four of them circulated with the same proposition. I would say "paper or papers"; it seems that that ought to go in. Then passing from that down to Section 3, nominations for members of the State Legislature, Judges and Clerks of the Circuit Court. I would suggest to strike that out.

Mr. Peck: Yes, Sir. Exactly.

Mr. Van Buskirk: We look a little further down—I would insert the word "substantially" and following, in the third line from the bottom, where they say "paper" I would say "papers." In view of the fact that the election comes on the first day of October, the inquiry arises in my mind whether that would be time enough for the Secretary of the Territory to get those returns that would come to him to be sent back, counted.

Mr. Peck: I simply put it there that we might note it; they can fix it as they see fit.

Mr. Van Buskirk: Passing that I would desire to suggest in view of the legislation that will take place in other localities upon that subject, I don't know whether that would be a subject for this Convention to investigate, the Judges and Clerks of Courts shall be chosen from the district political parties, they are of course provided for

Mr. Peck: Allow me to make one little suggestion. What I think the point that this measure desired was simply this,—
(Calls from different parts of the house of "louder").

Mr. Peck: What we desire to get a vote upon the principal and consider section by section until after we take the vote upon the principal. I think the wish of the friends of it is to secure the best system of voting that we can possibly get.

The President: Your amendment as made if carried would accept the whole measure.

Mr. Peck: It becomes a part of the report and then will be subject to revision just as the other sections of the report are,—subject to revision afterwards, to strike it out or modify it.

Mr. Hole: As I take it, under the Constitution, the adoption of this would make it permanent and would make this law and part of the Schedule absolutely. We have already adopted or made law, as far as in this Convention lies the power, all the sections down to and including Sec. 6. We now have before us Section 7. It is moved as an amendment to Sec. 7; that amendment is carried; then on motion adopting the section it would then be just as much a part of the Schedule as any other section of it. It looks to me if we urge this question only to get an idea of the feeling of the Convention. If this is only to feel of the temper of the Convention upon this subject that the matter might be brought forward by resolution. But in this we are making law,—we are making law when we vote upon this and we cannot afford to vote blindly. While I may be in favor of some things, I may not be in favor of others.

Mr. Dickinson: I do not agree with Mr. Hole, and I do not understand it as he does. I understand that this is an amendment to Sec. 7 in passing upon an amendment that it becomes a part of Sec. 7. We do not thereby adopt Section 7, we can re-commit or assign to a special committee or re-commit it to the Schedule Committee or take it in Committee of the Whole. I would not vote for it unless it were to pass under careful review and inspection, being careful to make it harmonize with other portions of the Schedule.

Mr. Jolley: What is the question before the Convention?

The President: The adoption of the amendment to Section 7, presented by Mr. Peck.

Mr. Jolley: Then it is to take the place of Section 7. Mr. President, at last, after two weeks of wrangling on this section, we

see ourselves at the threshold of having passed the finest Schedule that ever was passed by a constitutional convention, or we are to the threshold of having it mangled so that its parents won't know it. I had supposed, Sir, that from the time that this Convention had been in session up to the present time, judging from the acts of th's Convention and from the manner business has been conducted that we could get on through as we had begun, careful, prudent men, trying to keep ourselves in the boundary, in the formation of our Constitution, within the powers granted to us by the Omnibus Bill. The Schedule as reported by the Committee this morning governed everything that is necessary, comes right up the line allowed us by the Omnibus Bill. But when that line is passed the danger comes. It may be a gratification to the personal interests of some delegates upon the floor of this Convention to be recognized by pressing such an amendment as this, without judging of the result and effect that it will have upon the State of South Dakota. It may be that some delegate here feels determined to abandon that straight course that has been our line of conduct up to the present time and that they will put this Constitution with a Schedule with an amendment upon it in a position where it will be in very great danger of being wrecked. Among all the positions it has been my portion to be connected with in this world, I never was connectd with a position, and never had a duty to perform that was so difficult, so trying and in which more care had to be exercised than drawing a Constitution passed by the people to be amended under this Enabling Act, and it may be out of this thought that we will cease to be a Territory in a short time, and the joy that South Dakota will soon be admitted into statehood and that the star of South Dakota will soon be placed upon the national colors, has effected our good judgment. This I believe, could be carefully looked into, for, Sir, if there is any doubt in the mind of a single delegate in this Convention I cannot conceive the reason or theory that he has; I cannot conceive of the line of logic that he pursues. I cannot see what construction he gives the words if there is any question of that kind in the minds of any delegate here as to whether we have the power to make this amendment or not. We have a full, free, open and clear course to pursue, but we must be careful that we do not deviate from that course. Why Sir, this bill here is a general law, relating to the whole election as provided for in the Schedule relating to State officers. It relates also to the votes for

and against the rejection of the Constitution that we will put before the people and for the amendment thereto. No, Sir, I undertake to say without fear of successful contradiction, that there is no power given us any place in this Omnibus Bill; there is not a word, syllable, section, chapter or article from beginning to end which gives us any right to tamper or interfere in any manner with the election laws as laid down in the Territory of Dakota in any respect except upon the question of the adoption and rejection of the Constitution we will put before the people. The Omnibus Bill says: "And all persons resident in the said proposed State who are qualified voters of said Territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said Conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the Constitution." Now, Sir, I say under that language that that is all the language of this Omnibus Bill that relates to what we shall provide as rules and regulations for the election of State officers, not the election of the several persons that is attached. But the rule is strict; the law must be enforced exactly as it is; only that and nothing more. You can provide no rule and regulation that refers to the election of State officers; may provide rules and regulations for the election upon the question of the rejection or ratification of the Constitution, but you cannot go a single ell further; you are barred and can proceed no further. Why, Sir, this is a very serious question; it may result in this Convention of raising the question of its powers, it is frequent in courts that we raise the question of its jurisdiction. When we come before the people with our work; when the excitement of the present time is passed and gone; when we sit down in our homes and consider and look over this question as the people whom we represent are now looking at it; when we come to such things as it is we will realize that we have gone beyond the powers granted to us. Then will come the reaction and regret. Why, Sir, we cannot arrogate to ourselves any powers except what is given in the Omnibus Bill and it says what shall be done. I read from Section 8 to show that the President himself, has the right if we do not comply with the provisions of the Omnibus Bill, no matter how large a ballot has been cast in favor of this Constitution, no matter how good or bad the officers may be that are elected, if we deviate from the prescribed rule that is given us by act of Congress, then the President has the right to consider whether we will

be admitted under that Constitution as adopted, then or not. I read from Section 8: "And if the Constitutions and governments of said proposed States are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation on announcing the result of the election in each, and thereupon the proposed States which have adopted Constitutions and formed State governments as herein provided shall be deemed admitted by Congress into the Union under and by virtue of this act on an equal footing with the original States from and after the date of said proclamation." We are not only to have a republican State in form but all the provisions of this Omnibus Bill have to be complied with. So much for our power. Mr. President, this act, as we all know, was approved by the President of the United States on the 22nd of February, 1889. It is said that all persons resident in these proposed States who are qualified voters as herein provided shall be entitled to vote. Now, Sir, if there is any deviation of a single jot or tittle of the law, complications made to enter into it or any embarrassing cause by which a single voter thereby is deprived of his vote for or against this Constitution, then you have gone further than you are empowered to do and you cannot pass that Constitution because you have so deprived a voter of his privilege. The President will say, if he assumes the right, that we have not complied with the plain instructions, that the provisions of the Enabling Act have been ignored. Sec. 14 of the proposed amendment reads as follows: "No person shall be allowed to take his ballot paper out of the polling place, nor, except as in the case provided for by Sec. Eleven (11), to show it when marked to any person so as to allow the name of the candidate for whom he has voted to be known, and any voter who violates or refuses to comply with this ordinance shall not be permitted to vote." Here you go to work into a lot by the Omnibus Bill in so many words to vote for the ratification or rejection of the Constitution; here you pass a rule that a man shall not be allowed to vote for State officers and the Constitution, or its ratification or rejection and if he does not comply with the rules that he is to have his vote rejected and is thus disfranchised. Whoever heard of any such thing as that? We have no power given us for this; we are formed for one express purpose; we are here to amend the Constitution in compliance with the prescribed limitations of the Omnibus Bill, to make such amendments

as the Enabling Act allow; nothing more or less. And if there is any part of that Omnibus Bill, a single line or sentence by which any Legislative power is granted to the people of this Territory, I I would like to have it pointed out. Have you the right to pass this amendment? Why, Sir, a bill before our Legislature has to be read three times before each house and must be passed by each house and then go before the Executive of the Territory, who has the right to veto it. How do we stand here in this Constitutional Convention; does the mere act of our voting this make it a law? Have we any power that makes this law? We go to work and pass this Constitution voting for it, signing it, and enrolling it and forwarding it to the place and custodianship of the officer provided by law. Does that make a Constitution? No Sir, that never makes a Constitution. You not only have to do that but you have to go before the people first and they by majority vote have to ratify what you do here. Let us not forget that this Constitution is an inanimate thing until vivified by an endorsement by popular vote. You are bringing forth a creature in which the breath of life cannot be instilled until our acts are done, and you on this floor arrogate to yourselves to tell a man if he does not comply with that section he must be disfranchised and his vote cannot be counted. Not only must the people of this Territory breath life into this Constitution; it goes further than that, and a majority vote only creates life. If the President of the United States hears you have not complied in every respect with the Omnibus Bill and he puts a veto upon it, then life is squelched out of it. Until Congress admits us into the relations of the United States then here is this body without any power to create any interest in or give any force to this Constitution which you adopt. It is forward to assume that power that says, this man unless he complies with this law contemplated in this amendment he shall be disfranchised; shall not be allowed to vote, in clear violation of the written law of the Territory of Dakota.

SEC. 16. Immediately on the close of the poll the judges in the presence of the clerks of election and such of the watchers and voters as desire to be present, shall open the ballot box and proceed to count the number of votes for each candidate. In doing so they shall reject all ballot papers which have not been supplied by them as judges of said election, all ballots by which more candidates have been voted for than there are officers to be elected; also those upon which there is any writing or mark by which the voter can be iden-

tified. All ballots voted and counted and those rejected, those spoiled and those unused, shall be put into separate envelopes and all these parcels shall be endorsed so as to indicate their contents, and be placed in the ballot box and a return of the result of the election at the polling precinct shall be made to the County Clerk or County Auditor, as now required by law for the election of members of the Territorial Legislature. There is a provision, Sir, that clearly violates the laws of the Territory. We come here to adopt a Constitution and arrogate to ourselves the right to change fundamental law of the land and say that the votes cannot be counted. Sir, you are stepping upon the brink of an abyss in attempting any such power as that. You disfranchise the people of this Territory and who wants to take that responsibility? I do not want that in mine; to disfranchise them or dictate the manner in which they shall vote. It is attempting what is in clear violation of the law. That is base libel upon the reputation of your people to assume that you have been elected for that purpose or to assume to yourself the right to put into the Schedule something that disfranchises any voter of the Territory of Dakota. Why, Sir, it is not two months from now until the election comes. You will start a revolution that has not been equaled. If at the time of the election you tell the people they must do these things or be disfranchised. Let us tell the Czar of Russia to come here and by his edict say that the people shall not vote till they vote as he tells them to. There is no punishment that can be inflicted for violation of the law, I do not care on what ground or section you put it, no court under Heaven that would hold an indictment found under that valid for a single instance. Here you disfranchise a man,—for what? For something that is trifling, because he goes to work and he shows his vote, shows how he scratched his ballot; let a man see how he votes; for that act, that may be done as innocently as any act can be done by the purest person in the world, and for that act you take away his manhood; for that you rob him of his personal rights of American citizenship; for that act you put him in a position where he has no right to say how he shall be governed. Why, Sir, this question is an appalling one; this question is one that I approach with a great deal of dread. I do not suppose, Sir, that anything that I can say will change the result in this Convention. We have heard upon the streets, no word can stop this act; no reason can stay this crime and if that is the result I do not care

how this has been brought about; I do not care who is the perpetrator of this act, I want it, when this act is done, when this act is passed upon by the people and we have adjourned to our homes and neighbors and are confronted with our work in this Convention, that when they say anything to me or about me they cannot say I did it. Then, Sir, here is the question we are called to vote upon now; we are to pass an act which we cannot by any penalty under Heaven enforce. You arrogate to yourselves the right to disfranchise American citizens,—something un-American and unknown. You are to convict a man of crime, unheard by a jury and without being tried by a jury of his peers. You say that these judges of election, two or three of them, have the power to say to this man if he does such a thing, without trial by anybody, no evidence being given in his defence, no jury, no court; try him and let these judges with their power pass judgment upon him. Three men responsible; no one to guide where any little informality by a single voter will disfranchise him. This is the nineteenth century and this is a Constitutional Convention framing a Constitution for the people who have lived in this Territory for nearly a quarter of a century. If there has been a crime committed, ballot-box stuffing, if there has been fraud in elections and if there will be at the coming election you will by the passage of this act do something that you know the like of which never before occurred in all Christendom. Three judges of election sitting there clothed with such power that authorizes them for a trifling irregularity, to disfranchise American citizens. The thought is appalling and he who gives them the right to do it is a party to the crime.

Mr. Peck: I tried to correct my amendment before Mr. Jolley got to going. I will read my amendment as I supposed my remarks would have conveyed: "That Section 7 of the report of the Committee on Schedule be amended by adding the following thereto, this to be considered paragraph by paragraph with the other portion of said section. This will be considered in connection with it."

Mr. Williams: I dislike very much to prolong the session, but I feel compelled as my friend Jolley says "to say something"; I feel that I have something that if I do not say it I will not be satisfied. I believe it is my duty, representing the people, to speak upon these questions when I have anything to say. I have endeavored since I have been in this Convention, as well as my friend Mr. Jolley,—and it has been an honest endeavor, that I shall speak little. My en-

deavor has been and my determination, to be a working member rather than a talking member. Being so determined I, impart that determination for what it is worth, to others, to guide us straight to our work of this Convention according to the powers which we have. And in order to arrive at the power which this Convention has we have to look to the Enabling Act and inasmuch as there are a great many of us we have looked at it from a great many different stand-points.

While I believe we are bound by every provision of th's organic act and that we have no authority to overrule one of its provisions, I believe on the other hand that this body is not here solely with delegated powers. I believe that we are in existence and that being in existence, there are particular subjects that must come before this body; particular subjects to be considered and which this body was brought into existence to consider; that we can go beyond the rule laid down in the organic act known as the Omnibus Bill. I believe further, aside from that step this body meets here with all the powers that any constitutional body goes about its business. I do not claim that we meet with unlimited or untrammelled powers, but we meet with certain powers conferred upon us, and within the scope of these delegated powers we are bound hand and foot. But beyond that is a field and that in that field we are at liberty to work for the best interests of the people who sent us here, so as not to trample the restrictions imposed upon us by the Omnibus Bill. By the Constitution that was adopted on the 14th of May, I cannot understand my friend Jolley's speech nor this Ordinance, except we look at it this way; that a certain committee authorized by that Conevntion, sitting in that authorized Convention have powers that it does not in this Convention. We find a provision submitted to this Convention to become a part of the ordinance of this Convention from a Committee of which the gentleman is one of the leading members and if it passes it proposes to do just exactly as the gentleman says it is not in the power of this Convention to do, and that is to put vitality in this Constitution. I read the provision: "The election provided for herein shall be under the provisions of the Constitution herewith submitted." That is the provision that the Committee, of which he is one of the members, brings before this Convention. That is, that this Convention shall vote certain propositions putting vitality into the Constitution and making it a law of the land. With my limited knowledge of Constitutional

law, I assert that there is no power under the sun to give it vitality except the vote of the people when it is ratified. Then that Committee has arrogated to itself power that it has not got.

Mr. Van Buskirk: Where is that provision that you read?

Mr. Williams: You will find it in Section 7, report of the Schedule Committee.

Mr. Williams: Now, Mr. President, I wish to say this with reference to the question before the Convention, that is that these rules proposed here in this amendment are not for the purpose of establishing the qualifications or electors. There is a difference, a material difference between rules governing the deposit of a ballot by qualified electors by making a law prescribing the mode of depositing the ballot.

