

## Olympia, July 16th, 1889

The Convention was called to order by the President at 9 a.m. Prayer by the Chaplain. On roll call all members were present except Messrs. Fay, Jamieson, Stevenson, Willison (on leave). Mr. J. Z. Moore rose to a question of privilege and asked to have read an article in a newspaper, which was done. Mr. Moore then made a personal statement to the Convention.

Mr. Durie presented the memorial from the Common Council of the City of Seattle relative to bonding the City of Seattle for water, sewerage and other purposes. Referred to Committee on State, County and Municipal Indebtedness. Mr. Cosgrove, by request, presented a memorial on agricultural education. Referred to Committee on Education and Educational Institutions.

Mr. Turner from Committee on Judicial Department submitted the following report, embracing an article prepared by said committee on judiciary.

To the Honorable the President and members of the Constitutional Convention.

Your Committee on Judicial Department respectfully reports the article hereto attached, designated Judicial Department, consisting of twenty-eight sections, as establishing the judicial system which it deems most suitable for the needs of the people of the State of Washington, and respectfully recommends the adoption by this Convention of each of the sections contained in said article and the incorporation of the same in the Constitution to be submitted to the people to be voted for as the Constitution of the State of Washington.

### Article

#### Judicial Department

**Section 1.** The judicial power of the state shall be vested in a Supreme Court, Superior Courts, Justices of the Peace and such inferior courts as the Legislature may provide.

**Section 2.** The Supreme Court shall consist of three judges, a majority of whom shall be necessary to form a quorum and pronounce a decision. The said Court shall always be open for the transaction of business, except on non-judicial days. In determination of causes all decisions of the court shall be given in writing

and the grounds of the decision shall be stated. The Legislature may increase the number of judges of the Supreme Court from time to time.

**Section 3.** The judges of the Supreme Court shall be elected by the qualified electors of the state at large at the general state election at the time and places at which state officers are elected. The judges elected at the first election under the Constitution shall be classified by lot, so that one shall hold his office for the term of three years, one for the term of five years, and one for the term of seven years. The lot shall be drawn by the judges, who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the Secretary of the State and filed in his office. The judge having the shortest term to serve, not holding his office by appointment or election to fill vacancy, shall be the Chief Justice and shall preside at all sessions of the Supreme Court, and in case of his absence the judge having in like manner the next shortest term to serve shall preside in his stead. After the first election the term of each judge elected shall be six years from and after the first Monday in January, next succeeding his election. If a vacancy occur in the office of judge of the Supreme Court, the Governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term. The first election of judges of the Supreme Court shall be at the first general election which shall be held under this Constitution.

**Section 4.** The Supreme Court shall have original jurisdiction in habeas corpus and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all other cases except its appellate jurisdiction, shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy or the value of the property does not exceed the sum of two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine or the validity of a statute. The Supreme Court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any

part of the state upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or before the Supreme Court or before any Superior Court of the state or any judge thereof.

**Section 5.** There shall be in each of the organized counties of this state a Superior Court for which at least one judge shall be elected by the qualified electors of the county at the general state election. Provided, that until otherwise provided by the Legislature, one judge only shall be elected for the counties of Spokane and Stevens; one judge for the county of Whitman; one judge for the counties of Lincoln, Okanogan, Douglas and Adams; one judge for the counties of Walla Walla and Franklin; one judge for the counties of Columbia, Garfield and Asotin; one judge for the counties of Kittitas, Yakima and Klickitat; one judge for the counties of Clark, Skamania, Pacific, Cowlitz and Wahkiakum; one judge for the counties of Thurston, Chehalis, Mason and Lewis; one judge for the county of Pierce; one judge for the county of King; one judge for the counties of Jefferson, Clallam, Island and San Juan; one judge for the counties of Whatcom, Skagit, Kitsap and Snohomish. In any county where there shall be more than one superior judge, there may be as many sessions of the Superior Court at the same time as there are judges thereof; and whenever the Governor shall direct a superior judge to hold court in any county other than that for which he has been elected there may be as many sessions of the Superior Court in said county at the same time as there are judges either elected therein or assigned to duty therein by the Governor, and the business of the court shall be so distributed and assigned by law, or, in the absence of legislation therefor, by such rules and order of court as shall best promote and secure the convenient and expeditious transaction thereof. The judgments, decrees, orders and proceeding of any session of the Superior Court held by any one or more of the judges of such court shall be equally effectual as if all the judges of said court presided at such session. The first superior judges elected under this Constitution shall hold their offices for the period of three years, and until their successors shall be elected and qualified, and thereafter the term of office of all superior judges in this state shall be six years from the first Monday in January next succeeding their election and until their successors are elected and qualified. The first election of judges of the Superior Court shall be at the first general election held under this Constitution.

