

WEDNESDAY, July 24, 1889.

The Convention assembled at 2 o'clock p. m., pursuant to adjournment.

The President presiding.

Prayer was offered by the Chaplain.

The roll was called, all members being present except Messrs. McHugh, Powers and Spalding, who were excused.

The Journal of the preceding session was read and approved.

PETITIONS, COMMUNICATIONS, ETC.

Mr. Nomland presented the following petition:

HILLSBORO, N. D., July 23, 1889.

*To the Constitutional Convention of North Dakota:*

GENTLEMEN: The Scandinavian Temperance Society of Dakota, representing at large the loyal and progressive element among our fellow citizens of Scandinavian people, at its annual meeting held at Northwood, Grand Forks county, the 10th and 11th inst., adopted the following resolution, which, according to order, allow me as the secretary of the society to forward to your honorable body:

*Whereas*, The saloon traffic is a source of all misery, vice, crime, pauperism and all temporal and eternal destruction, is the worst enemy of civil and Christian progress. This society strongly oppose all kinds of legalizing the traffic by high or low license; therefore, be it

*Resolved*, That this society petition the honorable body of the Constitutional Convention, now assembled in Bismarck to do its best to secure constitutional prohibition for North Dakota.

TORGER F. HAV,  
Secretary.

Mr. Camp presented the following memorial:

*To the Honorable President and Members of the Constitutional Convention for North Dakota:*

GENTLEMEN: It gives me pleasure, as the official representative of the citizens of Jamestown, to communicate to you in their behalf an invitation to adjourn the Convention to this city for the remainder of the term required to complete the State Constitution. I am authorized to guarantee commodious and comfortable rooms for Convention and committee work free of expense, and free entertainment for the members who choose to accept it. Assuring you of the good faith of the foregoing invitation, and hoping that it will receive favorable consideration at your hands, I have the honor to subscribe myself,

Your Most Obedient Servant,

B. W. FULLER,  
Mayor of the City of Jamestown, North Dakota.

Mr. Parsons of Rolette, introduced the following resolution:

*Resolved*, That the Constitution, as adopted by this Convention, be printed in each of the newspapers published in North Dakota, and that all newspapers publishing the same be allowed a reasonable compensation therefor, according to the circulation of the papers so publishing.

That the Legislature of the state at its first session make an appropriation for the payment of the printing and publication of the Constitution as herein provided.

Mr. Wallace moved that the resolution be referred to the Committee on Printing.

Which motion prevailed.

#### REPORTS OF STANDING COMMITTEES.

The Committee on Judicial Department submitted the following report:

File No. 121.

#### JUDICIAL DEPARTMENT.

##### ARTICLE —

**SECTION 1.** The judicial power of the state of North Dakota shall be vested in a Supreme Court, district courts, probate courts, justices of the peace, and in such other courts as may be created by law for cities, incorporated towns and villages.

**SEC. 2.** The Supreme Court, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state and shall have a general superintending control over all inferior courts under such regulations and limitations as may be prescribed by law.

**SEC. 3.** It shall have power to issue writs of *habeas corpus*, *mandamus*, *quo warranto*, *certiorari*, injunction, and such other original and remedial writs as may be necessary to the proper exercise of its jurisdiction, and shall have authority to hear and determine the same; *provided*, however, that no jury trials shall be allowed in said Supreme Court, but in proper cases questions of fact may be sent by said court to a district court for trial.

**SEC. 4.** At least three terms of the Supreme Court shall be held each year at the seat of government.

**SEC. 5.** The Supreme Court shall consist of three judges, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said judges may adjourn the court from day to day or to a day certain.

**SEC. 6.** The judges of the Supreme Court shall be elected by the qualified electors of the state at large, and except as may be otherwise provided herein for the first election for judges under this Constitution, said judges shall be elected at general elections.

**SEC. 7.** The term of office of the judges of the Supreme Court, except as in this article otherwise provided, shall be six years and shall hold their offices until their successors are duly qualified.