The amendment offered in Sec. 7 does not attempt in any particular to say what the qualifications of the electors are, but excepting the qualifications laid down by the statutes of the Territory of Dakota; it only proposes to say that the elector, with all that magnificent and grand power directed to him by the general government, which he undoubtedly possesses, shall deposit that ballot. That he shall exercise that right to vote, in a certain way, not in any manner prescribing or limiting the qualifications or rights as a voter; and if an honest voter it cuts no figure. The amendment is interposed for the purpose of preventing a dishonest voter from taking, or stealing I may say, the result of an honest ballot cast. Now, Sir, I would ask this, is the dishonest voter or his rights more sacred than the honest voter? The just voter and the unjust receive alike and are equally protected and guaranteed at this station in the enjoyment of the highest law in the land, that of the right of voting. This amendment does not detract or take from him one qualification nor add to one qualification. It says in order that your vote as cast may be cast honestly, and that you shall not be dictated to or interfered with directly or indirectly when casting an honest vote, only would require that you comply with this reasonable request. That is all that it is; it is not law. This ordinance the gentleman, by certain reports made, attempt to make and establish a law of the land upon certain questions that perhaps are not of as much interest, yet he denies the right of this Convention to prescribe a rule governing the rule by which he exercises the right, it does not attempt to bridge, only attempts to establish a rule of action in no sense assailing the fundamental right of in-

dividuals But it only prescribes a rule that shall be enforced just for the time being and it is in fact, most salutary in its effects. That is, if a voter is honestly intending to cast his vote and cast it in an honest way, this rule will not infringe upon him in any such act. But if the is intending to cast a dishonest vote, then probably in this rule, should it be adopted, he will find little comfort. I do not believe this Convention has any power to say that this question shall only be taken up by the Legislative power under this Constitution.

Mr. Sherwood: Is there any authority for the adopting of this Australian system except what is contained in these rules and in the Omnibus Bill? In the last clause of Section 3?

Mr. Williams: Without attempting to give a definite answer I will say this; whether we get this Australian system or not, I take it the Australian system in its entirety prescribes the qualifications of electors. This does not. We have here prescribed the rules and regulations for voting upon the adoption of the amendment to the Constitution denying that this Convention can by rule or regulation prescribe the mode of depositing the ballot for State officers. I understood that to be the position of the gentleman from Clay County.

Mr. Corson: I would ask if any county refuses to adopt this rule, what then? I am of the opinion that they cannot be compelled to it

Mr. Zitka: If I should come to the Ballot box after I prepared myself at the next election according to the Territorial laws in present existence and offered my vote, not having inquired about the laws or the manner in which the judges prescribed it shall be received, not conforming in every minor particular with the law as proposed in this amendment would the vote be legal or not; would the judges have to reject my vote and thus disfranchise me? Now have we the right to legislate and disfranchise the people, in this Convention? We are assuming a right we have no right to.

Mr. Williams: I think the judges would be right to reject your vote. What I intended to say was this; it being admitted Congress says in this organic act that at the same election we may provide for the election of certain officers, I would ask this question: Where is the authority for saying, except by violent presumption, that it was the intention of Congress, after once having granted the authority and prescribed the rule for one thing that we must provide

a different set of blanks for judges and clerks, and have an election conducted under different rules and regulations? I say where is the authority for that except by violent presumption, except in a strange interpretation of the Enabling Act? This is a presumption without a letter or word in this organic act, if we have the power to prescribe the rules for one and not the other election. They cannot be authorized by the Enabling Act at the same time. It must be the same electors; the same judges of election and clerk and the same ballot. As the Committee, of which the gentleman is a member have reported this bill, they have adopted that as their interpretation of the Enabling Act. Then the rules and regulations by the interpretation of this Committee shall be the same in each instance. Then the only way out of it is to say that because this is not granted to us by express words in one instance that we cannot exercise the powers granted us in another.

Mr. Cooper: Suppose a duly qualified elector should duly tender a legal ballot to the judges of election and they refuse to take it, under what law would he procure redress of the judges? I have not stopped to examine that and I do not care to now, but it is a question that I will take up and examine in time.

Mr. Van Buskirk: I am, myself in sympathy with the spirit proposed in this amendment, that is if we have the power to do it and if I vote against it I shall vote against it seriously and with the conviction that we have not the power to pass this amendment, and I shall regret that we have not. I have listened to arguments so far. I am sorry to say that my first impressions were not correct; from all I can see, and the best light upon this subject that I possess at this moment, I am forced to take a position upon this floor against this amendment. I do not know but that some member of the Committee who had this amendment under consideration, may have had their attention called to some other provisions than what I have; but I am at present constrained to think as Mr. Jolley has said, that all that we can find in this Omnibus Bill that will permit us to adopt this amendment will be contained, perhaps, in those words: "And all persons resident in said proposed states who are qualified voters of said Territories as herein provided, shall be entitled to vote upon the election of delegates and under such rules and regulations as such Convention may prescribe, not in conflict with this act."

I am sorry to say that it appears to me from that that if that

was the intention of Congress that we should prescribe that form of ballot only upon the Constitution. Turning from the last section referred to to Section 24: "That the Constitutional Conventions, may, by ordinance, provide for the election of officers for a full State government". I am very much at loss to understand how we can pass this amendment, adopt it, and make it of any obligatory force whatever. Unless I can get more light I am constrained to believe that if we pass that amendment and I should walk down to the polls and if I should present a ballot just as I would if we do not pass this, and if the judges acting in the spirit of this amendment, should reject my ballot I am very much in doubt whether I would have any action against them for refusing to receive my vote I am heartily in the spirit of this. If I could throw some further restrictions around the method of casting our ballot, I should do it; I would be glad if any member of this Convention can find any clause that can give us that power.

Mr. McFarland: What is the meaning of the expression "Provide for the election of officers"?

Mr. Van Buskirk: As I said, unless there is something more than is contained in this I shall be compelled regretfully to vote against this, because I am in sympathy with the proposition and phases of it. It don't say we must, but we may provide for the election; it says we may elect these State officers. I do not think with a reasonable interpretation of the act, we can do other than go to work as prescribed. I cannot find here authority to adopt a different manner in which to deposit our ballot than we now have on our statute books and as I say, if any member can inform me so I can consistently vote for the measure, and throw some further restrictions around the ballot, I shall be glad to do so. It is possible some member may have had his attention called to some provision other than what has been alluded to and it may help me out of out difficulty.

Mr. Huntley: If we have no power to enforce the provision of the ordinance, leave that out, and suppose we adopt the rest of this ordinance which is here recommended,—if we have no power to enforce this ordinance, the ordinance we are adopting.

Mr. Van Buskirk: The ordinance we adopt does not prescribe any qualifications of the voters; does not prescribe any manner in which he shall receive it. The laws of the Territory steps in and supplies all those matters.

Mr. Lee: I do not wish to discuss this question now; I wish to call my friend's attention to the clause he read, Section 3—the last part of Section 3. Now, Sir, a few days ago, an unwary clerk at Washington misplaced the semi-colon and added the conjunction and, and it cost \$200,000 to fix that up when it was discovered and years of hard work. The matter should have read in the document that "Fruit-trees should be received without paying any duties, and he said "fruit and trees" and put the semi-colon after the third word, and some ingenious Yankee found out he could introduce his fruit as well as trees, and went before the court and the court sustained him. Now gentlemen, I am lawyer enough to see this; you take the third clause and read it down until you come to the next to the last conjunction, this is a matter of common sense and common sense is generally pretty good law. "The number of delegates to said Conventions respectively shall be seventy-five". Why haven't we a grain, haven't we more than a grain of common sense except old Father Lee" and all persons resident of said proposed states who are qualified voters of said Territories as herein provided shall be entitled to vote upon the election". Of what? "Delegates", and now the rest of these four lines don't mean anything for it is different states and made for a different time. We are not in Convention and we cannot do anything as a Convention until we are met here as a Convention(?). Beyond question seventy-five men were really elected; now can seventy-five men say we are elected and get together and make laws and do anything but lay the foundation,—lay the track upon which to sail this grand old State into the Union?

Beyond question when you cancel this conjunction and, you cannot do anything further. The rest of the four lines belongs down upon Section 24, and merely stuck on there. Sometimes a little piece of lead will stick to a bullet when we run it which we cut off to make the ball go straight. I am not ready to make my little speech.

Mr. Davies: I must say that the arguments have been so scattered that I do not know much more about it than when I came here this afternoon. The eyes of Dakota are upon this Convention and whether we have the power or not it seems to be generally understood that we have, and we are going to be held responsible. As I understand it the election that is going to take place next October,—the Constitution of the Territory of Dakota, the Con-

stitution which we are allowed to adopt has been anticipated and the framers of that Constitution designed that such an election would have to take place, as the election that is to take place next October. The question is, whether we govern, or are we to be governed in the mere manner of conducting that election by the laws of the Territory or are we to be governed by the act which created that election, by the Enabling Act of Congress,—in other words, does the Enabling Act say to us, “Go on with that election and have it according to the laws of your Territory” or does it go on and say “You will have your election and by ordinance elect your officers”, etc.

Now if we can say whether the Enabling Act intended us to take that course, or say how it shall be conducted, I am not prepared to say which of these two we are to follow. It seems to me some of the members of this Committee that have given particular attention to this matter can confine their arguments to this one point. It seems to me we had better spend another day on this than murder the principle involved in this amendment. I should very much dislike to vote against the principle of protecting the ballot box. We know this is one of the greatest failures in American politics—the question of the preservation of the sanctity of the ballot box. It is one of the most vital questions confronting the American statesman today. I do not see my way at present to do it. Then too, there is a great question in my mind whether this law, if passed can be enforced practically if it is put in operation at our next October election. I want to vote for this but do not see my way clearly to that determination at present.

Mr. Zitka: I believe that this Convention has no power to legislate; has no power to change the general laws as they now stand upon our statute books. That we have no power whatever, or authority, not clothed with that authority to change the general election laws as they are now. If you adopt this amendment as it is here presented you certainly do that. My ballot may be rejected indeed, according to this amendment, should be rejected. Are we not legislating here; are we arrogating to ourselves to rule, a right which was never granted to us? Certainly you are; Congress never meant that this should be done. Makers of the Constitution of 1885 never dreamed that this Convention, if it ever existed, would go to work to change the general election laws for the purpose of adoption of the Constitution. If there is any power anywhere it is in the Legis-

lature. I do not think that Mr. Williams studied this question very deeply. I think that for this reason. Yesterday he stated to me that this proposition in his mind was ill-timed; he didn't think it was good, and today he is supporting it. Considering the short length of time in which he changed his mind, I think he did not consider this as he should have done. Therefore, I state this that when you disfranchise the people of their rights to vote you disfranchise them of the dearest rights that a man has got. If I am a voter under the present Territorial laws, I am certainly a voter when I come to the ballot box to vote on the Constitution. You change your mode of voting, debar me and deprive me of the right to vote unless I conform to certain restrictions which never have been heard of before; that I must have certain initials upon the back of the ballot. Is not that, Sir, a practice which should be regulated to foreign countries ruled by kings and emperors. Is this, a free country, of the nineteenth century? Is this the United States of America, of which every citizen is proud of his citizenship? I believe this Australian system was made for Australia and not for this free United States.

Mr. Sterling: Gentlemen of the Convention; I think I fully appreciate the discussion of this question. I have reached my present conclusion after not a little thought and had we a little more opportunity to examine into the question of the rules and regulations pertaining to elections we would have found something startling upon the question discussed here today. I had intended examining the subject at length on that line. I have not had time to do so. What, gentlemen, does this amendment prescribe? Anything more than a few rules and regulations governing the conduct of the election at any particular polling place. I have heard the discussion. A few practical things have suggested themselves to my mind, that might happen in any polling place without any statutory provision upon the subject at all.

Suppose there is a notice of election to be held in a certain polling place in a certain ward or precinct, and suppose the managers of that election, the judges or clerks of election shall, on the morning of the election before they go to the polls and before anyone is there at all, mutually conclude, for the sake of convenience, although this is the place designated by law as the place for holding the election, nevertheless on account of some contingency that they had not thought of, for convenience or otherwise, remove it to some

other place reasonably convenient to all; that they made that change before the polls were open, do you believe that the voters of that precinct have got reasonable access to the polls at the place to which they were removed, that they could come in and say they were disfranchised because of that? I think not. Suppose in the absence of any statutory provision, the judges of the election had decided that they would not allow the election to be held in that place that the regulations recorded, that the public order recorded; further that they would not allow but one man in the polling place at a time, except the judges and clerks, do you believe that they would have the right to do it? I do. Does this amendment disqualify or effect the qualifications of the voter in any degree? No, it does not; it is simply saying that here on account of a particular element that we have to contend with at this place, on account of the great number of voters and the question at issue, it is better that we for this election prescribe these rules and regulations and deem it wise to designate the manner that the voter shall cast his ballot at the time. Then someone says: "I have the right to go in with this voter and vote." And the judges have said "No, the public order and public decency requires that but one come at a time to cast his ballot, and the party persists in demanding the privilege until the police power takes hold of him and says to him "You cannot go in". What is the result? He comes and says "I am disfranchised". Disfranchisement, indeed! Has he been prevented from casting an honest ballot? Far from it. I say he has not; I say that just rules as that the judges of election have the power to prescribe or if not the judges of election, then the county officers who have the management of the election within the county or precinct. It is a reasonable rule and regulation for that particular election. What is this? I believe that for the most part it is rules prescribing how many voters shall be in the apartment in which the votes are cast at a time. Nothing more than that. Nothing more than reasonable rule and regulation, and that in view of the several questions involved, the officers to be elected, the question of prohibition, the question of minority representation, the question of capital location, these make this a reasonable regulation to be made at the present time and under the circumstances under which this election will be held. There can be no question about it. Does it decrease the qualification of the voter in any sense? No, not at all. It does not prescribe the qualifications of a voter, simply

embodies the rules under which the election shall be conducted without infringing at all upon the voters qualification. They are the same as the laws of the Territory prescribe.

Mr. Sherwood: If a county or town refuse to furnish the places for voters would they be compelled to provide them?

Mr. Sterling: They might.

Mr. Sherwood: Then would that vote be received?

Mr. Sterling: I am inclined to think that they would be received so far as that is concerned. Now as to whether such a ballot will be received or not, whether this is complied with, I say gentleman, that that does not do away with the desirability of rules and regulations like these.

Suppose we do not conform with the rules and regulations in certain polls that the vote is received without, I say that these places will be comparatively few. The intent will be for the most part to follow the rules and regulations prescribed in this amendment and that the result will be that we will have an honest and pure election on account of these rules and regulations.

Mr. Van Buskirk: Let me ask a question; the difficulty that occurs to my mind is this: In place of a simple regulation a man cannot be permitted to vote any ballot except those tendered by the judges of election, with certain initials upon it. Is not that legislation?

Mr. Sterling: I do not believe that is legislation in conflict with any legislation in connection with the subject. The tendency is not towards disfranchisement of men. He has a ticket with all the names of the men nominated, printed under the rules and regulations. It is his privilege to change that ticket as he desires.

Mr. Van Buskirk: Under the existing laws and rules and regulations on the subject as in force now if we add these rules and regulations, isn't it legislation? is the difficulty that arises in my mind.

Mr. Sterling: I do not believe that it is.

Mr. Cooper: I desire to suggest this, gentlemen of this Convention, if this amendment can have any force at all it must go to the extent of repealing the election law of this Territory. If not the gentlemen who favor the project ask every gentlemen who is judge of election at the coming election to commit a crime that the statutes of this Territory provides shall be punished in certain ways. The statutes of this Territory provide that certain persons

are qualified electors; that they can vote in a certain way; that if their vote or ballot is duly tendered that the judges of election must receive it and that if they refuse to receive it they are guilty of a crime and can be punished for so doing. The question that it suggests to my mind is first, is this proposed amendment legislation, if so, does it conflict with the laws that we already have and under which we would operate if this were not added to the report of the Schedule Committee? Now, the statutes of the Territory provides over the age of twenty-one years, or any male over the age of twenty-one years who has declared his intention to become a citizen of the United States, has the right to vote at any election within the Territory. It provides what his ballot shall be; that it shall be upon white paper with the name of the candidates and the matters to be voted for either written or printed, or partly written and partly printed. I desire to ask the gentlemen of this Convention that if a qualified elector went to the voting precinct within the Territory of the proposed State of South Dakota, went to the polls at the place advertised that the polls would be open and tendered his ballot as provided by the statutes of this Territory and it was refused by the judges of that election if those judges would not be guilty of a crime and they could not be punished? I ask any gentleman, if under our laws as they now exist, if that judge could not be prosecuted, convicted and punished. I received no answer. I think that under the circumstances I am justified in answering it myself and if any gentleman does not agree with me I will like to have him correct me and give reason for such corrections. My idea is, gentlemen of this Convention, that if the ballot of the qualified elector was duly tendered in the proper manner and was refused by the judges of election that the judge who refused it would be guilty of a crime and that he could be prosecuted, convicted and punished under the laws of this Territory as they exist at the present time, because I do not believe there is anything in the Constitution as it now stands, anything in the Omnibus Bill as it was presented to us, anything in the Constitution as it will stand when finally adopted by the people of this Territory, that repeals the election laws of this Territory as to-day existant. They say it does not strike at the qualifications of the elector. We will presume, for the sake of the argument, that this Convention deems it wise to require that all electors shall vote upon tickets colored red, white and blue and the judges of election at the coming election in Octo-

