TWENTY-NINTH DAY.

BISMARCK, *Thursday, August 1, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

Mr. ALLIN moved the following resolution:

Resolved, That all clerks of committees now in the employ of the Convention be and the same are discharged from and after this date, August 1st, 1889.

Mr. MATHEWS. I don't think it would be well for this resolution to pass. There is the Apportionment Committee, for example, which has done no work yet, and it will be necessary for it to have a clerk.

Mr. LAUDER. I hope this resolution will not prevail. It will be all very well for the committees that have finished their work to discharge their clerks, but as the Convention well knows there are some committees who cannot finish their labors—in fact can do very little of their work till the Convention has acted on the reports of other committees. I have not yet been able to get a meeting of the Committee on Schedule. I have prepared a number of sections, but the work of that committee is yet to be done, and it cannot be done till these other reports have been acted upon, and we know what there is to come into the Schedule. To do our work will require the services of a clerk.

Mr. PURCELL. I move that the resolution be amended by applying only to those committees which have finished their labors.

Mr. BARTLETT of Griggs. There is the Judiciary Committee which has handed in its report to the convention, but since that it has had other resolutions and matters referred to it.

The original resolution as amended by Mr. PURCELL was carried.

A QUESTION OF PRINTING.

The report of the Committee on Printing was read as follows:

MR. PRESIDENT: Your Committee on Printing to whom was referred the resolution introduced by Mr. PARSONS of Rolette, respectfully recommended

that the same be adopted, and that each newspaper in North Dakota receive $25 each for such services, and recommend that provision be made in the Schedule for the payment of the same by the Legislature.

ROGER ALLEN,
Chairman.

The adoption of the report was moved by Mr. ROBERTSON and seconded by Mr. ROLFE.

Mr. NOBLE. I understand that the report provides that each newspaper shall get $25 for publishing the Constitution. It seems to me that if it provides that, it should be printed, read a second and a third time.

Mr. SCOTT. It seems to me that it is not wise for this Convention to pass such a resolution as this. The better way in my judgment would be for this Convention to take steps to secure the printing of 100,000 or 200,000 copies, whatever may be determined on as necessary, and let those be sent to the delegates or to the county auditors or to the chairmen of the boards of county commissioners in the different counties. They could be very well distributed in that way. They will thus reach more people than if the Constitution is printed in every paper in the State, and the cost will not be one-fifth as much as it would be under this resolution. If my suggestion is followed the Constitution will be in pamphlet shape and can be preserved, whereas it won't be if it is printed in every newspaper in North Dakota. I am opposed to the resolution.

Mr. MILLER. I would like to inquire how many newspapers there are in North Dakota.

Mr. PARSONS of Rolette. There are about 150.

Mr. MILLER. I am opposed to the resolution. I think it amounts to saying that we will make a donation to each newspaper of $25. If we put it in this shape, and the respective editors say they need it, I would vote for the resolution, but for the matter of printing the Constitution I don't think we should do it. There is not a newspaper that will not print all that Constitution for the benefit of its readers. It is being printed every day, and if this report of the committee is adopted we shall be making an investment of $4,000 to have this document printed in the respective newspapers, more than two-thirds of which would be useless. I have papers in my mind that have not a circulation of more than 100, and to pay them $25 for printing the Constitution would be throwing the money away. It seems to me that the gentleman

from Barnes is correct. If we are to print this Constitution let us print it in pamphlet form.

Mr. ROBERTSON. I would ask that for the purpose of securing a full presentation of this matter, the gentlemen be requested to state what the cost would be to print the Constitution in pamphlet form as he recommends, that we may consider the cost of the one method and the other.

Mr. SCOTT. I don't know what it would cost, but if this Convention wish to give me $4,000 I will print all they want in pamphlet form, bound in morocco.

Mr. NOBLE. I wish to make an amendment to the proposition. $25 is too much for each paper in the territory, for the simple reason that they get a supplement from the Pioneer Press or some other paper, and the cost of them will be about eight cents a quire. I think that $5 would be the greatest plenty and leave a little to spare for the newspapers. I will move as an amendment that the figures $25 be stricken out and $5 inserted.

Mr. PARSONS of Rolette. There won't be a newspaper in North Dakota that will print it. The work cannot be done for any such figures. The sum of $25 is about half what was proposed to me by the newspaper men—a few that were here. The matter cannot be set up for $25. The usual fee for printing county commissioners' proceedings is 25 cents per folio. The price suggested for printing this Constitution is very much less than that. I differ with the gentleman who says that it can be printed for $5 for each paper, and I am certain that it can be printed by the newspapers at a very much less cost than by the pamphlet plan. It cannot be printed in pamphlet form in sufficient quantities for half that.

Mr. JOHNSON. Does the gentleman from Rolette imagine that if this resolution passes, that every country newspaper like his own is going to set up the type for this Constitution independently? I do say this—that nearly all the papers in Dakota—nearly all the country newspapers—have patent insides printed at St. Paul or elsewhere. I know that these printers of patent insides for the newspapers are now preparing to print the entire constitution immediately, just as soon as it is ready. I am myself in correspondence with one of the largest manufacturing concerns in those cities, for the purpose of furnishing them as promptly as possible a copy of a correct constitution. My idea is that whether this resolution passes or not the Constitution will appear in the news-

papers as interesting matter, as profitable matter for those newspapers to put in, just the same whether we pay them for it or not. I think that even the $5 would be a donation. They would publish it anyhow.

Mr. PARSONS of Morton. I am informed that a hundred thousand copies of this Constitution printed in pamphlet form would cost about $2,000, and it seems to me, as we have forty or fifty thousand voters, we could supply each one with two copies apiece, by having a hundred thousand printed, and this would be better than the adoption of the resolution or report before the House.

Mr. PARSONS of Rolette. You want to figure the additional cost of distributing them.

Mr. PARSONS of Morton. That would be a very small matter. Every man here would be pleased to put them into the hands of parties in his district who would distribute them. I never knew of any literature of that kind that lacked distributors.

Mr. STEVENS. There has just been a resolution passed here providing that a committee should be appointed for the purpose of drafting a letter or memorial to the people showing the reasons for the adoption of this Constitution. The object for introduction of that resolution was this—the Constitution will not in all probability be read as a whole by one-half the people—probably not more than one-third of them. A majority of them would rather read a synopsis of the important features, and it should be pointed out where it differs from the ordinary Constitution. At the same time I had in view that there would be printed in pamphlet form a sufficient number of the Constitutions that might be placed in the hands of the county auditors of the various counties, so that any person after having read a synoptical letter might go and get a copy of the Constitution and look it over if he desires for further information. That was the view that was taken when the resolution was drawn to which I have referred, calling for a committee.