If a vacancy occurs in the office of judge of the Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judges so elected shall hold office for the remainder of the unexpired term.

**Section 6.** The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and all other cases in which the demand, exclusive of interest, or the value of the property in controversy, amounts to one hundred dollars, and in all original cases amounting to felony, and in all cases of misdemeanor not otherwise provided for; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of divorce and for annulment of marriage; and of such special cases and proceedings as are not otherwise provided for. The Superior Court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said Court shall have the power of naturalization, and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justice and other inferior courts in their respective counties as may be prescribed by law. They shall be always open except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.

**Section 7.** The judge of any Superior Court may hold a Superior Court in any county at the request of the judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty to do so. A case in the Superior Court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court and sworn to try the case.

**Section 8.** Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed

to have forfeited his office, provided that in cases of extreme necessity the Governor may extend the leave of absence such time as the necessity thereof shall exist.

**Section 9.** Any judge of the Supreme Court, or judge of the Superior Court or prosecuting attorney may be removed from office by a joint resolution of the Legislature in which three-fourths of the members elected to each house shall concur, for incompetency, corruption, malfeasance or delinquency in office or other sufficient causes stated in such resolution. Such resolution shall be entered at length on the journal of both houses, and on the question of removal of ayes and noes shall also be entered on the journal.

**Section 10.** The Legislature shall determine the number of justices of the peace to be elected in incorporated cities or towns and in precincts, and shall prescribe by law the powers, duties and jurisdiction of justices of the peace; provided, that such jurisdiction granted by the Legislature shall not trench upon the jurisdiction of Superior, or other courts of record. In incorporated cities or towns having more than five thousand inhabitants, the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use.

**Section 11.** The Supreme Court and the Superior Courts shall be courts of record and the Legislature shall have power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record.

**Section 12.** The Legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this Constitution.

**Section 13.** No judicial officer, except court commissioners and unsalaried justices of the peace, shall receive to his own use any fees or perquisites of office. The judges of the Supreme Court and judges of the Superior Courts shall severally, at stated times during their continuance in office, receive for their services the salaries prescribed by law therefor, which shall not be increased after their election, nor during the term for which they shall have been elected. The salaries of the judges of the Supreme Court shall be paid by the state. One-half the salary of each of the Superior Court judges shall be paid by the state, the other one-half by the county or counties for which he is elected. In cases where a judge is provided for more than one county, that

portion of his salary which is to be paid by the counties shall be apportioned between or among them according to the assessed value of their taxable property, to be determined by the assessment next preceding the time for which such salary is to be paid.

**Section 14.** Each of the judges of the Supreme Court shall receive an annual salary of five thousand dollars; each of the Superior Court judges shall receive an annual salary of three thousand six hundred dollars, which said salaries shall be payable quarterly. The Legislature may increase the salaries of the judges herein provided.

**Section 15.** The judges of the Supreme Court and the judges of the Superior Court shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

**Section 16.** Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.

**Section 17.** No person shall be eligible to the office of judge of the Supreme Court or judge of a Superior Court, unless he shall have been admitted to practice in the courts of record of this state or of the territory of Washington.

**Section 18.** The judges of the Supreme Court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary as shall be prescribed by law.

**Section 19.** No judge of a court of record shall practice law in any court of this state during his continuance in office.