ber shall say that statutes of this Territory prescribes that the ballots must be on white paper. We refuse to accept your ballot because it does not comply with the statutes of this Territory under which we are voting; we won't receive them. I ask, gentlemen of this Convention, if there is any power on earth to punish these judges for refusing to accept that ballot. I ask you in the name of reason and common sense the question, and ask every member of the Convention that if this Convention authorizes, nay requires, that a man would so vote a ballot red, white and blue, I ask if this man is not disfranchised? I have noticed this to be true that when men are so very free to allege fraud and want to punish crime to such a great extent when there is no basis for it that they are willing yea willing and sometimes anxious to override the laws themselves, to commit a crime themselves and compel the agents of the government under which they live, to commit crime. I am not talking upon the advisability of this law as to whether or not it would be a good thing of a bad thing. I believe in throwing around the election everything that I can in the nature of restrictions that will protect the ballot and make our elections pure; I would be in favor of a law that would prevent fraud at the polls and would throw around the voter, conditions that would isolate him from men, when in the act or casting his ballot. I would be in favor of a law that would make it a misdemeanor to approach a voter and undertake to talk to him as to how he should vote, within a hundred feet of the polling place. I do not believe this Convention has the power to do it because this is not a legislative body. I cannot vote for it because when I became a member of this Convention I registered an oath in Heaven that I would do my duty faithfully and well, just as I understood it. I do not believe that this Convention has the power to do it. I do not believe that this Convention, by calling it Rules and Regulations, can say that a man must bring the initials of any man or set of officers to the papers to the polling place and show them to certain parties, even if this Constitutional Convention desires it should be done, before he can cast his ballot, and why? Because the statutes of this Territory provide another manner and another way of voting. I do not believe we can change these laws of this Territory. I desire to ask, gentlemen of this Convention, where there is any power to enforce any of these rules and regulations? Suppose as has been said by other gentlemen who have talked upon the other side of this question, many towns and count-

ies in South Dakota should refuse to comply with this amendment, would you refuse their vote? Suppose Tom, Dick and Harry all over this proposed State should go to the polls and say I want to vote upon a white ballot. I will write the names upon the ballot I want to vote for; I do not want the name of Republican nor Democrat upon my ticket; I want the names of my particular candidates upon it. It is refused; what will be the result? The next five years will be blackened with the prosecution of judges and clerks of election. I say, that in my opinion this is a malicious scheme. I shall ever wish to prevent any deal of this kind. While I will go to as great length as any member of this Convention, when the time comes that we can throw around the ballot box, legally, new protection and safeguards that will insure purity in our elections, not criminally but legally, I am heartily in favor of that action at the proper time and under the proper conditions. I am not in favor of this Constitutional Convention assuming that prerogative. The members of this Convention do not even understand, I do not believe, do not even understand the working of this amendment. I never lived in Australia, nor Canada, nor England; I don't know what it is, but it seems to me that it is altogether "too English you know." I believe in this Union; I believe in national independence; I believe in this country; I believe that when the time comes when they have got the power and right to do it, the people will go to work and declare a bill of this kind if it is necessary. They will do it in a legal way and then it will be effectual. But if we assume to legislate in this manner it will be illegal and you at the same time commit a crime yourselves and ask every judge of election to commit a crime and at the same time place upon yourselves the burden of carrying the prosecution. It must necessarily fail.

Mr. Humphrey: It is not my purpose to enter into a legal discussion of this question nor even to make small of the arguments that have been presented for I have been very much edified by them. The few words I propose to say will be in explanation of the vote I shall cast. While I am second to none in my desire for protection of the ballot box, while I am in perfect sympathy with every effort to do that, the question of power, in my judgment, comes under this Federal law in this clause. I will say in regard to the Territorial law in regard to regulating elections and as far as any regulation that this Convention may stipulate or pretend to, or any regulation

now required by the laws of the Territory, they in no manner disfranchise anyone. This is simply a method of procedure in casting the vote. The latter part of the 3rd clause has been read here to substantiate the grounds that the ratification of the Constitution must be under the same restrictions as an election of delegates to this Convention.

In the sentence preceding that I find specified the restrictions under which the delegates to this Convention were to be elected and the point to my mind is this: I find there are two different regulations for two different purposes,—the one for the election of delegates in which it says the delegates shall be elected and the returns made in the same manner as prescribed by the laws of the Territory. Now when we come to the ratification of the Constitution it shall be under such rules and regulations as this Convention determines. Now then, we would not be permitted under that clause to make any restriction or regulation different from the Territorial law for any other purpose than the adoption of the Constitution, in my judgment. If we adopted this amendment, we would require two elections,—one to vote for the officers and one for the adopting of the Constitution. I think that that is the only thing to which we could apply it; that is the only point in which we have the power to adopt the regulations or restrictions other than those provided by Territorial law, if we elect officers at the same time. There is no question about the legality of our providing for an election, but unless we provide for two elections we could not adopt this amendment, and not being in favor of two elections, I would not vote for this amendment.

Mr. Young: Under the influence of its personal oratory and under the influence of some of the doctrines of some of the speakers, I really expected to see this Convention break away into the greatest enthusiastic uproar. Springer builded better than he knew. I have just two points to make: One is, that it is not the right or duty to undertake to seek an enumerated power to make this regulation in the Enabling Act. This is part of a Schedule; this is not a part of the Constitution, and from the very nature of the Constitution under which that Enabling Act was passed, why it would be just monstrous to enumerate the powers under which we should work in drawing up a Schedule and Ordinance. These specifically enumerated powers are the strict limitations under which we have

been working and suffering here. They were brought about and had reason only on this ground, that the people of that part of the Territory of Dakota that formed the State of South Dakota had ratified the Constitution of 1885. A delegated body, such as this, has nothing in particular to do with it except those things as the commands in the Act require. They did not, however, ratify the Schedule and Ordinance; it was understood that that disappeared with the action they had in 1885 and that as far as the Schedule and Ordinance was concerned we had full plenary power as a body, to bridge over this somewhat revolutionary state of things. The idea of our laboring under delegated powers, drawing a Schedule and Ordinance is altogether out of any reason, because here we are framing a Constitution and we are not supposed to have the powers of ordinary State legislation. We are not tampering with the Constitutional Act because the people of the State have expressed themselves upon that point and therefore our hands are off from the Constitution but when it comes to the Schedule and Ordinance then we have all the power which should be left to a people acting as a body politic which is about to assume the position of one of the dignified states of the Union. Now, just one other point,—the point I make is that it is not our duty to take or look for any delegated, distinctly enumerated powers in the Enabling Act in drawing up these rules and regulations in our Schedule and Ordinance; the other is that we are not, in our Schedule and Ordinance, drawing up or prescribing the qualifications of voters. We are not, because there is something of a weak, diluted Australian System of voting. The Australian Ballot System has been considered by the State Legislatures, I think by every State Legislature in the Union. This Australian Ballot System has been adopted by the State Legislatures of at least twelve states without requiring perhaps an amendment to the State Constitution, so that therefore any modified form of the Australian System does not presume additional qualifications of voters and as this system has been adopted by the different States without requiring an amendment of the State Constitution, it cannot be construed into any different qualifications for the voters. The qualification of voters is always prescribed in the Constitution of the different states and as the adoption in these different States of this system of voting did not bring about an amendment of that Constitution I see perfectly clear, there is

nothing like an additional qualification added to the voters in the adoption of this amendment.

Mr. Sherwood: I desire to say this as a closing proposition. I asked the gentleman from Bon Homme, Mr. Williams, what effect this would have upon questions where the counties refused to hold this election, and as an answer, as I understood him to say, that they would not be compelled to hold them under this Australian System unless they desired to do so. The same was substantially answered by the gentleman from Spink. The object of this system, if it has an object at all, is to reach those localities where frauds at the ballot are known to have been perpetrated. I admit that any rule, or restriction, anything that this Convention would pass, would be perhaps heeded and obeyed carefully as a rule in this State of South Dakota, wherever the Board of Township officers lived whose purpose and object was to defy this law while there was evidently an intent to defraud at the ballot box at that place if they was no power that would compel them to yield to this law there would find the law would be an absolute nullity and of no effect whatever. If that is true, then this law we are considering, if it pass this Convention is going into effect where there will be no violation of the law, going to be set aside in all that portion of the country where there would naturally be violation of the law. I desire to say that I am in full sympathy with every effort to throw every safeguard around the ballot box. I think if this Convention had the power they might pass these rules and regulations. I believe as the gentleman who has preceded me, that they have not the power to enforce this regulation to the extent of going into these precincts where the law would be violated and compel it to be respected there; hence I shall vote against the amendment.

Mr. Willis: I begin to see light a little; I begin to find for my own purposes, for the purposes of determining my own convictions on this subject; I want light upon the one point of authority,—whether or not we have the authority. I have felt within myself—of course I could not express it judicially,—I have sort of felt within myself somehow, even with the arguments with which we have been regaled on this floor, to be impressed with the conviction that the adoption of this amendment, either by intention or in fact, was no restriction upon anybody's ballot, upon the form of anybody's ballot. The idea to me is exceedingly far-fetched. I cannot connect it as having any force whatever in this connection. I

have a feeling way down within me that the mere presentation of that argument is a superfine sort of suggestion of the motive that may determine the position of this amendment. I am exceedingly glad for this little light from these lawyers. Of course it is, this great work is prescribed by Bill Springer's bill. The great work that we have been elected to do here has been such as to give most peculiar concern to the lawyers and the judges. We preachers and the other fellows have not had much difficulty and we feel proud we have this Convention and that we have a part in it. We feel that it was particularly now, the lawyers and judges that we want to hear from upon this one particular point of our authority. I have no sympathy with anybody who is weak-kneed at all when it comes to this question of throwing any rational safeguard around the ballot box. If there is anything, any subject that is popular today and that is momentarily gaining in popularity it is the question, the ballot box reform. There may be some here who are not Australians who recognize the necessity of reform in the American ballot system, to whom the terrorizing methods employed in some parts of our fair country are perfectly familiar, to whom even the recital of blackest murder perpetrated at the polls does not cause a start of surprise who dare stand up and speak against the reform of the ballot box, but I doubt it. If there is anything that is dear to the average American it is the right of free ballot, but enough for that. The one point is, have we authority; are we simply a set of manikins dangling upon wires adjusted by Bill Springer with automatic arrangement that with regular time and rhythm go through our set of dances and contortions? We are not that sort of a crowd. We want something provided; call it Australian System if you will. We are not trying to restrict honest men at all. There is nothing that can be so construed, except by the most determined, I may say mendacious distortion to any attempt on the part of anybody to prevent Jim Jones or Pete Smith from voting as he pleases. Anything of that characterization is perfectly mendacious and what we want is light on this question of authority. The lawyers disagree, and when lawyers and doctors disagree then we must depend upon our own good common sense in great measure determining these questions. Congress showed us no favor in this; this Convention is doubtless as respectable as the other and the other as respectable as this. At least we will allow this with

a great deal of generosity. Congress did not say so probably for this you will give us credit. Lawyers disagree upon this proposition; I do not think we are ready to vote; I do not want this dropped. If I judge the state of the Convention pulse correctly, taking into consideration the hour, I think it would down. I would hardly know just how to vote myself. I think we ought to vote upon this question intelligently. I move we defer further consideration of this question until eight o'clock tonight.

Which motion received a second and upon being put to a vote, prevailed.

Mr. Williams: I move that when we adjourn we adjourn to meet at eight o'clock this evening. Carried.

Mr. Peck: I move that we do now adjourn.

The Chairman: The gentleman from Hamlin moves that the Convention do now adjourn; those favoring this motion please make it known by saying aye. The motion prevails; the Convention stands adjourned until eight o'clock this evening.

Hall of the Constitutional Convention, Sioux Falls, Dakota, Friday, July 26th, 1889, 8 P. M. Convention re-assembled pursuant to adjournment.

The President: Will Colonel Jolley, of Clay, take the chair.

Mr. Jolley (as Chairman): Gentlemen of the Convention, the question is upon the adoption of the amendment offered by the gentleman from Hamlin. What is the pleasure of the Convention?

Mr. Anderson (of Hand): Inasmuch as there is some question as to the wording of the amendment before the Convention, I call for the reading of the amendment as it stands tonight.

The clerk reads the amendment.

RULES REGULATING THE ELECTION TO BE HELD UNDER THE AUTHORITY OF THE ENABLING ACT FOR THE ADOPTION OR REJECTION OF THE CONSTITUTION AND THE ARTICLE SEPARATELY SUBMITTED THEREWITH AND THE REPRESENTATIVES IN CONGRESS; ALSO STATE AND JUDICIAL OFFICERS FOR SOUTH DAKOTA.

SEC. 1. That at the election to be held on the first day of October, 1889, the election laws now in force in the Territory of Dakota shall apply to and govern such election except as herein after specially provided.

SEC. 2. Nominations for State officers, Representatives in Congress and Judges of the Supreme Court shall be made by any State Convention and certified to by the Chairman and Secretary of such Convention, according to form number one (1) hereinafter

provided, or by any three hundred (300) legal voters in South Dakota attaching their names to a paper nominating candidates and filing the same with the Territorial Secretary.

SEC. 3. Nominations for members of the State Legislature, Judges of the Circuit Court and Judges of County Courts shall be made by any convention held in legislative and judicial districts or county for which any such officer is to be elected, and certified to by the Chairman and Secretary, according to form No. 2. hereinafter prescribed, or by any one hundred legal voters of any legislative or judicial district or county, by attaching their names to a paper nominating such officers, and filing the same with the County Clerk or County Auditor to which such nominations refer.

SEC. 4. All certificates of nominations and nominating papers provided for in Section Two (2) shall be filed with the Territorial Secretary by the fifteenth day of September, and all those provided for in Section Three (3) shall be filed with the County Clerk or County Auditor by the twentieth day of September, 1889, and no certificate of nomination or nominating papers shall be acted upon, except accompanied with the consent in writing of the person or persons therein nominated, provided that in case of death or resignation, the authority making such nomination shall be permitted to fill such vacancy by a new nomination.

SEC. 5. The Territorial Secretary, on the receipt by him of the nominating papers hereinbefore mentioned, shall forthwith transmit true copies of the same to the County Clerks or County Auditors of the several counties in South Dakota.

SEC. 6. The County Clerk or County Auditor shall, after the expiration of the time for receiving the nominating papers, forthwith cause to be printed such a number of ballot papers as will be sufficient for the purpose of election, and the number necessary for each polling place shall be bound or stitched in a book of convenient form, and the County Clerk or County Auditor shall cause to be printed in English, in large type, on cards, instructions for the guidance of voters in preparing their ballot paper; such Clerk or Auditor shall furnish ten (10) copies of such instructions to the Judges of such election precinct, and said Judges shall cause them to be posted both inside and outside of the polling place, and said County Clerk or County Auditor shall, as provided by law, cause to be delivered to the proper Judges of election the ballot box and all poll books now by law required or by this ordinance required to conduct and complete the election, also the ballot papers, at least two (2) days before polling the vote; and shall cause to be published in each newspaper in the county a true copy of the ballot paper and card of instructions, said publication to be in the last issue of said papers before the day of voting.

SEC. 7. Every ballot paper shall contain the names of all candidates for Representatives in Congress, State and Judicial officers, and members of the Legislature, and the name of the political party

to which each candidate belongs; also the form of the ballot for the adoption or rejection of the Constitution and the articles separately submitted therewith as provided in this ordinance.

SEC. 8. Each polling place shall be furnished with a sufficient number of compartments, in which each voter, screened from observation, shall mark his ballot paper, and a guard rail so constructed that only persons within such rail can approach within ten (10) feet of the ballot box, and it shall be the duty of the Judges of election in each polling place to see that a sufficient number of such places be provided and shall appoint a person to guard the entrance to such compartments and he shall be paid the same as Judges of election.

SEC. 9. The voters being admitted one at a time for each compartment where the poll is held shall declare his name, and when permitted by the Judges to vote, his name shall be entered on the voters' list and he shall receive from one of the Judges of election a ballot paper on the back of which the initials of one of the Judges of election shall be so placed that when the ballot paper is folded they can be seen without opening it, and the Judges of election shall instruct him how to mark his ballot paper.

SEC. 10. The voter, on receiving his ballot paper, shall forthwith proceed to one of the compartments of the polling station and there without undue delay, not exceeding five minutes, mark his ballot paper by putting a cross (X) in the space to the right hand side of the name of the person for whom he desires to vote and if he desires to vote for any person whose name is not on his ballot paper he may write or paste on his ballot paper the name of the person for whom he desires to vote, and shall then fold up his ballot paper, so that the initials on the back can be seen without opening it ascertain that the initials are on it and that it is the same ballot paper given to the voter, and shall then place it in the ballot box and the voter shall quit the polling compartment as soon as his ballot paper has been put in the ballot box.

SEC. 11. The Judges of election, on the application of any voter who is unable to vote in the manner provided, shall assist such voter by marking his ballot paper in the manner desired by such voter in the presence of the persons permitted to be in the compartment occupied by the Judges and no others, and shall place such ballot paper in the ballot box, and when the Judges of election shall not understand the language spoken by the voter claiming to vote, they shall swear an interpreter, who shall be the means of communication between them and the voter with reference to all matters required to enable such voter to vote.

SEC. 12. A voter who has inadvertently dealt with the ballot paper given him, in such manner that it cannot be conveniently used, may, on delivering the same to the Judges, obtain another ballot paper in place of that so delivered up.