Mr. CLAPP. I am not so particular about the original resolution, but I hope the amendment will not pass. For us to say that the newspapers of this State shall print the whole Constitution for $5 is an insult to every one of them, and I hope the resolution will be voted down.

Mr. ROBERTSON. I fully concur in the remarks of the gentleman that has just spoken. I believe that we ought to publish the Constitution through our newspapers, and I believe we should

not be niggardly in the matter. We ought to pay what it is worth to set up that type. We ought to remember the fact that the servant is worthy his hire, and we ought not to impose on our newspapers or compel them to set that up for nothing simply because it is a matter of interest to the public. If we choose the newspapers as the medium for bringing this Constitution before the public, we ought to pay them every cent it is worth.

Mr. NOBLE. The question before us here is whether this expense should be borne by the new State—whether $25 is not more, in connection with the other necessary expenses, than the people should bear in the formation of the new State. There is no question but that the setting in type of such a Constitution as we will have, would be worth more than $25 to each newspaper in the State if they were to set it up themselves, in their offices; but I have had enough experience in the newspaper business to know what it costs to get a Constitution set up and printed. The patent inside of a newspaper costs about eight cents a quire, and that is for good sized papers. This Constitution will be distributed at the same rate. $5 will leave $2.50 clear to the newspaper if my amendment carries, in my opinion. If the newspapers were to set it up it would be worth more than $25, and it would be more of an insult than to give $5.

Mr. BARTLETT of Griggs. This Constitutional Convention is in a peculiar position when it is dependent on the patent insides of the newspapers to distribute their Constitution. Let us print it in circular from, or take some method to have our papers print it. If we print it in circular form it will cost more than if we pay the papers $25 each to print it. The gentleman says that 100,000 would cost $2,000. We should need at least 500,000. We have a population of over 200,000. South Dakota provided for 500,000 copies of her Constitution in two languages—the Scandinavian and the English language. It seems to me to be absurd to say that we shall only need 100,000 copies, when that is not as much as our population. If we pay the newspapers for it, it is easily circulated, and the money is distributed. We should not then be giving any one printing institution $2,000 or $3,000 for doing what should be more generally distributed.

Mr. ELLIOTT. The suggestion of the gentleman from Barnes would give more than two to every voter. I think that that should be sufficient, and there should be some left out of that for future use. If we had this Constitution printed in the newspapers it would

soon be out of print, and we would not be able to find a copy except those that would be printed in the law books or the school books. There are other people in the United States who are just as much interested in this Constitution as some of us are, and they would like to see what we have done here. If we fail to publish them in pamphlet form we cannot furnish anyone on the outside with copies. Before this convention met I wrote to the Secretary of the State of Kansas for a copy of the constitution of that state, but he could not send me a copy because it had not been printed in pamphlet form. I wrote to the Secretary of California, and got one back by return mail. I think we should make some provision by which we could circulate some outside the state for the benefit of people in other states. They are interested in our work here, and they want to see what kind of a production we are getting up.

Mr. MOER. This matter of the printing the Constitution is, presumably, for the benefit of the people of the territory or state, so that they may know what they are voting upon. It strikes me that a question of $2,000 or $3,000 or $4,000 cuts but little figure as against the fact that the people must know what they are voting for or against. I would be willing to favor the proposition that the Constitution should not only be printed in the way recommended by the committee, but I would also have it printed in as many different languages as we have got people to vote on it. I believe that the thing we want to do is to put it before the people, and it does not matter whether or not it costs $2,000 or $4,000. The gentleman from Ransom county says that he has introduced a resolution for the purpose of having a committee prepare reasons why the voters should vote for the Constitution. It seems to me that the voters will do their own reasoning if they have the Constitution before them, and that they are fully as capable of deciding why they should vote for it as we are. It may be that $25 is too high a figure to pay the papers, but certainly $5 is too low. I therefore move as an amendment that the figure be made $15.

Mr. FLEMINGTON moved as an amendment that the figures $10 be substituted.

The amendments and the motion to adopt the report of the Committee on Printing were all lost.

THE SUPREME COURT JUDGES.

Mr. CARLAND. I move that the report of the Committee of the Whole in regard to the session of yesterday afternoon be

adopted with the exception of section nineteen, which reads as follows:

"The Judges of the Supreme Court shall give their opinions upon any question of law and upon solemn occasions when required by the Governor, the Senate and the House of Reoresentatives, and all such opinions shall be published in connection with the reported decisions of said court."

Mr. PURCELL. I also move to strike out of the report of the committee the whole of section four:

"At least three terms of court of the Supreme Court shall be held each year at the seat of government."

Mr. CARLAND. In support of the motion so far as section nineteen is concerned, I desire at this time to again renew the same objections that I urged in the Committee of the Whole to the adoption of that section. I believe it to be pernicious and unwise to have it in the Constitution, and in support of my view I desire to read to the Convention the expressions of the Supreme Court of Colorado in regard to a similar provision which they have in their Constitution, and which was put in there by amendment in 1885. There were numerous questions referred to the Supreme Court, and they are included in this pamphlet. In answer to the Senate resolution on the subject of Irrigation, the court says:

"The resolution before us purports to have been framed under the authority conferred by section two, article six of the Constitution, as amended in 1885. The amendment in question reads as follows: 'The Supreme Court shall give its opinion upon solemn occasions, when required by the Governor, Senate or House of Representatives; and all such opinions shall be published in connection with the reported decisions of the court.' It is obvious that this constitutional provision will become a medium of great abuses unless its purpose be clearly apprehended, and its spirit be strictly obeyed by both the General Assembly and the court. In acting thereunder the peculiar functions devolved upon each of the three departments into which the State government is divided should always be kept in view. It could not have been the intention to authorize an *ex parte* adjudication of individual or corporate rights by means of a legislative or executive question. Parties must still adjudicate their rights in the ordinary and regular course of judicial proceeding. Nor could the purpose have been to enact, in response to a legislative inquiry, a wholesale exposition of all constitutional provisions relating to

a given general subject, in anticipation of the possible introduction or passage of measures bearing upon particular branches of such subject."