**SEC. 8.** The judges of the supreme court shall immediately after the first election under this Constitution, be classified by lot so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years from the first Monday in December A. D. 1889. 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 territory and filed in his office, unless the secretary of state of North Dakota shall have entered upon the duties of his office, in which event said certification shall be filed therein. The judge having the shortest term to serve, not holding his office by election or appointment to fill a vacancy, shall be the chief justice and shall preside at all terms 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.

**SEC. 9.** There shall be a clerk and also a reporter of the supreme court who shall be appointed by the judges thereof and who shall hold office during the pleasure of said judges, and whose duties and emoluments shall be prescribed by law and by the rules of the supreme court not inconsistent with law. The Legislature shall make provision for the publication and distribution of the

decisions of the supreme court, and for the sale of the published volumes thereof.

SEC. 10. No person shall be eligible to the office of judge of the supreme court unless he be learned in law, be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this state or territory of Dakota five years next preceding his election.

SEC. 11. Whenever the population of the State of North Dakota shall equal six hundred thousand the Legislature shall have the power to increase the number of judges of the Supreme Court to five, in which event a majority of said court as thus increased shall constitute a quorum.

SEC. 12. No duties shall be imposed by law upon the Supreme Court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided.

SEC. 13. The style of all process shall be "The State of North Dakota." All prosecutions shall be carried on in the name and by the authority of the State of North Dakota, and conclude, "against the peace and dignity of the same."

SEC. 14. Any vacancy happening by death, resignation or otherwise in the office of the Judge of the Supreme Court, shall be filled by appointment by the governor, which appointment shall continue until the first general election thereafter, when said vacancy shall be filled by election.

SEC. 15. The judges of the supreme and district courts shall receive such compensation for their services as may be prescribed by law, which compensation shall not be increased or diminished during the term for which a judge shall have been elected.

SEC. 16. In case a judge of the supreme court shall be in any manner interested in a case brought before said court, the remaining judges of said court shall call one of the district judges to sit with them on the hearing of said case.

#### DISTRICT COURTS.

SEC. 17. The district court shall have original jurisdiction, except as otherwise provided in this Constitution, of all causes both at law and in equity, and such appellate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of *habeas corpus*, *mandamus*, *quo warranto*, *certiorari*, injunction and other original and remedial writs, with authority to hear and determine the same.

SEC. 18. The state shall be divided into six judicial districts, in each of which there shall be elected at general elections, by the electors thereof, one judge of the district court therein, whose term of office shall be four years from the first Monday in January succeeding his election and until his successor is duly qualified. This section shall not be construed as governing the first election of district judges under this Constitution.

SEC. 19. Until otherwise provided by law, said districts shall be constituted as follows:

District No. 1 shall consist of the counties of Pembina, Cavalier, Walsh, Nelson and Grand Forks.

District No. 2 shall consist of the counties of Ramsey, Towner, Benson, Pierce, Rolette, Bottineau, McHenry, Church, Renville, Ward, Stevens, Mountrail, Garfield, Flanney and Buford.

District No. 3 shall consist of the counties of Cass, Steele and Traill.

District No. 4 shall consist of the counties of Richland, Ransom, Sargent, Dickey and McIntosh.

District No. 5 shall consist of the counties of Logan, LaMoure, Stutsman, Barnes, Wells, Foster, Eddy and Griggs.

District No. 6 shall consist of the counties of Burleigh, Emmons, Kidder, Sheridan, McLean, Morton, Oliver, Mercer, Williams, Stark, Hettinger, Bowman, Billings, McKenzie, Dunn, Wallace and Allred, and that portion of the Sioux Indian reservation lying north of the seventh standard parallel.

SEC. 20. The Legislature may, whenever two-thirds of the members of each house shall concur therein, but not oftener than once in four years, in-

crease the number of said judicial districts, and the judges thereof; such districts shall be formed from compact territory and bounded by county lines, but such increase or change in the boundaries of the district shall not work the removal of any judge from his office during the term for which he may have been elected or appointed.

SEC. 21. No person shall be eligible to the office of district judge, unless he be learned in the law, be at least twenty-five years old, and be a citizen of the United States; nor unless he shall have resided within the state or territory of Dakota at least two years next preceding his election; nor unless he shall, at the time of his election, be an elector within the judicial district for which he is elected.