SEC. 13. Any voter refusing to take the oath or affirmation of

qualification as required by law, when requested to do so, shall not receive a ballot paper or be permitted to vote.

SEC. 14. No person shall be allowed to take his ballot paper out of the polling place, nor, except as in the case provided for by Section Eleven (11), to show it when marked to any person so as to allow the name of the candidate for whom he has voted to be known, and any voter who violates or refuses to comply with this ordinance shall not be permitted to vote.

SEC. 15. In addition to the Judges and Clerks of election, one watcher at each polling precinct for each political party presenting a candidate or candidates for the suffrage of the voters and no others shall be permitted to be in the compartment occupied by the Judges on election day, and such Judges, Clerks and Watchers shall, before entering upon their respective duties take and subscribe to the following oath or affirmation;

I, John Jones, do solemnly swear (or affirm) that I will keep secret the names of the candidates for whom any voter may have marked his ballot paper in my presence at this election, so help me God.

SIGNED: J. J.
Sworn or (affirmed) before me at.....this
first day of October, 1889.

Justice of the Peace or Judge of Election.

SEC. 16. Immediately on the close of the poll the Judges, in the presence of the Clerks of Election and such of the watchers and voters as desire to be present, shall open the ballot box and proceed to count the number of votes for each candidate; in doing so they shall reject all ballot papers which have not been supplied by them as Judges of said election, all ballots by which more candidates have been voted for than there are officers to be elected; also those upon which there is any writing or mark by which the voter can be identified; all the ballots voted and counted, and those rejected, those spoiled and those unused, shall be put into separate envelopes, and all those parcels shall be endorsed so as to indicate their contents, and be placed in the ballot box and a return of the result of the election at the polling precinct shall be made to the County Clerk or County Auditor, as now required by law for the election of members of the Territorial Legislature.

SEC. 17. All expenses incurred under these rules to be a charge against the county and audited and paid as other claims against the county.

Mr. Anderson (of Hand): I shall not attempt to discuss the legal aspect of this question at this time but I wish to state some of the reasons to this Convention why I am in favor of this amendment. In the first place the people whom I represent are all unanimously in favor of this proposition, upon the adoption of a prop-

osition of this kind, possibly with the exception of a few political bulldozers and ticket peddlers at two dollars per day will receive the support of most men; men who boast judiciously and expeditiously selling their votes for every election of the last seven years will not be pleased should this Convention pass this amendment. It is for the purpose of blocking the wheels for this class of men, gentlemen of the Convention, that I am in favor of the adoption of this proposition. At the last general election held in our county, in one township it is estimated that there was expended to purchase votes, \$1100. and gentlemen, it was openly and publicly done in a great many cases. In another township in our county and they cast votes in that township, there was as high as \$1000. expended to purchase and influence votes. Let me say to you gentlemen, that in that particular township, not receiving the price for their votes, at the last election held in our county for the election of delegates who are here on this floor, they refused to vote for the candidates who were before them for election, but met in Convention and instead of voting the ticket that they had provided, they voted for each other, and when questioned as to why they adopted that report, their reply was: "Why, the candidates didn't put up anything; they didn't even come around and set up the beer." Gentlemen of the Convention, this is only a part of the state of affairs existing in the Territory of Dakota. I am informed that it exists, not only in the County of Hand, but that it exists in other counties. Now, gentlemen of the Convention, the opportunity is offered for you to place yourselves upon record and so far as the legal aspect of this Convention is concerned, I am satisfied myself that we have the full power of authority to adopt a proposition of that kind. I shall not detain you by giving my reasons for having arrived at that conclusion. We have heard a good deal in the last four or five years about the purity of the ballot, an honest ballot and a fair count, and you, gentleman, having expressed your views of an honest ballot have an opportunity tonight to place yourselves upon record as to whether or not you are in favor of an honest ballot and a fair count. I do not expect, gentlemen of the Convention, to appear in public again, in Hand County as my friend from Codrington remarked,—this is my last appearance. I have no political ambitions, aspirations, and if I had I belong to the hopeless minority. But I do wish to see adopted, a plan that will preserve the

purity of the ballot box; that will protect the voter, the laboring men, the employees of the corporations in an independent exercise of the right of suffrage. I hope this Convention will put itself squarely upon the records. This system is being adopted by quite a number of the states. I prophesy it will be in every state in this Union. Probably gentlemen, you will see the time if you vote against the proposition to protect the ballot you may be ashamed of the vote you cast against it. After what I have seen practiced in the Territory of Dakota I do not intend to let an opportunity pass to cast my vote in this Convention upon this proposition and squarely in favor of it.

Mr. Dickinson: I have had nothing to say this afternoon, because I have had considerable to say in the Committee in the consideration of this subject and because I was very anxious to see what might be said upon the other side, that there might be the fullest expression, the strongest expression possible in opposition to this measure which has been proposed. Mr. President, I must say that I was amazed at the tenor of the arguments and upon the result of the arguments upon those who were present, gentlemen, who have been active as I have. I confess freely, I myself have been active in the endeavor to form this measure and secure the adoption in this Convention of these rules. For by the tenor of these addresses delivered this afternoon and apparently by the conviction produced upon the minds of many, we may be open to the charge of committing the greatest offense against the rights and interests of the people of the State of South Dakota. I have been contending, not for attempts to provide for wholesale bribery and attempts to so demoralize and corrupt the election laws that it might be possible to illegally vote to corrupt the vote and thus as unerringly as the sun follows dawn to place a stigma upon the fair name of our state because thereof. But have been contending, Mr. President, by an honest endeavor to provide in some measure for a just, honest, pure vote, for a just, true and fair expression of our people of the State of South Dakota and their will in reference to certain great issues that come before us in the first days of October next. We have in this hall as high and honorable and representative a body of men as you could get together and we are met here for acting or proceeding upon questions of vital importance and far reaching in their trend; a body of men such as will never

come together again in the history of this State from now on to the end of time, taking into consideration our business. Grave interests over which the hearts and minds of the honest people of South Dakota burdened and anxious and the decision they desire most earnestly shall be true and right and just; true expression of the minds and wills and purposes and intents of the people. And Mr. Chairman, I am not a lawyer, but I desire to call attention to the line of attempted argument that has been brought up. All of these lines of arguments and this outpour of eloquence has been upon us, not for any attempted corroboration, not for anything openly unjust because we are attempting to provide for purity and a just expression of the minds and will of the people. The force of the arguments to this proposition, made and proven apparently to the satisfaction of those who have spoken, is that we are here without power to do anything for the protection of the ballot box, but I would venture in the opinion that we have the power, that it comes to us from three fold sources. First, that we have the powers delegated to us in this Enabling Act from the Congress of the United States as to the larger parts of the interests involved in the election this fall. There has been no dispute of the claim that we have the power and even those who have spoken upon the other side have conceded that we have the power as to a submission of the Constitution to a vote of the people, as to the submission of the amendments relating to the minority representation, as to the submission of the amendment relative to Prohibition, as to the submission of the question of the location of the temporary seat of government; there is no question but that Congress gives us full power to make rules governing the election relating to those topics at all. It is conceded by every lawyer that I have heard speak upon that subject that it was a part of ordinary wisdom to conclude that when making that provision it was intended, when it states that you would also provide election at the same time for State officers, it was simply presumed to say that if we made laws for governing one part of the election, it might be presumed to cover the remainder of the issues of the election held at the same time but there is one consideration that I wish to call attention to and that is this: Speaking of the election of the delegates to this Constitutional Convention in the election of the 14th of May, the Enabling Act specifies that that election was to take place under

the rules of the Territory of Dakota. Then passing from the Convention when it was assembled, was required to submit the Constitution to the people, says that they may vote for or against the Constitution, under such rules as the Convention may prescribe.

Mr. President, why is it that the Enabling Act specified what election laws shall govern the election of delegates in the spring. I venture to guess that it was to determine what laws should govern because there would be no body in session; it would be before the Convention had existence; therefore Congress points out what laws shall govern and when we are assembled in Constitutional Convention it says the Convention might provide rules for the election upon the proposition, and when we come to the provisions of the 24th section of the Enabling Act for the election at the same time of the State officers, which we may by ordinance provide for and for the judges at the same time. Again nothing is said in reference to the laws that shall prevail and govern the election of State officers. Why is the Enabling Act silent there? I take it, Mr. President, that it is because it was deemed that this Constitutional Convention, having come together and having been thereby empowered to provide for the election of State officers, would without provision be provided with power to make the rules that should govern that election. It was silent with reference to the body that would be in existence and failed to provide for those election laws. It speaks definitely of what election laws should prevail when no such body was in existence and when we come together and provide for the election of officers, here it leaves us to ourselves to say what rules shall govern. It was the intention that those rules should be the rules of the Territorial election laws, if that law was to guide, I believe that that would have been definitely stated.

The Enabling Act has not been carelessly drawn. What I say is this: Those men knew what they were doing. I believe that they knew what they were calling into existence. This Constitutional Convention, made up of select representatives of the people of South Dakota, they honored us and honored themselves enough to say that we could be trusted to provide them ourselves. You may by ordinance provide the way for the election of State officers at the same time, by ordinance,—and that ordinance in the opinion of the best lawyers carries with it the power to pass the rules

governing the election as well as the power to submit the names of the officers that shall be elected and the offices that shall be filled. Now, Mr. President, I insist upon that point, that if it had been as essential as these men would have us believe it is, they would be so anxious that we do nothing to endanger our prospects for we must not forget they say that the President may shut us out at the time when statehood is just within our grasp. If it had been so essential that point would not have been left unguarded. We have found as we have been working carefully through this Constitution, we have found our point carefully guarded, we have found that they made no great mistakes. I can easily believe, and most thoroughly and sincerely believe that even had Congress gone so far as to say that we might have provided for our own election we could have been safely trusted to do it and that if we had done so we would have conducted the election under the Territorial law. We have no right to make the presumption that we must hold the election under the State law. This language is compulsory whenever mention of Territorial business is made as the adoption of the Constitution and the amendments severally submitted, the extra provision for the temporary location of the capital and the like. Mr. President, I am not a lawyer; I will confess that I commenced studying this point because the people were interested and were asking questions about it, whether the laws of the Territory would prevail, away last March,—asking about that and anticipating that we would have the power to provide the rules for the election. I will confess that I commenced studying it myself and asking the opinion of every lawyer I came in contact with and have taken it to every man that is recognized as being authority on that subject. I have in case after case, found the unhesitating answer, that it gave us all the power anybody could possibly assume; that the complete power was our's to provide for this ballot. To provide for an honest election against which there should be no suspicion or taint whatever. Gentlemen, I would have such a rule here today as a body representing the several states to be. We come here under a government in which majority rules and there is under the God of Nations no higher authority than the will of the majority. We are proud of it; we want that the majority shall rule in this. We come as agents of and representing the majority of the people of South Dakota. We have met in Convention so to

speak, as ambassadors of the majority of the people of South Dakota, cognizant of their will and sentiments and we are supposed to be here to express it for them and if the majority of the delegates belonging to this body shall deem it the part of wisdom and within their powers and province, that decision will be the decision of the people of South Dakota. Any decision or vote passed here today embodying our best wisdom and discretion, bearing upon its face the evidence of honesty and sincerity of purpose, will merit and be clothed with the dignity of an expression of the wisdom of the will of the people of South Dakota as a matter of law. We are sent here by the choice of the people to make or finish and adopt a Constitution a greater, graver or more serious work than that never has been enacted in the history of any nation or any state. They demand that of us and expect and trust us to do that and if the majority of this Convention I say shall decide that it is wise and best to pass certain election laws for the government of the election this fall it is the recommendation and expression of the will of the majority of the people of South Dakota. I know a paltry few, an insignificant few, will not endorse our actions, but it will be so recognized by the people. When a few years ago the Constitution of 1885 was submitted, when we had no State, when we had no authority, when we had no power but that which the people gave us, when the Constitution was provided and submitted, we had a Schedule and Ordinance providing for the manner of election. The people solemnly and carefully observed those rules and we never had a more conscientious election than that when it was proceeded under by the people who recognized it as the expression of the majority. Mr. President, at this time, when graver issues are at stake, when there are important issues to be decided, I venture to believe every honest delegate upon this floor agrees with me that when we go before our people with this amendment as a part of our Schedule and Ordinance that the people will respect the recommendation of this Constitutional Convention; that they will support earnestly and carefully, respect all rules for that election that we recommend. For they know this: Some of the delegates here on this floor seem to have forgotten that this is not in the interests of corruption, is not anything dishonest, anything unseen; it is honest and expresses their will; it is what they want. They want to do away with some of the baneful pernicious practices at the polls, the greatest inter-

ests of the Territory want it done; the great mass of the people of South Dakota are loyal to civil purity and are opposed to bribery, corruption, intimidation and fraud. We need not fear to trust ourselves, Mr. President, to trust ourselves to the people for anything that we enact, as I say, even as their representatives. We will have no fear to submit to them any enactment which is an honest and true expression of their minds and wills to their suffrages in the election in October. Mr. President, I have filled with wonder at the men of straws, that anxious men, members of this Convention, have set up and made war upon this afternoon. The first of these is the one where it is said that if we passed this bill, endorsed this provision and adopted these rules that Mr. President Harrison, when he learns that these were the rules under which the election was conducted will refuse to admit us as a State. Mr. President, I am astonished that any intelligent man will undertake to make use of such a proposition. That we made an honest attempt to secure an honest election, that the people were accustomed to vote by this means, that they did so vote by the rules and measures that were enacted to promote purity at the ballot box and discountenance bribery, intimidation and coercion; therefore, because he had reason to believe that the election pronounced the expression of the sentiments of the people of Dakota, therefore, he would refuse to admit the State into the Union. I would say attempt it if the ballot boxes were left open, then left as they have been, subject to all charges of corruption that they have been, how those men use that insane argument and bring it forward expecting any intelligent man to believe it is beyond my comprehension. I have greater confidence in the President of the United States than this. I would be ashamed to even meet the powers that be if I, for one moment, believed that that jeopardizes the causes of statehood to attempt to have a pure election next October. The other man of straw that has been set up here is this, that we are aiming a blow at the right of suffrage, disfranchising voters by prescribing certain rules. Mr. President, I would ask any man on this floor, who is disfranchised by this movement. Are we opposed to any rules we do not feel called upon to comply with them, we do not take the trouble to go and secure a ballot or if the officers of the election refuse to prefer charges against them. The cause comes up for hearing, we are put on the stand, no judge in South Dakota would convict

on that charge(?). Were I a lawyer, I should hesitate very much to jeopardize my reputation as a lawyer by such a statement as that. The answer would be and the answer that would silence all objections, that that man would have the opportunity to take a ballot the same as other men took one, that was prepared for him, that contained all names of all candidates and every proposition to be submitted to the people, that he might have an opportunity to take that by himself and without being overlooked, and without intimidation or coercion to make it right, to make it just exactly what he wanted it if he was not pleased with the regular nominees to strike them all off and put in whatever he wanted. He could go and deposit the ballot and exercise the right of suffrage; one man could do that and every man required to do it. Why? In order that that man might be protected in the free exercise in his own right of suffrage and demand that every man might be protected in his free exercise of suffrage, the proposition is in order that no man can hold over another the whip and use intimidation on that if he did not vote so and so, such and such would be the result. On the other hand, going by himself he makes up the ticket as he will without knowledge of anyone and beyond power of anybody to coerce him afterward. This is protection of that voter, the protection of every voter, this is freedom secured as far as in our power to secure it; this is for the interests of that man and every man and my friend here whom I respect and whose nationality I respect, would be deprived of no right of suffrage. He would have every opportunity to vote for anybody he might desire.

Mr. Zitka: Not if he voted according to the laws of this Territory.

Mr. Dickinson: If he voted as every other voter voted and as he should vote. There is one other point, Mr. President, that has been brought up, that if we recommend such rules and the people fail to pay any regard to them it has been openly said by those who may be citizens of this town that it would not be respected in Sioux Falls and other places like this and what is the use of passing that would not be respected. I repeat the facts stated in my opening remarks the honest careful observation of the former Constitution I have firm faith in the people of South Dakota, that they would pay no less deference to the recommendations and rules appointed by this Constitutional Convention. Mr. President, there

is in these rules, if passed by this body the power of self endorsement. No one has the right to assume in Sioux Falls or anywhere else in South Dakota the people in South Dakota would not sustain us in this amendment passing such restrictions. There is nowhere else that we have stronger pleas for a passage for this or a similar measure than to the people of Sioux Falls. We have had from no other locality stronger statements made that we were undoubtedly empowered to take such action and that it was demanded of us to make some such rule. We take this as self-evident there will be a larger number of citizens here that will be interested in seeing these rules applied and it will be partially an incentive to diligence on the part of those who control elections in this city or anywhere else in South Dakota not to refuse to adopt and put in force these rules and regulations, which other parts of Dakota are using and which are intended to secure a fair expression of the will of the people. If anybody disregards these rules in what interest will it be, why willfully do it? Will it be in the interest of purity and true suffrage of the people? No, it will be in the interest of corruption, bribery, false election and false return. Mr. President, we have said that great interests are coming up for decision. I wish to see that every delegate here and every intelligent citizen who has pure and honest intentions to care for the will of the people enough to be in sympathy with this amendment and thereby letting the people of South Dakota know that the great mass of the people demand and expect something of this kind. There has not been a day since we have been here this long session that there has not come up to us letters and petitions requesting that we pass some such law or provision as this governing the election this fall. We know what the interests of the people are; we know what they expect and we are here to put ourselves upon record upon one side or the other.