"The questions propounded by the resolution under consideration call for a construction of sections five to eight, article sixteen of the Constitution. These sections comprise all of that instrument dealing with the subjects of water-rights—a subject second to none in its importance and intricacy. Our answers to the questions would necessarily affect vast property interests, and profound questions of public policy. We are not apprised by the resolution that the various matters mentioned are covered by any act or acts pending before the General Assembly. There are now in this and other courts of the State actions through which some of these matters are in process of adjudication. To anticipate these cases, and pass in this summary manner, upon the rights involved, and no apparent rights or interests of private parties directly without the parties before us, and without the aid of counsel, is something we should not be asked to do, except upon the greatest and most urgent necessity. It is not improper for us to further suggest that a satisfactory response to the resolution would require vast research and extraordinary caution. In view of the fact that we must act both as court and counsel, and in view of the other duties which we must necessarily perform, the period of time provided for a legislative session would hardly be sufficient to return safe and satisfactory answers to more than one such inquiry. We shall always most cordially co-operate with both Houses of the General Assembly in their work, so far as such co-operation may be proper under the Constitution. But the foregoing, and other considerations that will readily suggest themselves, constrain us to respectfully request that your honorable body consider the propriety of withdrawing the questions embodied in this resolution."

Mr. CARLAND. There was no opinion obtained, and there was no human power that could compel the court to do anything further than they did. In another case as regards Senate Resolution No. 65 the court says:

"The framers of our constitution specified the jurisdiction to be exercised by the court. They declared that, with certain designated exceptions, this jurisdiction should be purely appellate and supervisory. A few writs and proceedings were named, in connection with which the court was clothed with original jurisdiction. Sec-

tion three, Art. six. The section mentioned has been construed by this court as applying only to cases where questions *publici juris* are raised, thus excluding from this branch of its jurisdiction all controversies wherein private rights alone are involved. Wheeler vs. Irrigation Co., 9 Colo. 249, 11 Pac. Rep. 103. The reasons for this construction are obvious and potent. They are considered in the opinion referred to, and will not be here re-stated. The provision authorizing legislative and executive questions was not originally a part of the constitution. It has been in effect less than three years. It is an enlargement of the original jurisdiction of the court conferred by said section 3 of the judiciary article. It adds to the list of writs there specified an unique and important proceeding—unique, because as we shall presently see, it is devoid of nearly all the usual indicia of judicial proceedings; important because of its consequences. All of the reasons relied upon for confining the writs specified in section three of article six to questions *publici juris* apply with even greater force to the novel proceeding authorized by the provision before us; for while this provision is original, and in that respect similar to the other original proceedings referred to, yet it possesses characteristics peculiar to itself. Not only should its operations be confined to questions *publici juris* but as we shall endeavor to show, every question of this character should rarely be thus presented or considered. It will be observed that the authority conferred is accompanied by an express limitation. While the question must be one relating to purely public rights, it can only be propounded upon solemn occasions, and it must possess a peculiar or inherent importance not belonging to all questions of the kind. It is impossible to state any absolute rule by which the sufficiency of this importance and the degree of this solemnity can be determined. These are matters that rest largely in the discretion of both the legislature and the court; for while the legislature is first to judge of the relative importance and solemnity justifying a given question, it has been held that the justices have also a voice in deciding whether jurisdiction should be entertained. Opinion of Justices, 49 Mo. 216. The court will seldom question the action of the legislature in this respect, but the right so to do should not be denied. It is submitted, however, that for reasons hereinafter stated, the greatest caution should be employed, both by the legislature and court, in exercising the discretion just mentioned. As already suggested, there are peculiar reasons for excluding from the purview of the provision before us legislative

and executive questions affecting private and corporate rights,—reasons not applicable in the exercise of the original jurisdiction of the court in connection with the other original writs or proceedings provided for.

"Only five states of the entire Union have ventured to adopt and retain constitutional provisions in any way analagous to this constitutional amendment. At one time there existed in Missouri a provision somewhat similar, but the framers of the Missouri Constitution of 1875, profitting, we suppose, by experience, excluded the same therefrom, and we are not aware that any effort has since been made looking to its restoration. But Colorado has gone further than the states referred to in this doubtful and perilous experiment, by adding two peculiar features, one of which at least seriously increases the danger. By the express words of the corresponding provisions in each of the other states the questions are limited to questions of law, and the justices, not the court, are to respond. These officers appear to be merely legal advisors, occupying much the same relations in this regard to their respective General Assemblies as does the Attorney General of Colorado to the State Legislature. Their written responses, when questioned, are not always published in the reports. They are not pronounced by the court, and hence are not technically judicial decisions, nor do they necessarily constitute judicial precedents. In this State, on the other hand, the interrogatories are not expressly limited to the questions of law, and it is the court, not the justices, that must answer. For obvious reasons, we hold that the intent could not have been to authorize questions of fact, but our responses must be reported as are other opinions, and they have all the force and effect of judicial precedents.

"It is a principle declared by our Constitution, section twenty-five, article two, and of universal recognition, that no person shall be deprived of life, liberty or property without due process of law. But there cannot be due process of law unless the party to be affected has his day in court. Yet a careless construction and application of this constitutional provision might lead to the *ex parte* adjudication of private rights by means of a legislative or executive question, without giving the party interested a day or voice in court. When this tribunal exercises its original jurisdiction by entertaining any of the other proceedings specified in the Constitution, process must issue, the parties to be affected must have notice, and they must be given an apportunity to appear and

be heard, both in person and by counsel; so that even though the primary and principal purpose of the proceeding be to adjudicate a matter *publici juris*, yet there is a compliance with the fundamental requirement relating to due process of law. This consideration greatly reinforces the proposition that it could not have been the purpose of those who framed the amendment to permit such *ex parte* adjudications by means of executive or legislative questions. We have no hesitancy in reaffirming what we have already declared, that 'parties must still adjudicate their rights in the ordinary and regular course of judicial proceedings.' In Senate Resolution on Irrigation, 9 Colo. 621, ante. 470.

"Nor could it have been the intention of the authors of this amendment to permit the presentation of questions relating to the policy of proposed legislation. A proper regard for the constitutional arrangement of the different departments of government, and the constitutional powers and duties devolved upon each department forbids the conclusion that this court can have anything to do with such matters. It is clearly not authorized to give its advice upon any question of fact or of policy. It is the peculiar and exclusive province of the Legislature, so far, at least, as the judiciary is concerned, to judge of the necessity or desirability from a political or economic standpoint of each and every act proposed. The history of this constitutional amendment may be consulted with advantage in the endeavor to discover its purpose. The successive Legislatures meeting after the admission of Colorado to statehood encountered great difficulty in the enactment of laws, on account of numerous wise, but troublesome, limitations contained in the Constitution. Perplexity and confusion arose in consequence of legislation which this court was ultimately compelled to hold invalid. It was deemed expedient that each house should have the privilege of submitting questions so that the injurious consequences arising from constitutional legislation might be avoided, by having the validity of proposed legislative acts thus determined in advance. Corroborating the conclusion that the foregoing was the primary and principal purpose of the amendment, we have the contemporaneous construction of the Legislature. All the questions propounded by the General Assembly of 1887, which was the first to meet after the adoption of the amendment in question, rested upon legislative doubts as to the constitutionality of certain proposed acts or parts of acts. This consideration is peculiarly significant, because it tends

strongly to show the view entertained by the legislative representatives of the people chosen at the same election at which the amendment itself was adopted. It must be presumed that these representatives comprehended, and by their action expressed, the understanding of the people in relation thereto.