**Section 20.** Every cause submitted to a judge of a Superior Court for his decision shall be decided by him within ninety days from the submission thereof, Provided that if, within said period of ninety days, a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a hearing.

**Section 21.** The Legislature shall provide for the speedy publication of opinions of the Supreme Court, and all opinions shall be free for publication by any person.

**Section 22.** The judges of the Supreme Court shall appoint

a clerk of that court who shall be removable at their pleasure, but the Legislature may provide for the election of the clerk of the Supreme Court and prescribe the term of his office. The clerk of the Supreme Court shall receive such compensation as shall be provided by law.

**Section 23.** In any case in the Supreme Court in which a judge is disqualified, the remaining judges shall choose some disinterested member of the Supreme Court bar to participate with them in the hearing and decision of the case, who shall be sworn to try and decide the case according to law, and the decision rendered by the court thus constituted shall stand as other decisions in said court.

**Section 24.** There may be appointed in each county by the judge of the Superior Court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the Superior Court at chambers subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.

**Section 25.** The judges of the Superior Courts shall, from time to time, establish uniform rules for the government of the Superior Courts.

**Section 26.** The County Clerk, shall be, by virtue of his office, clerk of the Superior Court.

**Section 27.** The style of all process shall be "the State of Washington" and all prosecutions shall be conducted in its name and by its authority.

**Section 28.** Every judge of the Supreme Court and every judge of a Superior Court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the Secretary of State.

We considered the proposition introduced by Mr. Buchanan, of Adams County, providing for the Supreme Court to be appointed



by the Governor, but think it most in accord with the genius of our institutions that these offices should be made elective.

Respectfully submitted,

GEORGE TURNER, *Chairman*

GEORGE H. JONES

B. L. SHARPSTEIN

J. J. WEISENBURGER

Olympia, W.T., July 16, 1889.

We concur in the foregoing report of the majority of the committee on Judicial Department with following exception; that the Supreme Court provided for in Section 2 be composed of five instead of three judges and that said section be so amended.

THOMAS C. GRIFFITTS

D. J. CROWLEY

R. F. STURDEVANT

T. L. STILES

R. O. DUNBAR

JOHN F. GOWEY

Olympia, W.T., July 16, 1889.

We concur in the foregoing report of the majority of the Committee, except we recommend that Section 5 be amended so as to make the term of offices of Superior Judges four years instead of six as such section now stands.

A. MIRES

THOMAS C. GRIFFITTS

T. L. STILES

M. M. GODMAN

J. R. KINNEAR

Olympia, W.T., July 16, 1889.

Mr. Henry asked to be excused for the day. Granted.

Report of Committee on Judicial Department received and read. Ordered printed and to lie over one day. Mr. Prosser moved to print three hundred copies. Mr. Power moved to amend by printing five hundred copies. Lost. Mr. Prosser's motion was then adopted.

The following propositions were then submitted. Read, and a second time by title.

Proposed cession to U.S. of Jurisdiction over Military and



Naval Reservations. By Mr. Jones (by request). Referred to Committee on Federal Relations, Boundaries and Immigration.

Proposition Relative to Education. By Mr. Suksdorf. Referred to Committee on Education and Educational Institutions.

Proposition Relative to State Roads. By Mr. Suksdorf. Referred to Committee on Miscellaneous Subjects, etc.

Proposition Relative to Secret Ballot. By Mr. Kinnear. Referred to Committee on Elections and Elective Rights.

In Regard to Holding Office by Appointment or Otherwise. By Mr. Dyer. Referred to Committee on Miscellaneous Subjects, etc.

Proposition on Secret Ballots. By Mr. Hicks. Referred to Committee on Elections and Elective Rights.

Proposition on Right to Bear Arms. By Mr. Hicks. Referred to Committee on Military Affairs.

Voting by Australian System. By Mr. Tibbetts. Referred to Committee on Elections and Elective Rights.

Relative to Time Within Which Action May Be Begun by States Against Persons. By Mr. Allen. Referred to Committee on Judicial Department.

Proposition Relative to Compensation of Public Officers by Salary and of Fees. By Mr. Allen. Referred to Committee on Judicial Department.