Mr. Clough: There has been a great deal of honest, earnest, inquiring talk here this afternoon. One thing I think has been settled and that is this, that this Constitution has vested in it the authority, let me go back, I do not want to say vested authority. We have heard a great deal about the Omnibus Bill conferring authority upon us; gentlemen our American citizenship confers upon us all the authority and perogatives of American freemen. Our Omnibus Bill takes from us nearly all of them, it confers noth-

ing, it takes from us, and in the shading process it takes, some; it leaves few. I could not understand from any talk which we have heard since we have been in Convention how it is that our powers were taken from us, and a little something was left in their stead; the rest was conferred upon us. I think this is the difficulty, whether or no we have the power to regulate the elections of the officers to be elected this fall. It is certain that we have the power to protect the election for this Constitution. I want to say to you gentlemen, that there is a deep and earnest solicitude throughout the entire length and breadth of the Territory of Dakota that the election upon the Constitution and these amendments shall be a most honest and fair one. I have canvassed this Territory well from east to west, from north to south. Pardon me if I say that there is no solicitude concerning the election of the officers that shall be the nominees of the party. They believe that the parties in this Territory are able to handle all those issues either under the present existing rules or any that this Constitutional Convention may adopt; in other words that the men who pass the crisis of the Convention will be sure of their election. I say to you that the better men and the better women of the Territory are mightily solicitous for amendments to the Constitution; that the 24th amendment arouses the Farmers' Alliance solicitude; others are solicitous for the 25th. Now if we can protect the officers who are running because of the election that is provided for in this Omnibus Bill we ought to do so. I say, gentlemen, every man on this floor is for a time vested with the responsibility of lawyers. I begin to feel with all my reverence for lawyers that the biggest man on this floor cannot be above suspicion of legal quibbling over this proposition. Most of you have admitted that you have the right to do this thing and gentlemen, what we have the right to do this Territory will hold us responsible for doing; what we have the right to do if we do not do that we shall be recreant to our trust in the degree that we sleep upon our rights. If we have no right to hedge and limit the election of the officer, then let us resubmit this section and send it back and as other men have furnished testimony as to the characteristics of the voters of certain localities of our State, I am constrained to say this that during the few years that I have been in this Territory it seems to me that I have come in contact with the most magnificent matured manhood that I ever met.

It seems to me that I never met so high an aggregate of intelligence and moral attributes as characterizes the general people of the State. We have heard the moral character of the voters of Dakota stigmatized, heard them called thugs and all that sort of things, yet I stand here and plead to you, if there is a cause for such an indictment to rest upon the voting population of our State,—my friends I stand tonight to plead with you to protect from such hands the Constitution that we are to submit. The amendments on Prohibition, the amendment on Minority Representation, and the rights of the citizens of 7, I believe, of Dakota's cities for an honest ballot for the capital location. I little thought that I would say very much on this question until I heard from the gentleman from Beadle; when I heard him criticize and stigmatize the voters of Dakota as he did, I appeal in the name of God for something to protect us against them. I said I will stand on this floor in defense for he knows Dakota as I have not known it; if he finds such indictments against the voters of Dakota. I have not found it; he as a lawyer and politician knows various people as I do not know them for I want to say to you that a minister only sees the better side of people; a man never shows his mean side to the preacher; he is afraid he may be called upon to bury him sometime and he wants him to give him a nice kind of a eulogy. I say you have heard him and I come to you to say in the name of this Constitution, dear to the people of this Territory, dear to its men and women,—I come to plead that you hedge it about; set guard over it and protect it and do not allow the men that he tells about to dominate or control the election upon the adoption of the Constitution. If they must have that privilege with the officers. If we have got them in Dakota—I do not believe that we have got many of them, but if you have them by the tens of thousands judging from what I have heard here today, if you have got them I do not believe many of this body yet believe this always must be. Take care of this Constitution. What can we do about it? Let us, if we cannot do anything else, re-submit it with instructions to the Schedule Committee. Apply this principal for in its working it deserves honorable mention and require of every member of this Convention and of this Territory to submit to it until we do find some other way. I appeal to you if there is scarcely a man who loves this commonwealth and these gentlemen

love it as just that; if there is scarcely a man that does not say, give us something in the nature of a reform of our ballot system. Now, gentlemen, in the name of the Omnibus Bill one thing more that is perfectly astonishing; we have heard of technicalities; one Committee to which I belong brought in a report in direct defiance of the Omnibus Bill. It was passed without a dissenting vote. The Constitution says that there shall be three times as many representatives as senators. We brought in 45 senators and one hundred and twenty-four representatives. It says that there shall be in each senatorial district, three representatives, but you have not done it. In some there is six or seven and in some there is only two—possibly in none less than two—I was going to say in some there was only one. Now, gentlemen, this standing on technicalities is altogether too thin a thing if you can protect my friends that are running for the Legislature, isn't it reasonable to suppose we can protect the Constitution in the proposition as true as we can protect the interests of Sioux Falls and these other places for the capital? I have heard several say within the last week, "Mr. Clough, give us a straight, honest ballot; that is the only thing to give us the fair show with all these other conflicting interests." Now, gentlemen of this Convention, in the interest of all these issues and good government give us these safeguards and this protection to the ballot box secured by this proposed amendment.

Mr. Van Buskirk: I came into this Convention as I have said once before today, thinking that we could adopt this or some similar amendment with the report of the Schedule Committee. The time was long before this question of the Australian system of voting began to be agitated in this Territory I had given it thought and felt interested in something of that character being done. The more I have listened to the arguments, the more carefully I have canvassed the Omnibus Bill, the more I have become convinced that we have no power whatever to introduce into this Constitution the provision of this amendment. There has been what possibly might be termed two lines of argument offered here. One is upon the power or this body to enact this amendment and the other has been upon the policy of such legislation. Have we the power? Now it is idle to undertake to argue for a moment before a logical mind that we have the power because as one gentleman stated today, that we shall go to work and do it regardless of power.

The policy of these arguments much of it, arises out of this condition of things. It is apparently the opinion of the gentleman who addressed this Convention we have a standing here as a body in the same position as the Legislature convened under the provisions of the Constitution having plenary power excepting so far as the power is limited by the operation of the Constitution for having no inhibition under the Constitution which the people of this Territory might adopt you might go to work and give a street railroad or gas works exclusive rights to lay their tracks or their mains and light the cities with gas. I say that there is inhibition and in the Constitution the Legislature may under the Constitution have plenary power and might confer just such privileges upon a corporation. We may just as well meet this question fairly, squarely as to dodge it. The first Legislature under the organic act this being a territory, has no legislative powers except what are provided, none at all. Gentlemen, a few years ago down South they disregarded the laws of this country; they got together and legislated common laws. They found they could not do it. They have not found a solitary thing that the Supreme Court said became law and binding. The Constitution and Laws of the United States control all of us throughout this broad land and as I have said in the Territory it is the law of the land until such time as Congress in its infinite wisdom otherwise shall say. If it pass a law authorizing us to organize a Territory and in its wisdom in the Organic Act of the Territory confers upon us the powers of the Legislature to that extent which they may say this Enabling Act does very well. I say the powers of the Legislature of the Territories is provided and has to be derived from the terms of the Organic Act precisely as the powers of the government of the United States is limited and defined by the Constitution of the United States. You will readily see in a moment that we have no plenary power, nor the State Legislature would not. That is derivative and when gentlemen insist here that we may reach out on our powers that is conferred upon us by act of Congress for the purpose of legislation and have provided for an election, this is a great misconception of the theory and history of purposes of our government. There is necessity for it you will see in a moment. Now then, where are we? We must go to this same very identical Organic Act, because our powers are derivative and we must find our powers we derive

by that act. We must look to this Omnibus Bill and its terms and provisions for the purpose of ascertaining what power we derive to transact business here in this Convention. Strictly and legally since we could not without we derived the power from the act of Congress conferring it upon us. Now, if the only question perceived in this is that of authority of the Convention by virtue of the act of Congress then they have the right to confer upon us just such limitations as they please and we are bound by them. Gentlemen, the intent generally is to a logical idea of what might be said in the argument by some other gentleman on the floor, to tear that down and therefore to disprove the assertion which they may make. I may attack argument which counsel in court might make and demonstrate the falsity of that. It does not demonstrate the correctness of the position I occupy before the court or public. It is clear that the whole line of argument here, and while I desire to accept the other theory, I cannot stand here with my knowledge which has been the accumulation of most a life-time and which is largely derived from forming legal deductions from evidence for a measure which I know cannot be sustained at all. Congress used that language understandingly, they used it in this light that it fell however within the authority of the Legislature to provide the amendment to be submitted to the vote of the people. Now, when they do that they go to work by requisition of the act and provide the formal ballot which shall be voted whether the people were to accept the amendment to the Constitution or not. Congress says we may fix the regulation in relation to it. We go to work and say a man might vote one way and then fix the form of his ballot and say if he votes the other way that is the form of his ballot and that he cannot cast it only one way and when Congress used that form with reference to the adoption of this Constitution, Congress meant by that simply this, that we might do as has been done by legislative bodies in other instances; so that when a man went to vote it should be intelligently voted and as the voter intended it to do. Otherwise there are gentlemen who might put in a vote for another man,—a different person than he intended to. With a different form of vote he actually would not be able to determine what those votes were. Now, if they had designed that we, here in this body, might provide regulations for that election, they would not have said we could provide regulations in reference to the Constitution,

but they would have said more had they intended more. They would have said that we might provide rules and regulations governing the election for the Constitution and State officers. They would not have stopped short of it. They would have said, you may vote upon this Constitution, you may at that time elect State officers and you may provide the necessary rules and regulations for that purpose,—for the purpose of controlling that election; why did they stop and say that we might provide regulations upon the question of the adoption of the Constitution; why did not they go further if they meant more. That is the difficulty in this whole thing. I wish it was otherwise, and if the time ever comes when I can go to the polls and help elect a man that will go to the Legislature and provide a measure giving us just the system desired in this amendment and which I have desired for years before it was adopted in this Territory, I will support that man gladly and if I can aid in preparing such a bill and carrying it through he can have my services.

Mr. Edgerton (of Davison): I understood that first gentleman from Codington to say this; that the Constitution provides that we should have three times the number of members that we have Senators and that every senatorial district should have three members and that we had violated the provision of the Enabling Act. I would like the first gentleman from Codington to call my attention to the section he has violated.

Mr. Clough: I have read that several times. Three times forty-five isn't it?

Mr. Edgerton: I belong to that hateful class—lawyers; but they are trained to speak in business like this with some degree of accuracy. "The number of members of the House of Representatives shall not be less than seventy-five nor more than one hundred and thirty-five. The number of members of the Senate shall not be less than twenty-five nor more than forty-five." "The sessions of this Legislature shall be bi-ennial except as otherwise provided in this Constitution."

Mr. Clough: There is another paragraph there.

Mr. Edgerton: That provides for that minority representation. I apprehend that the intelligence of the people next fall will say that it will never be a part of the Constitution.

Mr. Willis: Mr. President,—

The Chairman: The gentleman from Davison has the floor.

Mr. Willis: I rise to a point of order. Have not we a rule? I am sure we have against a showing of approval or disapproval upon this floor.

The Chairman: I guess there is something like that.

Mr. Edgerton: I felt a little sensitive as a member of this Convention when it was charged that we had plainly violated this Constitution that we have met here to frame,—or perfect rather. I knew it was my intention as declared on the first day of this Convention that we should not go beyond the Organic Act that limited the powers of this Convention. When it was declared here that we had plainly violated it I felt as if I would like to have the attention called to the section that we had violated. I admit this. The plain intention of the Constitution is that the number of members shall be three times the number of Senators; but I had yet to learn the fact there was any provision in the Constitution that there are senatorial districts that shall contain three members. There is no such provision that my attention has ever been called to; there is a provision that if the people of this State next fall adopt the Minority Representation and it becomes a part of the Constitution then thereafter there are districts that must be so formed. But I have no fear that that Minority Representation would be adopted. It at least, forms no part of the Constitution today.

Mr. Clough: My attention was called to that several times. I thought I was right, correct; and I think I am.

Mr. Huntley: As I listened to the learned Judge who spoke so feelingly upon this subject, interpreting the meaning of Congress, I thought he should have come from school of prophets instead of the legal profession. I do not understand how he may stand on this floor and interpret to us the meaning of Congress of the language which every one has perused the same as he has himself, unless it is through some authority like that of the prophets to which I believe he makes no claims.

I did not at first read those words of Congress in this Bill. It seems just as plain to me, very differently from what, from his interpretation of it, it seems to him. It looks to me clearly that we have the power to make regulations and rules, to pass ordinances, and what does ordinances mean but law, enactments, decrees,—

and if we come here together under the express authority of Congress to make decrees, what is that but that we have the power to make regulations to carry out all those acts of which we approve and which we here decree, and if we are empowered to make rules and regulations for the vote on the Constitution and its separate articles and if that same bill provides that this Convention may, it does not say that it shall but that it may, provide by ordinance for the election of State officers; what does it mean but that we may provide by regulations and rules how these said officers shall be elected. It is a mystery to me how these legal gentlemen differ from one another. We do not intend, and do not cast any reflection upon them. I believe the best talent among them have taken sides with those who think we have the full authority; therefore we preachers are not assuming anything when we boast of the legal talent on the floor. We think that we intend to urge and do urge upon this body that they put this ordinance in that Schedule. We have the power and I do not see how any question can arise upon it. Why, Sirs, the Committee in the Schedule have done it; they presume to do that very thing. They have the power to present it and recommend to us and they do it and recommend it. They present and recommend that we take the laws of the Territory and apply them to the election of State officers. Is there anything in the Omnibus Bill that directs that just those shall be slighted in such rules and regulations? Where do they find that? Will the gentleman please read the section in which it was found. They insist upon that being in there according to authority; very well. Having that authority they have the same authority for incorporating the same amendment which we bring; the same precisely. If they have the same authority for one they have the authority for the other and we insist that this is, as presented, is the belief of this body and is their will in regard to this matter. Those who are favoring this were taken rather aback this afternoon by the fears instilled by the legal friends who first opened this discussion. I think surely he ought to have come from the school of prophets, pronounced the cause which we have here insisted upon as a great crime, we propose to deprive somebody of his right to vote, to reject him if he goes to vote that ballot and don't in the form we prescribe; take away from him the dearest right of the American citizen. I

could not but admire the facility with which he pictured his fancies and imaginings.

In this amendment this Convention desires to protect and secure to the voter his rights and the passing of such an ordinance would most effectually compass that end. What would be the effect if a man steps up and presents his ballot and refuses to vote in accordance with the rules prescribed? I will tell you what I would say: "Mr. Voter, if you don't want to vote in accordance with the regulations, you don't have to. There is no law compelling a man to vote." What would you do with a wild man who refuses to carry out this ordinance? You would tell him, "You don't have to vote". Any dunce that would refuse to carry out any ordinance that was here prescribed. Suppose Sioux Falls should have two Senators, six or seven Representatives, and suppose, at the election this fall, they elect five Senators and fifteen or twenty Representatives, what would you do about it? Well, Sir, I presume they would find some way to legally do it. Whatever way that is, this is the way I should put it. If Sioux Falls did not comply with the ordinance we had in regard to elections they could pronounce our action in the one case illegal and void and it might be pronounced void if they violated this ordinance if we pass it. I believe we have the authority to pass it; I cannot see it otherwise.

I notice this peculiar fact: Nearly every speaker who has opposed this measure, nearly every one of them has said it was desirable that we have such protection thrown around the ballot box; every one wanted it. Our Legislature wanted it last winter, and they passed a resolution like it; it came into the hands of the Clerk and everybody wanted it; somebody wanted it so badly they got it away from the Clerk and it never got around anywhere else. Well, my friends, we want this just the same as if it had been seen and shall we, because some of these lawyers, who is less discreet and less talented, oppose some of those? Other lawyers, who understand the case better and are intent on doing the right thing shall those of us who are not lawyers sit in with the opposers of this measure, or shall we take part with those who want the ballot protected? I tell you let us pass this ordinance and if Sioux Falls, or Huron or any other town, whether they want the capital or not, do not obey that ordinance I tell you there will be a way provided

whereby they will suffer and they will wish they had obeyed the ordinance.