"Upon mature investigation and reflection, we are of the opinion that executive questions must be exclusively *publici juris*, and that legislative questions must be connected with pending legislation, and relate either to the constitutionality thereof, or to matters connected therewith of purely public right. We believe that the accuracy as well as the wisdom of this interpretation will commend themselves alike to the legislative judgment and the legal mind. But even with this construction there is danger of grave abuses. Efforts will still be made by private parties to anticipate judicial rulings in the ordinary course of litigation, by inducing the submission and decision of questions ostensibly *publici juris*. We feel constrained to repeat and emphasize the thought heretofore expressed that the utmost vigilance and caution be exercised by both the General Assembly and the court in acting under this novel constitutional authority. There cannot well be too much moderation in the premises. We note that in those states which permit consultation with the justices, the privilege seems to be less often invoked than it has been here. The Attorney General is the natural, as well as the statutory, legal advisor of the Executive and Legislative Departments. His counsel should be solicited, and only as a dernier resort, upon the most important questions and the most solemn occasions, should the court be requested to act.

"It must always be remembered that we are compelled to discharge the duties of both court and counsel; that the exigincies which of necessity require speedy answers, render it impossible to bestow upon these questions the research and deliberation usually given to judicial proceedings by courts of last resort; and that for these reasons our embarrassment is seriously enhanced, while the possibility of erroneous decisions is, of course, augmented. Although no questions be propounded or answered save those which relate to the constitutionality of legislation, or to other matters purely and exclusively *publici juris*, and although there be no causes pending in the courts that are directly affected, and no apparent rights or interests of private parties directly involved, yet it is obvious that a false interpretation by us of a con-

stitutional provision, or a mistaken opinion upon a question purely *publici juris*, may indirectly lead to the most grievous consequences.

"The question presented in this case suggests, neither through the preamble nor the resolution, any matter of constitutional difficulty; nor is it such a matter otherwise *publici juris* as would warrant our entertaining jurisdiction upon that ground. It does not even, so far as we can perceive, relate to the action of either branch of the General Assembly upon the bill mentioned. We are asked to construe the future effect of the proposed bill in its application to the fees of certain public officers. The matters specified are proper subjects for judicial action, and will doubtless be litigated through judicial proceedings. The court has always conscientiously endeavored to observe the requirements of all constitutional provisions, including the one now under consideration and it will in the future, as in the past, ever take pleasure in rendering such assistance to the Executive and to each House of the Legislature as shall be consistent with its position as a separate and independent branch of the government, and also in harmony with what is deemed a sound exposition of the Constitution. But in view of the foregoing considerations, were the General Assembly still in session, we would respectfully ask that the question be recalled."

Mr. CARLAND continued: Without taking up the time of this Convention any longer, I would say that I am satisfied that a constitutional provision of this kind is open to grave abuses, and I would ask that it be stricken from the report of the Committee of the Whole.

Mr. PURCELL. I move that the report of the Committee of the Whole be adopted by sections.

Mr. STEVENS. Does the adoption of this report adopt the sections?

The CHAIRMAN. No, sir.

Mr. NOBLE. Then if the motion prevails, what is to be done with the report of the Committee of the Whole prior to the report of the Judiciary?

WHERE TO HOLD COURT.

Mr. PURCELL. My objection is to section four which reads as follows: "At least three terms of the Supreme Court shall be held each year at the seat of government." I hope that the report of the Committee of the Whole with reference to that par-

ticular section will not be adopted. In our territorial form of government the Supreme Court held three terms a year at three different cities, and in conversation with many of the attorneys in those cities they one and all agree that it was a most excellent thing, and they cited this as an illustration of the benefits that were derived from the Supreme Court coming into their localities. In many instances poor people are litigants—people who have cases against corporations for injuries, and many of these cases are taken by attorneys contingently, their fee depending on recovery of damages in the case. When recovery is had, if an appeal is taken to the Supreme Court, the plaintiff or the poor man, may not be sufficiently able to follow that court to its location if permanently located at some far off point, but if that court in its movements will come within a reasonable distance of his district, his attorney can go there and argue it and have it disposed of at a less expense than if he had to pack up his papers and travel to the seat of government. There is nothing degrading in the Supreme Court holding its terms in different cities. It is done in Iowa. They have done that way for a number of years, and the same thing is done in a number of the states of the Union, and all who have tried it agree that it is beneficial to the people who are unable in many instances to follow their cases from the District Court to the Supreme Court, but who can do so if the court comes within easy reach of them. As I said yesterday a major part of the business of the Supreme Court in North Dakota comes from the Red River Valley, and the tendency is for litigation to come this way. If the Supreme Court can hold a term at Bismarck, one at Fargo and one at Grand Forks, the different litigants living in these localities can have their matters heard at less expense than if they are required to go to Bismarck. No one can be injured. There is no additional expense to the State, for if the Supreme Court Judges get mileage the presumption is fair that two of them will reside in the eastern part of the State and that mileage will amount to more to go to Bismarck than that of the Bismarck judge to go east. It seems to me that for all these reasons this section should not be passed as it is, but an amendment should be made so that one term will be held at Bismarck, one at Fargo and one at Grand Forks.

Mr. MILLER. Do I understand that you offer that amendment?

Mr. PURCELL. I offer that amendment.

The amendment was seconded by Mr. MILLER.