Relative to Qualification of Electors. By Mr. Allen. Referred to Committee on Elections and Elective Rights.

Proposition Relative to Alien Ownership of Land. By Mr. Weisenburger. Referred to Committee on State, School, and Granted Lands.

Proposition Relative to Military Affairs. By Mr. Berry. Referred to Committee on Military Affairs.

The report on rules taken up as the pending motion. On motion of Mr. Prosser, the same was adopted.

Report of Committee on Rules and Order of Business

Mr. President: Your Committee on Rules and Order of Busi-

ness, to whom were referred certain motions and resolutions affecting Rules 7, 36 and 42 of the Convention, respectfully submit the following report, viz:

1. We recommend that the following rule be substituted for Rule 7, to wit: "Standing committees shall report on all articles or propositions submitted to the Convention by members and referred to them at or before the time of making their final report, but they may do so merely by referring to the title of the same."

2. We recommend that the following rule be substituted for Rule 36, to wit: "Any member of the Convention may submit to the Convention the draft of a proposed article or section of the Constitution which shall be read and referred to the appropriate committee without debate. The first reading of an article or section reported by a standing committee shall be for information only, and shall be an entire reading. The article or section shall then be read the second time by title, and be printed and laid upon the desks of members before further action thereon."

3. We recommend that the following rule be substituted for Rule 42, to wit:

"Journal Entries"

"No article or section proposed by a member shall be spread upon the journal of the Convention until the same shall have been reported by a standing committee for the consideration of the Convention."

And your committee further beg leave to report that in the opinion of your committee greater certainty will be secured in the interpretation of Rules 51 and 53 by the amendment of Rule 53 by adding on to the end of line 4 after the word "present," the words "except as provided in Rule 51," and your committee recommend that the said amendment be made. All of which is respectfully submitted.

WILLIAM F. PROSSER,  
*Chairman*

JAMES POWER  
S. G. COSGROVE

T. L. STILES,  
*Secretary pro tem.*

LOUIS SOHNS  
T. M. REED  
THOMAS C. GRIFFETTS  
C. H. WARNER

Olympia, W.T., July 12, 1889.

Mr. Moore from Committee on Legislative Department asked to be empowered to employ Mr. Pratt to prepare a report. Granted.

Mr. Dyer offered the following resolution. "Resolved, that Hon. L. B. Andrews of King County, a member of the Constitutional Convention of 1878 that met at Walla Walla, be invited to a seat within the bar." Adopted.

Mr. Mires, at 10:10, moved to adjourn. Agreed to, and the Convention stood adjourned to 9 a.m., July 17th, 1889.

### Olympia, July 17th, 1889

The Convention was called to order by the President at 9 a.m. Prayer by the Chaplain. On roll call all the members were present except Mr. Jamieson (on leave).

J. Z. Moore asked unanimous consent to introduce the following resolution which was granted. "Resolved, that the floor of the Convention and same is now extended to the Hon. John B. Allen, our delegate-elect to Congress." It was amended so as to include Hon. E. P. Ferry, Hon. B. F. Dennison, Hon. Orange Jacobs and Hon. Eugene Semple, and they were invited to take seats within the bar. Adopted.

A memorial for Local Union No. 197 United Brotherhood of Carpenters and Joiners of America held at Tacoma, signed by Frank M. Castle, president, and George L. McMurphy, secretary, which had been received by mail, was presented by the President, ordered read and referred to the Committee on Elections and Elective Rights.

A letter from R. L. Carpenter, of Vashon, King County, W. T., was read and referred to the Committee on State, School and Granted Lands. A letter from Lucinda Hastings, C. C. Bartlett & Co. and others of Port Townsend was presented by Mr. Weir, read and referred to the Committee on State, School and Granted Lands. Mr. Weir (by request) presented an authority to Mr. Smith to present to the Convention the views of H. H. Tibballs Jr. and others of Port Townsend on tidelands. Read and referred to Committee on State, School, and Granted Lands.

Mr. Sharpstein from the Committee on Miscellaneous Subjects,