SEC. 22. There shall be a clerk of the district court in each organized county, in which a court is holden, who shall be elected by the qualified electors of the county, and shall hold his office for the same term as other county officers. He shall receive such compensation for his services as may be prescribed by law.

SEC. 23. Writs of error and appeals may be allowed from the decisions of district courts to the supreme court, under such regulations as may be prescribed by law.

#### PROBATE COURTS.

SEC. 24. There shall be established in each county a probate court, which shall be a court of record, open at all times and holden by one judge, elected by the electors of the county, and whose term of office shall be two years.

SEC. 25. The probate court shall have jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians, the sale of lands by executors, administrators and guardians, and such other probate jurisdiction as may be conferred by law.

#### JUSTICES OF THE PEACE.

SEC. 26. The Legislature shall provide by law for the election of justices of the peace in each organized county within the state, but the number of said justices to be elected in each organized county, shall be limited by law to such a number as shall be necessary for the proper administration of justice. The justices of the peace herein provided for shall have exclusive jurisdiction in all civil actions, where the amount in controversy exclusive of costs does not exceed fifty dollars, and concurrent jurisdiction with the district court in all civil actions where the amount in controversy exclusive of costs does not exceed two hundred dollars. They shall have such jurisdiction as committing magistrates as may be prescribed by law, but in no case shall said justices of the peace have jurisdiction, where the boundaries of, or title to, real estate shall come in question.

#### POLICE MAGISTRATES.

SEC. 27. The Legislature shall provide by law for the election of police magistrates in cities, incorporated towns and villages, who in addition to their jurisdiction of all cases arising under the ordinances of said cities, towns and villages shall be *ex-officio* justices of the peace of the county in which said cities, towns and villages may be located, and the Legislature may confer upon said police magistrates, the jurisdiction to hear, try and determine all cases of misdemeanor and the prosecutions therein shall be by information.

SEC. 28. Appeals shall lie from the probate court, final decisions of justices of the peace and police magistrates in such cases and pursuant to such regulations as may be prescribed by law.

#### MICELLANEOUS.

SEC. 29. The time of holding courts in the several counties of a district shall be as provided by law, but at least two terms of the district court shall be held annually in each organized county, and the Legislature shall make

provision for attaching unorganized counties or territory to organized counties for judicial purposes.

SEC. 30. Judges of the district courts may hold courts in other districts than their own under such regulations as shall be prescribed by law.

SEC. 31. No judge of the supreme or district courts shall act as attorney or counsellor at law.

SEC. 32. Until the Legislature shall provide by law for fixing the terms of courts, the judges of the supreme and district courts shall fix the terms thereof.

SEC. 33. No judge of the supreme or district court shall be elected or appointed to any other than a judicial office, or is eligible thereto during the term for which he was elected or appointed such judge. All votes or appointments for either of them for any elective or appointive office, except that of judge of the supreme court or district court, given by the legislature or the people, shall be void.

SEC. 34. Tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law, or the powers and duties of the same may be conferred upon other courts of justice, but such tribunals or other courts when sitting as such shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunals or courts.

Mr. Miller moved that the further consideration of File No. 106 be postponed until Saturday, July 27th.

Which motion prevailed.

The following report of the Committee of the Whole of July 23d was considered:

MR. PRESIDENT:

Your Committee of the Whole have had under consideration File No. 25, vesting the legislative power in one body, and recommend that the further consideration of File No. 25 be indefinitely postponed. Also have further considered File No. 63, and recommend that Sections 4 and 5 be stricken out, and that Section 6 be adopted. Your committee reports progress and asks leave to sit again.

JAS. F. O'BRIEN,  
Chairman.

Mr. Carland moved that the report of the Committee of the Whole be adopted.

Which motion prevailed.

Mr. Scott moved that the Convention proceed to the consideration of File No. 63.

Which motion prevailed, and

The President called Mr. Scott to the chair.

Mr. Noble moved that File No. 63 be recommitted to the Committee on County and Township Organizations.

Which motion prevailed.

Mr. Bartlett of Griggs, moved to adjourn.

Which motion prevailed and

The Convention adjourned.

J. G. HAMILTON,  
Chief Clerk.