Mr. SCOTT. It seems to me that the section as adopted by the Committee of the Whole is as it should be. The gentleman from Richland refers to the fact that now, while we are a territory, we have a migratory Supreme Court, and that it proved satisfactory. But I venture to say that there are not four states in the Union that have a Supreme Court of that character. It is something unusual—almost unheard of except in the territories. Now we have a Capitol—a seat of government, and there are supposed to be suitable rooms in the Capitol for the use of the Supreme Court. We are supposed to have, we should have, and we in all probability will have, a State Library for the use of the Supreme Court and the general public. It will be necessary to have chambers at the Capitol or the seat of government for the use of the court, and as stated by a gentlemen yesterday, if the court meets at Fargo and Grand Forks the first thing we shall be called on to do will be to fit up chambers or some other place for holding the Supreme Court in Fargo and Grand Forks as well. The gentleman also refers to the fact that it is a very great convenience that the Supreme Court should be held at these different cities—that it will be cheaper for litigants in the Red River valley to have the terms held there rather than at Bismarck. I venture to say it will not cost a litigant one cent more, whether his case is argued here or at Grand Forks or Fargo. I don't presume that the gentleman from Richland will say that a case that is appealed from a county to the Supreme Court will be passed over by that court for the term which is to be held here. The attorneys must be here anyway to attend to their cases, and when they are here they might as well argue then as to take it on to some future term. So that it will not be one cent additional expense to any litigant who goes to the Supreme Court, whether all the terms of that court are held at Bismarck, or whether it is migratory and the terms are held one at Bismarck, one at Fargo and one at Grand Forks. But it will be more expense to the State—there is no denying that. When we elect three judges they should hold their chambers at the Capital of the State, wherever that may be. They should be here, and I don't suppose they will be entitled to any mileage, for they are not expected to run all over the territory. Their business is here, and when they are not here they are not working for the State. If they desire to go home, they cannot expect the State to pay their mileage, but if we make the terms of the Supreme Court at these

three different places they will be entitled to mileage, and unless the gentlemen in Grand Forks and Fargo are benevolent enough to extend to the State the use of their court rooms, the State would be obliged to furnish some place to meet. I think the section adopted by the Committee of the Whole is just as it should be, no matter where the future Capitol of the State is finally located, whether it be Bismarck, Fargo or Grand Forks.

Mr. O'BRIEN. I don't see any good and sufficient reason why the report of the Committee of the Whole should not be adopted, so far as this section is concerned. The gentleman from Richland places it entirely on the ground of the expense of the litigants. He does not take into consideration, as the gentleman from Barnes has just suggested, that the expense of a term of court at these different places will fall on the State more heavily than a term would at the seat of government. I claim that when a man chooses to go to law the expenses of the litigation should fall on him mainly. The State should not bear the expenses of private litigation, and we will be arranging it that way if we place these terms of court at three different points as is contemplated by this amendment. We, as a state, are willing that every man shall be given an opportunity to be heard in the Supreme Court, but we don't desire, we don't want, to have the methods made more expensive than are necessary to the State. We will be required to have a Supreme Court room at Fargo and Grand Forks, and we will also find it necessary to have all the required appliances for holding a term of court at the seat of government. There will be at all these points the expense of a court room, the expense of the travel of the judges and the travel of the court officers. I cannot see any particular reason why we should do this for the purpose of accommodating the gentlemen who live in the Red River valley. Are we legislating for the present merely, or the future? If in course of time the center of population move to the West, why are not the people of the Missouri slope entitled to just as much consideration as the cities in the Red River valley, and if you are going to make it so convenient for litigants, why not hold that it should go to the door of each litigant, and there determine any matter which may be in process of litigation? If you are to save expense to the litigant, that would be the way to do it; but so far as expense is concerned I don't agree with the gentlemen who are arguing for this amendment. You will find in states where the Supreme Court is stationary—is

held at one point—that the most of the business before the court is done by briefs—briefs printed at the home of the litigants, and that is an expense that they would have to incur anyhow. As has been suggested here, there is nothing to require the litigant to go to the court himself. All that is required is the attention of his attorney, and in all cases if the attorney is doing business of any importance he has a number of cases to attend to at the session of the Supreme Court. In the case of a poor man, he can very easily, if he has got a good case, submit his case to the Supreme Court upon printed briefs and the court will give him just as much consideration and as fair a hearing as if he was represented by an attorney in the court.

Mr. MILLER. The gentleman suggests as an objection to the court being held in three places, that when the population changes it may be necessary to change the court to accommodate the public. The amendment offered by the gentleman from Richland provides that the terms of court shall be held at the seat of government, Fargo and Grand Forks "until otherwise provided by law." If it is found that the population is changed so as to require a change in the places to hold the court it is in the hands of the Legislature. I supposed that the object of all courts was to make them of the most convenience for litigants, that the greatest good to the greatest number might be secured. It is a fact that no one disputes that the population and the litigation is very much nearer Grand Forks and Fargo than the Capital. To subserve the interests of these people who have got to have the litigation and sustain the court, we ask for the terms of court at these places. I can see no possible objection to it.

Mr. PARSONS of Morton. The matter of expense has been mentioned, and I think there is one point to be considered. If we are to consider the matter of expense merely, why don't we select some city in the center of the State which is readily accessible to all, and locate there the Capital, and around it all the other public institutions of the State? Have them all right in the center, because they will be the most accessible there, and it would be the most economical. Who ever heard of any such scheme as this? Is there any state in the Union that has ever done it? And yet, following out the doctrine advocated by some of the gentlemen here, that would be the thing to do on the ground of cheapness. There is one argument that has not been referred to —and that is that it is a great honor for a town to have a session

of the Supreme Court, and wherever the seat of government is —whether it be at Grand Forks, or Fargo or Bismarck, the people of that place will be entitled to that distinction. As to the fitting up of rooms for the court, I would say that I have not had the pleasure of visiting the city of Grand Forks, and have not seen their court house, but judging from the looks of the gentlemen here from that city, I have no doubt but that they have a very fine one. I doubt sincerely if the Supreme Court were to hold a session at Grand Forks or at Fargo if the people of either city would want to tax the State for allowing the court to hold a session, any more than any one of us as individuals would want to charge the President of the United States for a night's lodging if he did us the honor to stay with us. As far as libraries go, I believe that there are just as many volumes accessible to the court in Fargo or Grand Forks as there would be at the seat of government. It is a well-known fact that the attorneys in those two cities have very fine libraries, and it seems to me that it would be well to distribute the honors.