My friends, my memory goes back to a point four years ago when the Territory of Dakota elected a legal Constitutional Convention. That county that the honored President now represents, said it would not amount to anything; they did not need any delegate. They were not represented here. Well, they could not be compelled to be so what happened? They did not come here; they stayed at home and had no part in it; they never had a vote in passing this ordinance. That is what happened to them if they do not care enough for this part of the Schedule and Ordinance that we pass, should we adopt the amendment, loyally stand by its provisions, then they will be left out of the election, that is all. Let us do our duty, for it is right, and God is for the right. Let us not be ashamed.

I tell you that these lawyers that have been so full of fire against this measure will see to it that their votes are not lost when they have to. Some gentleman in the lobby, after the afternoon session, gentlemen of this town, men of ability, of reputation as lawyers; men interested here in the work and especially interested in their solicitude on the capital question, said to me they were both in favor of this measure, very much in favor of it. One of them was so much in favor of it he told me he was really a crank on this subject. Indeed there are here cranks here that turn the wrong way; some left handed cranks. These left-handed cranks that are now endeavoring to turn the machine backwards. We want to go ahead, no matter whether we are cranks or not, gentlemen. Let us do our duty faithfully and the end will justify us.

Mr. Cooper: I do not think there are many gentlemen on this floor this evening but would, if asked the question, declare he was in favor of a law of this kind if we have the power to enact it, and for the reason the public interests demand it, because of the nature of things in this Territory and in every State and Territory in this Union. We have been led to believe that there were dishonest men; that there are corrupt men; that there were men who would disregard the election laws of the coming State, and disregard the election laws of every State and Territory in the Union; that they were dishonest; that they were corruptionists; that they were sluggers and certainly that they were thugs. That was the reason

why I think every gentleman and every individual who has spoken upon this question has declared that if he had the right to enact this law and regulation of that kind that it would be wise, and just and politic thing to do. I believe that every gentleman upon this floor is in favor of protection of the ballot; is in favor of a true, pure, honest ballot and fair count. But we have acquired the information from the learned gentleman from Codington County, that none of the reasons which have been urged in opposition to the reputation of this kind, so we have learned from the learned gentleman but that were an insult upon the manhood and womanhood of this commonwealth; that there is nowhere in all this bright land of ours anything which savors of purity, anything that savors of honesty, and in the meanest language that he could employ. He not only assaulted and impugned the motives of every gentleman who spoke against this amendment, but even undertook to make an assault upon me. I say that if the position that he has taken is true, that nothing of the nature of purity and honesty exists among the people of this great State. He has proved beyond recall, beyond possibility to his own satisfaction I presume, certainly to the satisfaction of every gentleman upon this floor, that this amendment is an insult upon the manhood and womanhood of South Dakota. I say that if any gentleman believes that the position that he has taken is the only correct position for that gentleman upon this floor to take. But I believe that in the people of South Dakota and no gentleman believes more firmly than I do that nowhere upon God's green earth are the people more honest, conscientious, more pure in his manhood; and no people higher in this integrity than these are. I say I believe there are dishonest men in this State; I say I believe there are corrupt men in this State; that there is what is known as thugs in this State. I believe that this is the reason why, Mr. President, and gentlemen of this Convention, that an ordinance of this kind, a regulation of this kind, a law of this kind, should be passed, but there is a question back of it. First, have we the right to pass it? I do not always believe in the sentiment expressed by one gentleman upon this floor; I do not think he will when he stops to analyze it; I do not believe the end always justifies the means; I do not believe that beyond question one wrong thing in order to prevent another wrong thing from being done, can always be employed so the end justifies the means.

Now, as to the matter of disagreement between the lawyers among the members of this body, I say there is not a lawyer who has spoken upon this subject this afternoon or evening that has denied a single gentleman who has spoken upon it. I say there is no difference of opinion between the legal gentlemen who have spoken upon this proposition; they all agree that no judge of election would have the right to refuse a ballot provided by the laws of the Territory of Dakota, a ballot which would be legal under the laws of the Territory of Dakota. No judge of election would have the right to refuse; if he did, by the laws of this Territory, he is guilty of a crime. No gentleman who has spoken upon this question today has admitted or claimed that in his opinion a ballot which would be legal under the laws of this Territory but which would not comply with the laws of this amendment, would be an illegal ballot; would invalidate the election.

But they say, the gentlemen upon the other side, that we are in a condition of anarchy without the laws of this Territory. They need the law to protect them, because they say you cannot repeal the laws or banish the laws. The moment you do that you make it an illegal vote. I say that I do not believe that I can conscientiously vote for a thing of that kind. I believe in the law. That under the laws that a man that casts an illegal vote is guilty of a crime, and a judge of election who refuses to accept a legal ballot is guilty of a crime. A gentleman here today argues this question saying, "No judge or no jury". I cannot quote his language—"I do not believe any judge of election could be convicted for refusing to accept the ballot." I would not say that is correctly quoted, but I believe that is the substance of it. I have more faith in the honesty of the judges and juries of this great Territory than to say that they will deliberately break the laws of this coming State. I believe that if the law made a certain man guilty of a crime and the man that performed that act was placed on trial and it was plainly proven that he violated the laws of this Territory I believe that the honest manhood of Dakota would say that he should be punished. I say I do not believe because we are passing from Territorial condition to statehood,—I do not believe that we are in a condition of anarchy; I do not believe that we are absolutely without protection because the Enabling Act provides the laws now in existence shall stand and that they shall have full force and effect

until superceded by future amendments by the Legislature. I would vote for an amendment of this kind if I thought we had the right to do it; for that reason I shall cast my vote in the negative. I will say again I do not believe that all men in this Territory are so pure and undefiled and have kept themselves so unspotted from the world that they do not need any laws. I do not believe that.

Mr. Clough: I rise to a question of privilege. There is no man that would rather be laughed at than I would if I make a mistake I am willing to acknowledge it. My eyes are not very sharp. I have looked at this Constitution, have read it a score of times and have talked about this rule seriously. I acknowledge that I never discovered that it was for the adoption of the Minority Report. I presume twenty have discussed. I acknowledge my mistake and I am glad to be enlightened. I confess that I made a mis-statement when upon the floor before and sincerely beg the pardon of the President of this Convention.

The Chairman: The Chair recommends to this Convention to endorse the sentiments that "honest confession is good for the soul." (Laughter.)

Mr. Dickinson: I want, upon the heel of the remark of the gentleman from Codington I like to get square arguments, I want, while he is upon the subject of Territorial law to call his attention to this article which we are considering, Article 7 of the Schedule submitted here. The section reads as follows: Section 7. The election provided for herein shall be under the provisions of the Constitution herewith submitted, and shall be conducted, in all respects, as elections are conducted under the general laws of the Territory of Dakota, except as herein provided. No mere technicalities or informalities, in the manner or form or election, or neglect of any officer to perform his duty with regard thereto, shall be deemed to vitiate or void the same, it being the true intent and object of this ordinance to ascertain and give effect to the true will of the people of the State of South Dakota, as expressed by their votes at the polls. I want to ask that the gentleman think upon that exception and the meaning of it. The Schedule Committee voted down this amendment in their meeting, they have taken occasion to say. I grant they might call attention to it simply to remove any doubts about why that being so, we have no right to anything except as herein provided. These articles will

be submitted but the same will be because the Territorial laws shall prevail in this election. We make the same provision exactly. I know there are minor exceptions here, they are small I grant, but that right which they hold to do here with small provisions paves the way for larger changes which are clear violations of the spirit of the Enabling Act.

Mr. Stroupe: I would like to speak to a question of privilege also, because I do not intend to speak very much of the report inasmuch as the Chair has allowed so many gentlemen to speak upon the question so often, I will speak for a moment.

This seems to have been a field day between the preachers and lawyers. I confess, although I am not one of the lawyers, the lawyers have the best of it. I came here in doubt this afternoon; I thought that the lawyers could make it clear to my mind as one of the fifty jurymen that we had a perfect right to ingraft this amendment into the Schedule, that I should vote for it because my friend from Codington says I am in favor and in sympathy with the spirit of this amendment. I want to say that I am ready to place myself upon record that I am in favor of Prohibition. No man worked in '85 harder than I did for it one year ago last fall for local option. I do not except any man. I do not expect any man will work any harder for it till next first day of October than I, be he preacher or sinner. I say that if there is a person here who will make an argument, not an enthusiastic talk, that is not very much of a legal argument, let us hear him. There are those who can talk in public of course, we can't blame them for it; they have been trained to it; they have been trained to preach, talk fire in their pulpits where no man dare, if he had a chance, to say anything against it. I want to begin with the first gentleman that spoke here to-night and say briefly, while his speech will do very well as a plea for prohibition it would not satisfy me very well as an argument on this proposition; the next gentleman from Day I admire. I want him to come into our county before October; I want him to come into our town and talk prohibition. Also the minister from Codington, I would like to have him come in there, but before he comes I would want him to get his speech committed in pretty good order so he won't make any bad breaks. I think Day and Beadle counties have to take it right and left; I think it is unjust. Mr. Cooper, I think, made one

of the best arguments that was made upon the floor this afternoon and of anyone tonight. I know I do not intend for one minute to be discourteous to anyone or reflect upon the motives of anyone as one or two speakers have passed, which he chooses to say reflect on.

I am certain that these gentlemen upon reflection will take it all back and might publish it even. This is a question of privilege. Gentlemen, I will stay here until morning if you want to talk; but my dear preachers if you do talk upon this question whether this amendment will be legal, whether we have the right to pass it and not that we would like to have it there. I don't believe that there is a man here but what would like to see it a law, but if the lawyers say that it cannot be legally passed, then let us do the next best thing; be on the safe side and vote according to the Territorial laws. This is my plea.

Mr. Willis: I am a lawyer,—

The Chairman: How do you spell that word? (Laughter).

Mr. Willis: I have had a course of law since I have been here. I might beg to insinuate a suggestion now that the last speaker did not stick to his text. I rise to defend nobody and observe to remark anything about anybody. I am going to studiously avoid any personal suggestions. I mean to say nothing contrary if I thought of it. I have done talking mere cold mysteries; it would confuse this Convention while confusion is now confounded. It now appears to me to begin to seem that certain lawyers of this body of long experience are very clear or rather quite clear or considerable clear,—that is about this question of power we have not got. But there are certain other lawyers of experience so far as I know I have only to make up my mind from observation I have had no experience with this, who, upon this question of power, decides that we have the power.

Two hours ago a man whom I judge to be one of the prominent lawyers of this city who is now in the lobby, in relation to, this matter made this remark that is about the question of this Convention having the authority under the Omnibus Bill to prescribe the conditions of the ballot next October, even to the extent of the adoption of this amendment. He had not the shadow of a doubt; his mind was as clear as a bell which is entirely clear; his manner was just as confident as it could be; he was just clear on that point. Many

lawyers disagree as to that subject, whether we have the power, this is the only question that is pertinent to be discussed. There are many men besides preachers who have given evidence of redundancy as it is true some preachers have. I am not a preacher; I am a lawyer. Well, I guess the citizens of the State to be, will weigh you fairly that we may, that this body may procrastinate as they will. Let me say that the people of South Dakota know their own minds and will weigh us by our actions upon this amendment. Why, it is very clear to me that there is a difference of opinion and that nobody knows exactly just what we ought to do. But with the popular pressure upon this point, which we know to be behind us, which some of us appear to be conscious of I am constrained to say that with this difference of opinion I am thoroughly dissatisfied. I think I was never more dissatisfied in my life. I am thoroughly dissatisfied and I am in favor of supporting the amendment. I am in favor of the amendment and I want the men of this body to know I shall vote for this amendment. I believe the majority ought to vote for the amendment.

Mr. Sterling: In the argument of this question I have had no thought whatever as far as my duty is concerned about the pressure that may be brought to bear from the outside. I consider that in questions of this kind that what people should think is the last thing that should influence a lawyer. I think I feel everything that recommends the desirability of such an amendment as this, perhaps as keenly as anybody, but I do not believe that it influences my judgment nor vote upon the question of power. Now, one of the arguments that has been adduced here as to the question of power has been satisfactory to my mind and I state now that in the discussion of this one question I have failed to hear anything that has been conclusive in my mind to even raise a doubt as to what I stated in my remarks this afternoon. I recognize this, that there are certain essential things about every election that no rules nor regulations can influence or set aside. The subject of the election, the time of the election, the place of the election, are all essential; and as they are fixed by laws we cannot interfere with them in any way whatever. The qualification of voters as prescribed by statutes are things you cannot interfere with. When it comes to rules and regulations concerning the conduct of an election I think we have the power to make them. Suppose,

gentlemen, that there was no election now except upon the Constitution to be passed and that the Enabling Act had not a single word about submitting it to the voters under such rules and regulations as the Convention, by ordinance, prescribes. I wonder if the Convention, then, might not have had the power to make any ruler or regulations had the Enabling Act been silent upon that subject. I say, if it was given the power to make the Constitution this would have carried with it the implied powers to make rules and regulations concerning the election by the people upon that Constitution. I say that in reference, now to the officers for which we may vote at the same time that we vote upon this Constitution and the amendments thereto. Remember, the Enabling Act says that we may make rules and regulations; it gives us the right in explicit terms, to make rules and regulations concerning this Constitution and the amendments in that same Enabling Act provides that at the same election we may vote for the officers necessary for a full state government and I say as the lawyers do, that under the ordinary rules and constructions of legal compositions and the statutory propositions that it follows as implied power that we have got the right to make rules and regulations concerning the election of officers in that same election. That we have to make rules and regulations concerning the Constitution and the amendments thereto.

This is an implied power; it is not an express power given in the terms of the Enabling Act itself. As I said this afternoon, I say now without any previous study upon the subject at all that the officers of election, themselves, and nobody seems to dispute the proposition, may for the preservation of order that extent and the purity of the ballot, make certain rules and regulations that shall govern the conduct of the election at this or that particular polling place.

The question is, is anybody deprived of the right to cast his honest vote? Gentlemen, when it comes to irregularity at that election the question of principle, it is not even raised, but it comes back to this: Has there been a fair and honest election? Have the electors had the right and been given the opportunity to cast a ballot at that particular election, and if so then the irregularities will not vitiate the election. That is the rule. What, does this amendment propose anything that disfranchises a man? Disfranchising! Listen, you gentlemen that harped upon that this

afternoon, instead of disfranchisement, taking it all in all, it is an invitation instead of a disfranchisement,—an invitation for them to go to the polls and vote as every man chooses to vote. That is what it is. And if there is anything that will make a man feel his independence as a voter, it is that he may be apart as this amendment provides. from the persuasive eloquence, unscrupulous interference of another when making or fixing his ballot. Entirely away from any outside influence. It secures, the entire intent and object of it is, to secure the entire independence of the voter. Disfranchising! When according to this amendment, he is provided with a ballot containing the name of every man who has been nominated by the party or by the wishes of a number of men outside of the party, in the county, in the legislative, and in the judicial district in which the man and the officer resides; he is furnished with that kind of a ballot, is there anything else about it. Why, he is not limited to the names upon it. Aside from where anyone can see him or intimidate him or persuade him; he can write any other name in there; he can place upon it any other name than that indicated in the ballot itself. Gentlemen, the more I think of this question and weigh it in all its bearings, it leads me in the belief, the more I think about it, the more I am convinced that this is a reasonable rule and regulation which we have the right to enforce. Enforce I say, and I do not use those words without some thought as to what they mean. I say this: I do not know that it would be ever resisted; I am inclined to think that it would not, but if the precinct entirely refuse to adopt the system I would believe this, that it would be no violation that the entire vote might be thrown out. I am not prepared to say that it would be done and that I would sanction any such thing should it be done. What might be the result, so far as our admission is concerned; so far as any action that President Harrison might take, is concerned, I would go to him with perfect confidence with the statement that this amendment had been put into the Schedule and Ordinance and that the voters had been required to comply with that and not voting in compliance with it, their vote was cast out. What would be the result? That amendment deprive you of your suffrage, that amendment deprive you of the right to exercise your right as an American voter and freeman,—an amendment like that which allows you to go apart by yourself in an apartment in the polling place and there vote as you choose,— that amendment which was designed to

secure the purity of the ballot box,—does that deprive you of your vote in this or that particular precinct? I say, gentlemen, when there is this attempt to secure purity at the election, done manfully and carefully, taking into consideration the question that we had that to decide in this election, that no jot or tittle of our right to be admitted will be effected by our adding this amendment to the Schedule and Ordinance requiring that it be one of the conditions of the election next October.

Mr. Davies: I ask the indulgence of this Convention for one moment to discuss the question a little. We are met this evening to settle one point; this Convention recognizes that to be a legal point and as one of the large majority of the members present I look to the legal fraternity to settle this question. There is no doubt but what the majority of the members here desires to carry this through if the way is clear for this Convention to do so. This is not a Convention of the ministers and preachers here. I believe it is equally dear to every attorney in this room and for that very reason I cannot conscientiously allow this Convention to close without putting my voice as attorney in favor of this amendment. I will say, gentlemen of this Convention, you who are not lawyers, that you have no business to expect two lawyers to agree on anything. When we, every one of us, have talked about this subject, when we sitting here have heard the presentation of the views of the different members, when you have talked over all those that you deem to be law and argument and reason, then bring your own common sense of duty and of right and when you come to vote on this, you have the power here to say that this shall be. There are not attorneys enough on this floor to make a show. I undertake to say that at least half of the lawyers in this room are in favor of this amendment. Now, come right back to the question.