Mr. PURCELL. The objection to the substitute that I offered, as made by the gentleman from Barnes and the gentleman from Ramsey, seems to me to have no weight. Particularly the argument used by the gentleman from Ramsey, because I take it that sarcasm and ridicule are never an argument. I do not here seek by this motion to ask the Supreme Court to go to the door of any litigant. I simply ask that this court may hold one of its terms a year at Fargo, and there be installed in one of the finest buildings that this territory possesses, and it is no condescension on the part of the Supreme Court of this State to go there and hold one of its terms of court. I also ask that it hold one of its terms of court at Grand Forks. I have had some experience in the court house in Grand Forks, and it will compare favorably with any building in the Territory. There is nothing in the proposition they make and urge against this substitute. The library is not necessary for any lawyer attending the Supreme Court, nor is it necessary for the judges, as they will have at hand all the books they need. The gentleman says that briefs are prepared in all cases. Cases are frequently argued on briefs, but frequently there is a good deal more to a case than the mere submission of a brief. There is no place in the Territory to-day that has so fine a library as either one of the cities of Fargo and Grand Forks. Every book that would be needed is possessed there by the law-

yers, and collectively, the lawyers of those two cities possess a library as good as any that will be found in the State during the next ten or fifteen years. Everything will be accessible to the court, and as to the objection urged as to the court room, I simply say that I believe that neither Grand Forks nor Fargo will exact $1 on account of the expense of the court in occupying their court houses. The expense of the traveling will be little or nothing. All that will be necessary will be for the Clerk to go and take what papers pertain to the litigation about to be heard. It will not require a freight car to do this, and the item of expense will be nominal, if anything. The gentleman asks why we don't establish the court on the Missouri slope. We don't establish one on the reservation, because we don't need it there. Every man knows that nine-tenths of the business in the Supreme Court comes from the Red River Valley counties, and we proposed this substitute so that the people can be convenienced. The gentleman from Ramsey says that when a man goes into court he must stand the expenses of the litigation. That idea is in conflict with our bill of rights. We have courts established for the purpose of hearing every man's case, so that every man, be he rich or poor, can go and avail himself of the protection of the law, and see that his just rights are protected. We say that this substitute is just and right, and that is the basis on which we place it.

Mr. SELBY. Residing as I do, between the two principal towns of the Red River valley, it might appear that I was taking or assuming an attitude that would be contrary to my interest, and to the interest of the people of my county, and to the interests of that valley, if I would oppose a traveling Supreme Court. The gentleman from Richland tells us that if the Supreme Court holds a session once a year in the City of Fargo, that the people of my district can save expense by going there and having their matters determined. So then all the cases arising in that district or locality would be submitted to the term of court to be held at that particular place. Now, sir, I have, we will say, an action of importance. It is determined in the district court; I appeal the case to the Supreme Court; they sit in May; I am not early enough to get in at that term, and the result is that I have to wait till a year from that time before I can have my case determined. But if I could have taken that same case to Bismarck I would not lose all this time. This proposition was raised squarely in the committee when we were discussing it, and the committee by a ma-

jority took the position that for the very reason that these cases would be districted in that manner, it was decided that it would be better to have the court held in one place, where every case goes and is there determined in order. There would then be no passing over and waiting till the court would get to Fargo or Grand Forks. They claim, and it is true, and I am proud of the fact, that Fargo has got as good a court house as there is in North Dakota, but it does not follow from that fact that the officials of that county, if we provide in the Constitution that the Supreme Court shall be held in that town, that they will say: "You can have the use of this court house free of charge." If we make a provision of this kind they are in a position then that they can say: "Gentlemen, come down." We are not supposed to go upon the assumption that because it is an honor for a city to have a term of the Supreme Court that they will open the doors of their public buildings and say "you can come here," and especially when you are fixed in such a way that you have got to go there as it is proposed to fix this Constitution. If the people of that town or county would say "come down" it may be said that the Supreme Court would be taken away from them, but gentlemen we are here making a Constitution—an organic law—and let us go on and do that, and if it is right that the Supreme Court should hold its sessions at the seat of government, let us adopt that plan. I believe that it is right, and therefore I vote for the report of the committee.

Mr. LAUDER. It seems to me that the gentleman from Traill county has raised up here a man of straw for the sake of the amusement that it would afford him to knock it down again. His objection to having a migratory court is that litigants would practically have but one term of the Supreme Court a year instead of three. Now, Mr. PRESIDENT, you will see at once that that is an unwarranted assumption. He has no right to make that assumption, and then base an argument on it and draw a conclusion from it and ask this Convention to accept that conclusion. There is no rule laid down here and no provision, that the litigation shall be conducted in that way. Any man who has a case can demand that it shall be tried in its order, but this proposed substitute does give litigants who live in that vicinity and who for economy's sake consent that their cases be tried at a certain point, the privilege of trying them at that point. There is no compulsion about the matter whatever. He raises the objection that when the court is estab-

lished in this article at Fargo and Grand Forks, then these cities will be in a position to make the State "come down." Mr. PRESIDENT, and gentlemen of the Convention, there are a great many ways in which a city can make the people "come down." The small expense of a room is not the only way in which the public may be bled, and when you get this court established unchangeably, so that it will hold three terms of court in a particular place, I want to ask if that place is not in a position to make the public "come down?" What is there to prevent that place from charging extraordinary fees, expenses, hotel bills—everything else that the public wants? They can make the public pay and you can't help it, for you have got to go there. I would ask the members of this Convention not to forget that the State is simply the people in the aggregate, and when you take a dollar out of the pocket of a citizen you have got it out of the State, and hence if Fargo charged $50 for the use of its court house for Supreme Court purposes for the term, and by holding the term there you save to the attorneys, litigants and the public $200 in railroad fare and hotel bills, is not the State ahead? It seems to me that it requires no great arithmetician to demonstrate this. I don't see how any gentleman can oppose this substitute on principle. I don't wish to insinuate that any gentleman is actuated by any improper motive, but it seems to me that the interest and welfare of the public demand this. The Red River valley furnishes three-fourths of the business for the Supreme Court, and I would like to ask upon what principle the attorneys and litigants of that valley shall be required to travel clear across to the Missouri river in order to do business that they have a right to do nearer home? It is a right they have to have the court near them.

Mr. SPALDING. I desire to say just one word on this subject. There has been a great deal said about a migratory court. It has seemed to me, as the gentleman from Richland has said, that it was a good deal like setting up a man of straw for the purpose of knocking him down. In no article in this Constitution, or proposed article, is there any provision requiring the Supreme Court Judges to reside at the seat of government. If there were such a provision there might be a little sense in the argument, but assuming that the judges will be elected, as they naturally will be, one from the lower Red River valley, one from the upper Red River valley and one from the Missouri slope or somewhere in that vicinity, where is the migratory Supreme Court? In the one

instance we have a term of court held every four months near the residence of one of the judges, while in the other case we have none of them held except at the residence of one of them. One word in regard to the dignity of the matter, which has been touched upon. I resided for some time in a state that held a term of the Supreme Court in every county in the state. That would not be practicable here, owing to the large number of counties and the large number of small counties, but place it on a principle as nearly equal to that as possible, and owing to the vast extent of our domain, this point of placing the Supreme Court at three different centers comes as nearly as possible to such a proposition. In that state every litigant can go into the Supreme Court with comparatively no cost to himself. Here in this Territory we have been in the habit of paying for our expenses of attending the litigation in the Supreme Court, from $50 to $100 and $200 a case, simply because of the inaccessibility of the court. We need to do away with that as far as practicable. We cannot do away with it altogether, but let us put the Supreme Court where it will be the most convenient for the greatest number. The gentleman from Traill may have a case that he gets a decision on in the district court, too late to get into the next term of the Supreme Court, and it may be that he will have to go to Bismarck. But there is only one chance in three that he would have to do that—only one time out of three, and twice he would not. Here he proposes to cut off his nose to spite his face and go to Bismarck with his cases three times when there is no need for him to go more than once. I think that remarks in this Convention as to what occurred in the committee room are somewhat out of taste, and ordinarily I would not refer to them, but inasmuch as the gentleman from Traill has seen fit to bring in the position of members on this question in the committee room, I would say that I think that when section one of this article comes to be acted upon, the gentleman from Traill will take a position that is somewhat inconsistent with the position he has taken now.

Mr. SELBY. Very briefly in answer to the gentleman from Cass, I don't suppose that a member of this Convention transgresses the rules of proper decorum when he makes reference to a discussion that had occurred in a committee, having the matter under advisement that was before the Convention for discussion. If so, I must certainly beg the pardon of the gentleman. Nevertheless, my proposition was simply this—the gentleman from

Richland made the statement that if the Supreme Court was itinerant, that then the cases would be distributed, and the litigants would save expense. I took occasion to make the remark that that was discussed in the committee, and I took occasion to state to this Convention that that was the very reason why I oppose an itinerant court, because the Supreme Court can make a rule and say that in a certain district the cases will be tried in Fargo, and I shall not be able to get my case before them at Bismarck if I want to.

Mr. NOBLE. Is it provided in this motion that the names of these places will be substituted in place of the report of the Committee of the Whole ? I would make the point of order that the report of the Committee of the Whole cannot be amended by the Convention. It can simply be rejected, or that portion of it, or accepted.

The Chair ruled that the point of order was well taken.

Mr. MILLER. The motion of the gentleman from Richland was to substitute.

Mr. O'BRIEN. The report of the Committee of the Whole is before the Convention for adoption or rejection, and the gentleman from Richland asks to substitute something for that portion of the report which is section four.

Mr. PURCELL. My intention was to offer this as a substitute for section four. The matter was argued yesterday in the Committee of the Whole and every delegate was acquainted with the substance then, and although I did not write it out and hand it in every one knew what was the nature of my substitute.

Mr. PARSONS of Morton. Do I understand that the Chair rules that it is impossible for the Convention to amend the report of the Committee of the Whole ?

Mr. PRESIDENT. You must adopt the report of the Committee of the Whole or reject it, but the Chair holds that this substitute is in order.

Mr. ROBERTSON. I would like to inquire if the action we are now about to take extends to sections three and two?

Mr. MOER. Under the motion to adopt the report of the Committee of the Whole it is necessary for those of us who don't favor the proposed substitute to vote against two and three.

Mr. ROLFE. We passed a resolution providing that we would adopt one section at a time, and then we proceed to take four sections at once, and this results in confusion.

Mr. JOHNSON. I call for a division of the question. We are entitled to a division of the question.

Mr. PURCELL. At the commencement of the consideration of this matter I made a motion that this report be considered section by section, but some one raised the point that unless some one objected to the sections as they were read, they would be considered adopted. I withdraw my substitute for the present.

Sections two and three were then adopted.

Mr. PURCELL. Now I move my substitute for section four.

Mr. PRESIDENT. We must adopt section four as reported by the Committee of the Whole or reject it.

Mr. PARSONS of Morton. I wish to speak on a point of order. I understood yesterday that it was impossible at that point to offer an amendment to anything in the Committee of the Whole, and it was distinctly understood that it would be possible that the report of the committee should be amended. The proposition is this—can a report of the Committee of the Whole be amended? The report of the Committee of the Whole has no more prestige than the report of any other committee before this House. It seems to me to be the most preposterous proposition put before a body that a report cannot be amended. There is no gag law known to man that would be any more tyrannical than that. We have been amending reports ever since we began our sessions here. We have cut and slashed them in every direction, and now we have a report before us and the question is raised whether or not we can amend it. Mr. PRESIDENT, we have adopted a set of rules here to govern us, and I call for the rule on this point.

Mr. STEVENS. I move that section four of this report be recommitted to the Committee on Judiciary.

The motion was seconded.

Mr. JOHNSON. It occurs to me that there will never be so good a time to pass on this question as now. We have discussed it thoroughly, and we know exactly what the point at issue is. It seems to me that affairs have got to a pretty pass if we cannot pass on this because it will inconvenience the clerk. What are clerks for? We are not here to take their orders—to be gagged in that way. It is very evident, and perfectly clear to my mind, that a decided majority of the delegates here are in favor of the amendment offered by the gentleman from Richland. Are we to be denied the privilege of voting on this simply because the clerks

will get confused in keeping the records? It seems to me that it would not be very difficult to get a clerk that is competent to write down that a substitute was put in, in place of this section.

Mr. O'BRIEN. It seems to me that this is purely a question of procedure, and it is not necessary to say anything about gag law. It resolves itself down to this—the Chair rules that we must first accept or reject this section. Then after that action, the amendment or the substitute of the gentleman from Richland would be entitled to be brought before this Convention.

Mr. PARSONS of Morton. We have passed quite a number of articles and have sent them to the Committee on Revision. The understanding is that they will come back for adoption or amendment. If it is not possible to amend the report of the Committee of the Whole, we had better settle that question now, and I call for the ruling of the Chair on this question whether we can amend the report of the Committee of the Whole.

Mr. BENNETT. Is there a question before the house?

Mr. PRESIDENT. The Chair will rule that the substitute of the gentleman from Richland is in order, subject to appeal and that it can be placed in this report of the Committee of the Whole.

Mr. STEVENS. If that is the ruling of the Chair, I will withdraw my motion to recommit.

Mr. MILLER. I want a roll call on that motion if we have got to it.

The vote was then taken on the substitute of Mr. PURCELL to section four, and the substitute was adopted by a vote of 48 to 26.

Mr. SCOTT. I move that the words "one," "three" and "five" be inserted in place of the figures "3," "5" and "7" in section eight.

The motion was lost by a vote of 51 to 17.

Mr. JOHNSON. I have an abiding conviction that the people of this state want their officers elected for a definite term, and therefore I offer this amendment to section nine: After the word "clerk" in the first line insert the words "elected by the people, who shall hold his office for the term of four years."

The amendment was lost by a vote of 46 to 25.