This afternoon some questions were asked. I do not know but what I had better answer a few of them right here.

Suppose a man wishes to vote according to the old methods, after the new method has been introduced. What would be the result? The men authorized, ordained if you please, by the Congress of the United States to this Convention, those men ordained to attend to that matter, will attend to it. How? Just like this: Just as your little slip tells you, he must come and deposit his ballot in secret and if he does not prefer to do that he has not got to do that but his vote will not be counted. Suppose he goes to law about

it; let him go. Will that vitiate this election? The very fact that the man said, I will not submit to the majority and will vote, that I will insist about voting my way and go to law about it; will that vitiate the result of the election? Is there a lawyer here tonight that will say for one moment that this matter has anything whatever to do with it? Talk about this "I won't do it". I was asked by my wife where I was going to preach next Sunday. Yes, that's a fact. Now, I can't say today that I intend to lie out of it. The highest tribunal in this land,—the legislative tribunal, the Congress of the United States—not the Constitution of Dakota but the Congress of the United States through the Enabling Act, has provided that elections will be held next October in this Territory. It is provided that certain things shall come up for submission to the people when it is also provided that this Convention shall prepare itself for admission, so far the Constitution of Dakota has nothing to do with it. The laws of the Territory of Dakota, only as far as they relate to the general subject, has nothing to do with the particular method of how we shall vote. Whether there shall be one judge or two judges. The present law existing in the Territory of Dakota has nothing for general and special elections provided for, has nothing to do with this, because this is a special election organized by Congress of the United States, and that same authority has vested in us, power to prepare all the ways, the means of doing this. I think this word "ordinance" misleads some of us. When I was a little boy, about so high (indicating about three feet) my teacher used to put me through elocutionary and elocutionary drill. I remember it ran something like this: "They did not legislate, they did not enact, they ordained that the people of the United States shall be free." The Congress of this United States has permitted us to ordain that we shall have a clear, pure election. For one, I shall vote for this amendment.

Mr. Williams: I find one objection to this section as it stands. I believe that with that word out and two other words substituted that objection will be obviated. These words are these. I find that this ordinance does attempt to legislate; it attempts to repeal certain of the laws of the Territory of Dakota. Now, for one, I want to get right on that. Section 7 reads: "The election provided for herein shall be under the provisions of the Constitution herewith submitted and shall be conducted in all respects as elections are conducted under the general laws of the Territory of

Dakota, except as herein provided." That word "except"; I think we had better change that. Why? For this reason; this section says that this election shall be according to the laws of the Territory of Dakota EXCEPT as herein provided. Let us change that and instead of the words "Except as herein provided", not repeal any law, but allow the law to stand and then add these words "and regulate it."

Mr. Fellows: I desire to submit one or two thoughts in connection with this very important question before the Convention. I will say right here that I shall not attempt any flights of oratory. I won't soar very far from the issue that is before the Convention. The question is one of such vital importance that it should receive the careful consideration and unbiased consideration of every delegate here. The question whether we are exceeding, in passing the amendment that is proposed, the power that is vested in this Convention is one of much importance. Upon it depend out perpetuity and usefulness as a Convention. I have no doubt that nearly every delegate in the Convention would be in favor of that amendment if, in his judgment it was proper and was within the power of this Convention to pass it; therefore I shall address the remarks that I make solely to that question of the power of this Convention.

In the first place, it is conceded here by everybody those who favor the amendment and those who oppose it that the only power which the Convention has is the limited powers which the Omnibus Bill gives us. This Convention sits here without plenary power, but such power as is given by Congress. If this Convention has the power given it by the Omnibus Bill to make laws, provide laws and enforce these laws, then it has the power to do just what we are attempting to do here in this provision. But, if on the other hand there is any question, I say any tangible question, if the standing it has got is subject to strict construction, if there is any question of its giving the power to this Convention to become a legislative body, to be a law-making body, to be a law-passing body, then certainly this amendment can be passed and should be passed.

Now, we will have an election next October; the laws which have, by the provisions of this act and by the Constitution will be, at that time in full force and operation; and the election laws of this Territory will be in operation in every city and town and hamlet in this State of Dakota,—or this will be at that time the Territory of Dakota,—they will be at that time the Territory of Dakota,—

they will be in full force and operation as they are in force by the courts. Now then, can you, acting here under the authority that is given you by this Omnibus Bill, under the limited authority that you obtain here, together in this Convention, do anything that will overthrow the force of those laws? That is the question confronting this Convention; because if you can do something that will repeal them by express enactment or implication, certainly these laws will be in full force and effect. What will these judges of election do on that day? They will have to sign a solemn oath, they will have to act under the laws of the Territory that are in force. The first thing that a man does before he commences to act as Judge of election, he has to swear that he will, to the best of his understanding and ability, perform the duties of his office in accordance to the law. In accordance to what law? According to the law of the Territory of Dakota, that is in force.

You attempt to say here in this ordinance that a man shall not observe the oath that he has taken; you attempt to say here that he shall not follow the laws of the Territory of Dakota that he has sworn he will follow; that he will not administer the laws of this Territory that he has sworn he will administer. You are changing all that. You provide entirely different methods; you are making a provision here in this act, I call your attention to it gentlemen, and it is this: That in regard to marking the tickets that he will cast out the ballots that are not marked in a particular way. I tel' you, under the laws of this Territory that are in force and will be in force on that day that the judges of election cannot legally no anything of that kind. I make the application personally myself,—I go up to the polls on election day with a ticket that expresses just what I want expressed there. It is in conformity with this Schedule and Ordinance except that it does not conform with this amendment. Suppose they refuse to accept my vote? What justification has he to show? Suppose we follow it a little further. I commence action against him for judgment for *δέπνεξις*. He has set up the justification and defense. What is the justification and defence going to be? Suppose we carry it further; suppose the judges of the election presented and filed a large number of ballots cast there in accordance to the ordinance you are attempting to pass here that are not in exact conformity to it. Must they be thrown out in conformity with that section of the amendment? What is the effect of that upon the election? Have those judges

of election the right to discard the votes that perhaps were placed there in the ballot box, that expressed their will and intention without any defense of that kind.

Now, I do not believe there is anything of that kind. I am in favor of purity in election; I would like to see all the safeguards thrown around the polls that can be thrown around them. I do not believe there is any such burning necessity existing at this time to take the chances of this experiment we are taking here if we adopt the amendment of this kind. For, the question of power is in doubt, if there is a question of power at all and there is at least a question in the minds of this Convention here if there is a question in regard to this: "can we, friends, considering the importance of this election, considering the fact that statehood, perhaps, of South Dakota depends upon the solution of this question. Can we afford to take any chances,—to say that we will take this procedure when there is doubt as to its being the right course; when by taking the course that has been pursued in this Territory year after year to the general satisfaction of this people." We are standing upon grounds that are perfectly safe and solid with no question about the result of this.

(Calls of "Question, question" from different parts of the room.)

Mr. Huntley: I want to ask the gentleman how he reads the first sentence in that article to which this amendment is offered, that the election provided for herein shall be conducted in all respects as elections are conducted under the general laws of the Territory of Dakota,—Article 7' The Committee whose report this amendment is made to, this Committee have assumed that they had authority to dictate.

Mr. Hole: I suggest that the gentleman should not answer his own question. That question was asked awhile ago; I do not wish to enter into this discussion; I would answer that question because it has not been answered. This question has been before the Committee and has had considerable attention. We are free to say that where there was any possible doubt we have taken the safe side, deeming it the best course to pursue.

Mr. Lee: I will not detain this Convention long. I wish to suggest that there is a moral side and a legal side to all questions. I have a mortgage on my neighbor's cow, their only cow. On the legal side I could go and foreclose that mortgage and take that cow. Perhaps it is the only cow of a widow with little children. When I

take the cow away they have got scarcely nothing else to live upon. Such an action outrages the moral side of the question. I believe my constituency are mostly of excellent morals and good men. The majority of the voters are in favor of this amendment and all taxpayers are. We are about to cast the greatest vote ever cast. And more men will show up then any other time that we will ever have seen in South Dakota. I have to stand here for the lawyers and for the preachers. I was made a lawyer in 1857, a preacher in 1860. The lawyer part of me is a little older than the preacher. I tell you because I want the farmers that own the real soil, and the merchant and the men who pay the taxes to have the right to say how this thing shall be. I want them to cast the vote that will carry. I do not want the dead beat and dude and loafer and that beautiful class to be shipped in here and boarded until after election. They have got men who will come here from Iowa, Nebraska, Minnesota and from Canada, that if you will pay their board until they have stayed long enough to vote they will come in hoards. We want to make them pay taxes before they vote. The old pioneers that came here and lived and fought and got their farms and families and children and their business and trade and profession, who ought to run this government. I say this is right. It is just and it will do no harm. In my town, but a few days ago, there were four farmers about four miles from town. Well, I went out and got them to vote; but you do not have any trouble to get them out to vote and vote in the city and double our taxes. Men who do not own a foot of land, but they are voters and they out-vote us in the city and double up our taxes before we know anything about it. I tell you, all my life time, this idea has been growing with my years that there should be a change in our election laws. I have been judge of election in my time; I have said "We won't allow you to come into this voting room at all; stand outside and put your vote in through the window." They had to do it and I did not hear of any man being disfranchised either. These circumstances alter cases. I tell you I am going to vote for this amendment. This is the preacher side of me. I believe it is right.

Now, in regard to the lawyer side I have some little doubts but they are not very strong. I believe it will be tried in less than ten years in every state in the Union. I believe the time in our history as a Territory is ripe for this trial now. In standing before a jury defending a man charged with crime, I say: "Gentlemen of

the jury, if you have any reasonable doubts that my client committed this crime, you will have cause to clear him. You had better let a thousand crimes go unpunished than kill an innocent man. That is law; I shall give this amendment the benefit of the doubt and vote for it in this Convention.

Mr. Corson: I do not desire to take the time of this Convention to discuss the various phases of this subject that have been touched upon in this debate. But one thing seems to me Mr. President, is very apparent, and that is, that there is a safe course in this matter which can be pursued and a course that can be pursued that is not so safe. It would seem from the discussion this afternoon that there is grave doubts about the right of the Convention to pass this amendment; to make changes in the law applicable to this election the ensuing fall. Now, like the gentleman from Spink, Mr. President, I have been here in the Territory of Dakota for many years. I have worked hard and long for statehood. I do not feel, Sir, like endangering that at this time by passing this amendment and placing upon this election some restrictions about which there is grave doubts as it seems to me that at this time we can ill afford to do that. This is a matter of grave importance; this matter of this election and the returns, etc. are to go before the President of the United States and if it should, in his opinion, turn out that this was an illegal amendment and the provisions of it were illegal then, there would have been no election of this Constitution and the whole thing would fall to the ground and we would commence new again. I ask, gentlemen, if we can afford to, at this time, take never so remote a chance of a disastrous termination of our hopes.

I have lived in Dakota twelve years and I have never seen such a state of corruption in regard to voting as has been proclaimed here. I hear that we have the finest population of the American education that there is in the world; that we have forty thousand farmers, intelligent, honest and independent. I know we have ten thousand miners that are equally intelligent and equally honest; I know we have twenty to thirty thousand mechanics that are honest and disposed to go to the election places and exercise their right gravely and like honorable men. I do not know where these men are that are so corrupt. I believe nobody intentionally would do such a thing, but I do believe the fair fame of Dakota has been slandered

this afternoon by having it appear that there is set corruption in our elections in Dakota.

I believe it is doing an injustice to her people to assume to presume that there was such election frauds practiced in our Territorial elections. Our laws and penalties are very severe in connection with our election laws as it now stands. I understand it is conceded by all parties that they can be enforced and will be enforced next fall; while there is no power to enforce the provisions of this amendment. I express no opinion one way or the other; I simply say this: That there is sufficient doubt about the matter, and there is sufficient doubt about the result that might ensue that makes it a part of wisdom to pause here on the threshold and see whether we had not better forego the matter of this amendment and take the absolutely safe course; take a course about which we will have no doubts from this time until we are a State. Hence, Mr. President, I shall vote against this amendment and as it has been said and perhaps repeated very often, I presume, there is no gentleman here that is not in favor of a good election law; not in favor of having thrown around the election all the safe-guards possible, but as has been said here, we are not a legislative body, this is a matter for another body to consider.

Let us then pursue the course that is marked out for us; that is a safe course, and not venture upon any experiments of this kind; it might be a costly experiment for us to make.

Mr. Peck: I do not propose to take any length of time, but simply to refute a few statements that have been made. I agreed in the first place to explain but a few remarks that I thought was misunderstood. In the first place I am one of those who came in here to be told by the lawyers just exactly what my duties are. I have read and practiced law enough to satisfy myself that I cannot understand law to my own satisfaction. I came here after giving the Omnibus Bill my full consideration to satisfy myself as to the fact of our right. I have no doubt at all or any question but what we have got to make the rules and regulations and ordinances whether you could adopt the Territorial law or other law, to control the coming election. One of the two we have got to do.

I think there is a mistaken idea that if we adopt nothing that the Territorial law will govern the first election. I do not believe that there will be any law at all if we do so. For that, only as we provide one for this election. I believe that the Committee thoroughly

understood that; that they thought that we have got to get it into the ordinance to have a law and that they adopted the election law of the Territory.

Now, what must we seek to do with these few rules? Just enough to cover two things. I do not want any election law that is foul, fraud and besmirched with unbecoming procedure that has been practiced for a long time. That is fraudulent in the printing of ballots.

We simply provide first, for what? We simply deal with two things. We provide first for the printing of ballots by authority and in order to do that we have got to have a common and general method of nominating. Second, to provide for certain machinery to deliver these ballots, first to the persons who have the right to go with them unmolested and put them into the ballot box. If this is any infringement upon any person's rights I fail to see it. I have studied very carefully the Australian election laws. I say there can be no distortion of this thing into an infringement of any person's rights. Having arrived at that conclusion that we have the right, without doubt, to pass this law the next question was as to its expediency. My own opinion is, that we should retain the old law as far as we could and get an ordinance to free and purify the ballot. The real simple phases of all the election laws of Dakota shall govern this election except just simply as to the printing of the ballots by authority and stopping fraud and abuse to the ballot system of distributing and handing them to the several persons as I said before, who are entitled to receive these ballots and protect the voter in the exercise of his rights.

Mr. VanBuskirk: If we may legislate to the extent as provided by the rules and regulations advanced by this amendment, may not we make that penal? If a man evades the provisions of this amendment it must follow if we may pass such a regulation as contemplated by this amendment may not we make it penal if a man violates the provisions of this amendment? I simply say that there are severe penalties under Territorial laws that require that we protect these rules.

The Chairman: The question before the Convention is Section 7 of the report of the Committee on Schedule and Ordinance. To that the gentleman from Hamlin moves this amendment.

Mr. Peck: He seeks to amend Section 7.

The Chairman: Section 7 is before the Convention. He asks to amend Section 7.

Mr. Williams: We have not moved the adoption of Section 7.

The Chairman: Section 7 of the report of the Committee on Schedule and Ordinance is before the Convention and to that the gentleman from Hamlin moves that the following be attached as amendment to Section 7.

RULES REGULATING THE ELECTION TO BE HELD UNDER THE AUTHORITY OF THE ENABLING ACT FOR THE ADOPTION OR REJECTION OF THE CONSTITUTION AND THE ARTICLES SEPARATELY SUBMITTED THEREWITH AND THE REPRESENTATIVES IN CONGRESS; ALSO STATE AND JUDICIAL OFFICERS FOR SOUTH DAKOTA.

SECTION 1. That at the election to be held on the first day of October, 1889, the election laws now in force in the Territory of Dakota shall apply to and govern such election except as hereinafter specially provided.

SEC. 2. Nominations for State officers, Representatives in Congress and Judges of the Supreme Court shall be made by any State convention and certified to by the Chairman and Secretary of such convention, according to form number one (1) hereinafter provided, or by any three hundred (300) legal voters in South Dakota attaching their names to a paper nominating candidates and filing the same with the Territorial Secretary.

SEC. 3. Nominations for members of the State Legislature, Judges of the Circuit Court and Judges of the County Courts, shall be made by any convention held in legislative and judicial districts or county for which any such officer is to be elected, and certified to by the Chairman and Secretary, according to form No. 2 hereinafter prescribed, or by any one hundred legal voters of any legislative or judicial district or county, by attaching their names to a paper nominating such officers, and filing the same with the county Clerk or County Auditor to which such nominations refer.

SEC. 4. All certificates of nominations and nominating papers provided for in Sec. Two (2) shall be filed with the Territorial Secretary by the fifteenth day of September, and all those provided for in Section Three (3) shall be filed with the County Clerk or County Auditor by the twentieth day of September, 1889, and no certificate of nomination or nominating papers shall be acted upon, except accompanied with the consent in writing of the person or persons therein nominated, provided that in case of death or resignation, the authority making such nomination shall be permitted to fill such vacancy by a new nomination.

SEC. 5. The Territorial Secretary, on the receipt by him of the nominating papers hereinbefore mentioned, shall forthwith transmit true copies of the same to the County Clerks or County Auditors of the several counties in South Dakota.

SEC. 6. The County Clerk or County Auditor shall, after the expiration of the time for receiving the nominating papers, forthwith cause to be printed such a number of ballot papers as will be sufficient for the purpose of the election, and the number necessary for each polling place shall be bound or stitched in a book of convenient form, and the County Clerk or County Auditor shall cause to be printed in English, in large type, on cards, instructions for the guidance of voters, in preparing their ballot paper; such Clerk or Auditor shall furnish ten (10) copies of such instructions to the Judges of each election precinct, and said Judges shall cause them to be posted both inside and outside of the polling place, and said County Clerk or County Auditor shall, as provided by law, cause to be delivered to the proper Judges of election the ballot box and all poll books and returns now by law required or by this ordinance required to conduct and complete the election, also the ballot papers, at least two (2) days before polling the vote; and shall cause to be published in each newspaper in the county a true copy of the ballot paper and card of instructions, said publication to be in the last issue of said papers before the day of voting.

SEC. 7. Every ballot paper shall contain the names of all candidates for Representatives in Congress, State, and Judicial officers, and members of the Legislature, and the name of the political party to which each candidate belongs; also the form of the ballot for the adoption or rejection of the Constitution and the articles separately submitted therewith, as provided in this ordinance.

SEC. 8. Each polling place shall be furnished with a sufficient number of compartments, in which the voter, screened from observation, shall mark his ballot paper, and a guard rail so constructed that only persons within the rail can approach within ten (10) feet of the ballot box, and it shall be the duty of judges of election in each polling place to see that a sufficient number of such places be provided and shall appoint a person to guard the entrance to such compartments and he shall be paid the same as Judges of election.

SEC. 9. The voters admitted one at a time for each compartment where the poll is held shall declare his name, and when permitted by the Judges to vote his name shall be entered on the voter's list, and he shall receive from one of the Judges of election a ballot paper on the back of which initials of one of the Judges of election shall be so placed that when the ballot paper is folded they can be seen without opening it, and the Judges of election shall instruct him how to mark his ballot paper.

SEC. 10. The voter, on receiving his ballot paper, shall forthwith proceed to one of the compartments of the polling station and there without undue delay, not exceeding five minutes, mark his ballot paper by putting a cross (X) in the space to the right-hand side of the name of the person for whom he desires to vote and if he desires to vote for any person whose name is not on his ballot paper he may write or paste on his ballot paper the name of the

person for whom he desires to vote, and shall then fold up his ballot paper so that the initials on the back can be seen without opening, and hand it to one of the Judges who shall, without opening it, ascertain that the initials are on it and that it is the same ballot paper given to the voter, and shall then place it in the ballot box and the voter shall quit the polling compartment as soon as his ballot paper has been put in the ballot box.

SEC. 11. The Judges of election on application of any voter who is unable to vote in the manner provided, shall assist such voter by marking his ballot paper in the manner desired by such voter in the presence of the persons permitted to be in the compartment occupied by the Judges and no others, and shall place such ballot paper in the ballot box. and when judges of election shall not understand the language spoken by the voter claiming to vote, they shall swear an interpreter, who shall be the means of communication between them and the voter with reference to all matters required to enable such voter to vote.

SEC. 12. A voter who has inadvertently dealt with the ballot paper given him in such manner that it cannot be conveniently used, may, on delivering the same to the Judges, obtain another ballot paper in place of that delivered up.

SEC. 13. Any voter refusing to take the oath or affirmation of qualification as required by law, when requested to do so, shall not receive a ballot paper, or be permitted to vote.

SEC. 14. No person shall be allowed to take his ballot paper out of the polling place, nor, except as in the case provided for by Section Eleven (11), to show it when marked to any person so as to allow the name of the candidate for whom he has voted to be known, and any voter who violates or refuses to comply with this ordinance shall not be permitted to vote.

SEC. 15. In addition to the Judges and Clerks of election, one Watcher at each polling precinct for each political party presenting a candidate or candidates for the suffrage of the voters and no others shall be permitted to be in the compartment occupied by the Judges, Clerks and Watcher shall, before entering upon their respective duties take and subscribe to the following oath or affirmation:

I, John Jones, do solemnly swear (or affirm) that I will keep secret all the names of the candidates for whom any voter may have marked his ballot paper in my presence at this election, so help me God.

SIGNED:

J. J.

Sworn (or affirmed) before me at.....this first day or October, 1889.

Justice of the Peace or Judge of Election.

SEC. 16. Immediately on the close of the poll the Judges in the presence of the Clerks of election and such of the watchers and

voters as desire to be present, shall open the ballot box and proceed to count the number of votes for each candidate; in doing so, they shall reject all ballot papers which have not been supplied by them as Judges of said election, all ballots by which more candidates have been voted for than there are officers to be elected; also those upon which there are any writing or mark by which the voter can be identified; all the ballots voted and counted, and those rejected, those spoiled and those unused, shall be put into separate envelopes, and all these parcels shall be endorsed so as to indicate their contents, and be placed in the ballot box and a return of the result of the election at the polling precinct shall be made to the County Clerk or County Auditor, as now required by law for the election of members of the Territorial Legislature.

SEC. 17. All expenses incurred under these rules to be a charge against the county and audited and paid as other claims against the county.

The Chairman: Is the Convention ready for the question?

Calls of question from different portions of the house.

The Chairman: Gentlemen as your names are called, those favoring the adding of this proposed amendment to Section 7 of the report of the Committee on Schedule and Ordinance will answer yes; and those opposed will answer no.

AYES—Messrs. Anderson, Atkinson, Berdahl, Clough, Davies, Dickinson, Downing, Eddy, Gifford, Goddard, Hall, Hartley, Huntly, Lee, Matson, Murphy, Peck, Ramsey, Spooner, Sterling, Wescott, Wheeler, Willis, Williams, Williamson, Wood of Spink, Young.—(27).

NOES—Messrs. Boucher, Buechler, Coats, Cook, Cooper, Corson, Couchman, Craig, Diefendorf, Edgerton of Yankton, Fellows, Fowles, Henninger, Hole, Houlton, Humphrey, Jolley, Kimball, Lyons, McFarland, O'Brien, Ringsrud, Scollard, Sherwood, Stoddard, Smith, Stroupe, Thompson, Van Buskirk, Van Eps, Van Tassel, Whitlock, Zitka, Mr. President.—(34).

The Chairman: There are twenty-seven (27) ayes and thirty-four (34) noes, so the amendment is lost.

Mr. Williams: I move to amend Section 7 by striking out the word "except" where the same occurs in the fourth line of said section and insert in lieu thereof the words "and Rules and Regulations".

This motion did not receive a second.

Mr. Hartley: I move that Section 7 be adopted.

Mr. Humphrey: I move that the word "annul" be substituted for the word "avoid" where it occurs in Section 7.

Motion received a second.

The Chairman: The gentleman from Faulk moves to substitute the word "annul" in line seven for the word "avoid".

Those favoring the motion will say aye; the noes appear to have it; the noes have it. The question before the Convention is upon Section 7.

The Chairman: Those of the opinion that the motion to adopt Section Seven of the report of the Committee on Schedule and Ordinance prevail say aye; those of the contrary opinion say no. The ayes have it. Section 7 is adopted.

Mr. Williams: As it is a manifestation of the members of this Convention to leave no doubt as to the rules, I move that further consideration of this report be postponed until Thursday of next week.

Motion received a second.

The Chairman: It is moved and seconded that further consideration of this report be postponed until next week, Thursday. Are you ready for the question?

Mr. Hole: Gentlemen; I trust you will not take that action at the present time as this report has been in your hands now twelve hours and here will not be a time in the history of this Convention when we have so full a representation of the delegation as we now have. A large number of those here tonight intend to leave tomorrow morning. I think that I will offer a substitute to the gentleman's motion that we adopt the balance of the report of the Committee on Schedule and Ordinance.

This motion received a second.

The Chairman: The gentleman from Beadle moves as an amendment that the Convention do now adopt the remainder of the report of the Committee on Schedule and Ordinance. Are you ready for the question?

Mr. Williams: I would move an amendment to that amendment that Section 19 of the report be amended so as to read as follows: "The officers provided for in this ordinance, to be elected on October 1st, A. D., 1889, shall continue to hold and exercise the duties of their respective offices until their respective successors are elected and qualified under and by virtue of this Constitution and laws passed in pursuance thereto.

The Chairman: A motion was made to postpone further consideration of this report until next Thursday; an amendment was offered that the balance of the report be adopted. Now an amend-

ment was made to the amendment that Section 19 be amended, striking out Section 19 as it appears and inserting in lieu thereof the words: "The officers provided for in this ordinance to be elected October first, A. D., 1889, shall continue to hold and exercise the duties of their respective offices until their respective successors are elected and qualified under and by virtue of this Constitution and laws passed in pursuance thereto."

Mr. Williams: In drawing this hastily and stating my motion I have not yet presented what I mean; that is to substitute for the first section that part of the section that designates officers is not to be touched,—that is what I mean to say. It will only be the first paragraph; it will end at the word "follows". I want to strike that part of it out.

Mr. Hole: I will say that that matter has been extensively discussed by the Committee and that we have heard the various arguments on that and that they come to a unanimous conclusion that that would not do to pass it.

Section 7 provides that this election is under this Constitution.

Mr. Williams: I dislike very much to worry this Convention, but I cannot let that pass without raising this objection and if I have not expressed all that I intended in offering it, it will come now in what I want to say. I want to read that section which provides the tenure of office of all officers. "The tenure of all officers, whose election is provided for in this Schedule, on the first day of October, A. D., 1889, shall be as follows:

The Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Attorney General, Superintendent of Public Instruction, Commissioner of School and Public Lands, Judges of the County Courts, shall hold their respective offices until the first Tuesday after the first Monday in January, A. D., 1892, at twelve o'clock M., and until their successors are elected and qualified."

"The Judges of the Supreme Court and Circuit Courts, shall hold their offices until the first Tuesday after the first Monday in January, A. D. 1894, at twelve o'clock M., and until their successors are elected and qualified; subject to the provisions of Section 26, of Article V, of the Constitution." Now, to make my objection known I will next read the last paragraph and my objection to that is this; that this Convention, by ordinance attempts to prescribe the tenure of the officers provided for in this Constitution.

"The terms of office of the members of the Legislature, elected

at the first election held under the provisions of this Constitution, shall expire on the first Tuesday, after the first Monday in January, one thousand eight hundred and ninety-two. (1892)".

This does not prescribe the term of office of those to be elected in October 1889; but instead of describing the tenure of office of the officers elected in 1889 it prescribes the term of office of the first officers elected under the Constitution. It cannot be earlier than 1890 unless the Legislature prescribes. I further say that in prescribing that these officers mentioned in the second paragraph shall hold until the first Monday in January, 1892. It extends the term of office of these officers to be elected at the election the first of October beyond the time prescribed by the Constitution; extends the term of the member of the Supreme Court and County Court,— extends the time of their office till January 1894. I take it that it is in direct opposition and contrary to the purposes of this Convention by ordinance prescribed. That is the business of the Convention to prescribe the term of office of the officers elected in this election in 1889 and no other, and that they cannot fill the prescribed term of their office for any other election a long length of time, that the time which the tenure of office of the officers to be elected under this Constitution shall begin. In one place in the Constitution it provides that the term of office of the first Legislature shall commence the first Tuesday after the second Monday of January following their election. The Constitution provides that they shall be elected at the first general election under the provisions of the Constitution which will be in November 1890. Their term of office will commence the first Tuesday after the second Monday of January, 1891. I think when this amendment is fully understood by the members of the Convention they will see the force of it. The gentleman who framed this particular ordinance admitted to me that it was not right, but did not express his opinion.

The Chairman: The question is upon the amendment offered to the amendment of the gentleman from Bon Homme. Is the Convention ready for the question?

Mr. Stroupe: This was carefully considered and finally voted down in the Committee.

Mr. Williams: I want to explain the intent of that amendment. This amendment provides this: That the officers elected the first day of October 1889 will continue to hold their office; their

term of office will expire the first of January 1891, when those rules will hold until the election of 1890.

The Chairman: The question is upon the amendment.

Mr. Boucher: With all due deference to the gentlemen of the Committee I believe that this Schedule had ought to provide that the officers elected this fall ought to hold until the general election. The Constitution undoubtedly intends that our general elections in this State shall be bi-ennial. In fact the effect of adoption of the Schedule as it now stands will result that the general elections will occur every year. I do not believe it would be radically wrong; I do not believe it would be contrary to the spirit of the Constitution if this Schedule should provide for the election of officers that they act until their successors are elected and qualified at the next general election. I hope the amendment will be adopted.

Mr. Hole: To explain that further I will say that this has been before the Committee and argued by the various lawyers and submitted, and the lawyers reconsidered it in Committee and they have decided it was not best.

We tried our best to get that through and we worked to get that in but that is our judgment and if there was to be a change I would not want it to be at my recommendation. I am satisfied that we do not want it.

Mr. Willis: I am sure the people are nearly a unit in this; that it is the temper and sentiment of the people not to have an election every year. They want this business bi-ennial. I am in favor of the amendment.

The Chairman: Is the Convention ready for the question? Those in favor of the adoption of the amendment offered by the gentleman from Bon Homme, say aye; those opposed say no. The yeas appear to have it; the noes have it and the amendment is lost.

Mr. Humphrey: I move that the section be amended by striking out everything after the words "shall be" in the third line of the first paragraph and inserting instead the words "shall be as provided in the Constitution."

The Chairman: The third line of the second paragraph?

Mr. Humphrey: The section will then read "The tenure of all officers, whose election is provided for in this Schedule, on the first day of October, A. D., 1889, shall be provided in the Constitution."

The Chairman: That is substantially the same.

Mr. Humphrey: I do not so understand it. I shall not take the time to tell the members in regard to overstepping the provisions of the Omnibus Bill in discussing the question with regard to the powers with regard to Section 7. In my judgment this is overstepping the power of the provision of the Constitution; this is overstepping the powers of the Omnibus Bill and it defines their terms and the Constitution provides for their terms; the laws provide for the terms of officers we now have and we have no power to change the term of office. I am not in favor of the election at that time anyway; and above all I am not in favor of infringing upon the Constitution. I am in favor of electing the officers in compliance with this Bill and in accordance with the Constitution.

The Chairman: The question before the Convention is the adoption of the remainder of the report of the Committee on Schedule and Ordinance. The gentleman from Faulk moves to amend Section 19 by striking out all after the words "shall be" in the third line of the first paragraph and inserting the following: "Shall be as provided in the Constitution." Those favoring the amendment as stated, say aye; those of the opposite opinion say no. The noes appear to have it,—

(Calls of "Rising vote".)

The Chairman: Those of the opinion that the amendment should prevail please rise and stand until counted. Those opposed rise and stand until counted. The vote stands twenty ayes, noes, thirty. The amendment to the amendment is lost. The question is upon the adoption of the motion of the gentleman from Beadle, that the rest of the report before the Convention be adopted. Is the Convention ready for the question?

Mr. Sterling: I move as a substitute that this report be postponed until next Thursday. I simply want to say that while the Chairman of that Committee said we have had that report before us for twelve hours, our attention has been called in that time to other portions of the report and there are other important matters I would like to look over and have time for the consideration of these questions.

The report provided for the election every year. It seems to me quite an important thing to be considered. I am not ready to vote upon that question.

Judge Edgerton: I would ask if the amendment is carried

and then the original motion is carried what is the condition of the report on Schedule?

The Chairman: The report would be this. We did adopt the amendment offered by the gentleman from Beadle. Defeated the motion made by the gentleman from Spink to postpone,—

Judge Edgerton: The point of order I make is, that this is not a proper amendment. It is a part of the substitute; it is not a proper amendment. One motion is to postpone and the other is to adopt.

The Chairman: Mr. Edgerton makes a point of order and the amendment is ruled out.

Mr. Hole: I offered that as a substitute.

The Chairman: The Chair cannot recognize something that is entirely different. I would have allowed it if no point of order had been raised. The motion of the gentleman from Spink is now in order. The question is upon the motion of the gentleman from Spink, to postpone further consideration of this report until next Thursday. Is the Convention ready for the question? Those favoring the motion as stated will please make it known by saying aye; those opposed by saying no. The Chair is unable to decide. (Calls of "Division".)

The Chairman: Those favoring the motion as stated will please rise and stand until counted. Those opposed will please rise and stand until counted.

The Chairman: Those who support the motion are thirty-three and those who oppose it are twenty-one.

The motion of the gentleman from Spink is carried.

Mr. Lee: I move you that the Convention do adjourn.

Which motion prevailed.