Mr. RICHARDSON in explaining his vote said: I vote no. Yesterday when the same question came up I voted yes. My reason for voting no is that every delegate who had a resolution up yesterday that was defeated has run it in to-day. There has been noth-

ing accomplished to-day yet, and I think it better to let the report of the Committee of the Whole go to the Committee on Revision, and take action when the articles come up for final adoption.

Mr. CARLAND. I renew now my motion made in the early part of the session, that the report of the Committee of the Whole, as far as section nineteen is concerned, be not adopted.

Mr. WILLIAMS. I hope that the motion will not prevail. My colleague read a decision from the Supreme Court of Colorado, and I think it is easy for the members to understand why that court gave that decision. The Legislature did not submit to the judges, as it will appear, a particular bill, and ask their opinion on that. It seems to me that this provision should present itself to every member of this Convention. It places every member of the Legislature on an equality. It places a man unlearned in the law on the same footing as the man learned in the law, and it avoids forcing on the statute books an important law which may affect the whole people of the State, and afterwards have it declared unconstitutional. It seems to me that the motion of the gentleman from Burleigh should not prevail.

Mr. MILLER. I raise a somewhat different objection to the article from that which has been stated. The fundamental principle of our constitutional government is that it should be divided into three departments—legislative, executive and judicial. Under the article as adopted by the Committee of the Whole yesterday the Legistature may at any time, or any faction or bare majority, may ask the Supreme Court for their opinion. Suppose the Supreme Court were politically inclined towards the minority of that Legislature, if they gave their opinion they would shape it so as to help out their political friends. It would be political judicial legislation that would follow, and the Supreme Court would legislatate from the fact of their being called on to advise the Legislature. That is what it would amount to. It would interfere with the division of the government into its three departments. I object to it also because it would be burdensome to the Supreme Court; would result in no good to the people; would make the Supreme Court the legal advisers of the Legislature, and they would have to pronounce in advance on questions and without a trial, that would afterwards come before them to decide where the rights of parties would be involved. They would thus almost feel forced in some cases to abide by their original opinions, and the litigant would not get his rights nor would the law be administered as it

should be. I object to it on that ground—that it binds the Supreme Court in advance. The Supreme Court would become, when they had rendered an opinion, the attorneys of the party in whose favor they had rendered their opinion, they having rendered it without hearing the evidence on more than one side. When I go into court with a case that involves the same opinion, they have already expressed their views, and yet they are sitting on the bench as a Supreme Court to decide my rights. It would result in the gravest of wrongs; injury to the poor and the rich man alike, and would thwart the ends of justice.

Mr. MOER. I can't let this question go by without uttering my protest against the adoption of the section as it came from the Committee of the Whole. It seems to me that all we have to ask ourselves is—what will the Supreme Court do? Will they simply be an addition of three more lawyers to the legislative body? That it seems to me is all there is in it. Their opinion on these supposed questions will be *ex parte*, and without a hearing, and will be entitled to no more weight than that of the lawyers who may be present as members of the Legislature. A gentleman stated yesterday that a large amount of expense would be saved. But if even there was any expense saved it would be to the litigants. The State does not pay the expense for fighting these laws that it is claimed are unconstitutional, or for taking them before the court. The litigant will bear the burden of the expense, and it is a matter of small concern to this Convention whether they do or not. The gentleman stated that a small minority of lawyers in the Legislature, in the interest of the corporations, would get up and tell the majority that the law they were about to pass was unconstitutional. I venture the assertion that if a majority of lawyers get up on the floor of the Convention and say that a proposed bill is unconstitutional, it is just as safe to believe them as it would be to believe the Supreme Court if they said so. The lawyers in the Legislature, for the sake of their reputation, would desire to be right on the proposition, and they would investigate a question, look it up, and when they said it was unconstitutional their judgment would be entitled to some weight. The Supreme Court might not be able to investigate the matter and give you an off hand opinion. To place all men on the floor of the Legislature on an equality is something that nobody can do but Almighty God. It cannot be done by law. If men are unequal there is no law that will make them equal. The

decision of the Supreme Court in such a matter would simply be an addition of three more members to the Legislature.

Mr. LAUDER. The whole argument as advanced by the gentleman from Burleigh proceeds on the assumption that some of the members of the Legislature are in great danger from the lawyers. I am an humble member of the profession myself, and I don't believe that there is anything in the record of the lawyers of Dakota that warrants any such assumption. They don't need any defense at my hands; their record defends them, and I venture the assertion that of the same number of men, there will be found no greater integrity, no greater virtue than there will be found in the lawyers of North Dakota. This idea of talking about the lawyers as being tricksters is simply wrong. It is done for a purpose, and it is no credit to the intelligence of the men for whose benefit it is said, that it should be said. It is said that the lawyers will be interested in the corporations. They won't all be interested. There may be corporation lawyers in the Legislature, but I venture to say that all of them won't be corporation attorneys. Lawyers will have divers ideas, the same as other members, and if it is sought to have the impression created that the lawyers will be bought, I would suggest to the gentleman from Burleigh county that the lawyers are no cheaper than parties belonging to some other professions.

Mr. CLAPP. I cannot expect to add anything to the discussion, but I do want to place myself on record as being in hearty sympathy with the motion that this section be not adopted. It seems to me that we need stronger reasons than any that have yet been mentioned why this section should stand. The gentleman last night referred to a body of men who would meet and pass resolutions, and petition the Legislature to pass certain laws; and then some one would rise in the Legislature and say that the law was unconstitutional, and then it should be referred to the members of the Supreme Bench for their opinion. The gentlemen on the Supreme Bench, will be, perhaps, the peers, but not the superiors of the lawyers of the Legislature, and unless the case is tried before the court, and argued before them, they are just as liable to make a mistake as anybody else. Suppose an action is proposed that would be a benefit to the people, and they on their *ex parte* testimony, declare that it is unconstitutional, and the arguments, if properly brought before them, would have convinced them that

it was not unconstitutional. Then, in that case, the people would be deprived of a law that they needed and were entitled to.

Mr. JOHNSON. There is another view of the case which has occurred to my mind, and which has not been thoroughly discussed, and it is this—the premises of the gentleman from Burleigh are perfectly correct, namely, that the officers of the State and the Legislature, should have some guide in legal matters. So far, so good; we concede that, but his logic is wrong—his conclusion is fallacious. He draws the conclusion that the only way to get this legal advice is to put it in the Constitution that the appeal for legal information shall be made to the Supreme Court. We have a department specially provided to fill that—it has come down from the tradition of our fathers. What do we have an Attorney General for but to give this advice? His occupation would be gone if we were to adopt the report of the Committee of the Whole. The only advantage that the Supreme Court has over the justice of the peace is that it has the last of the case. They are no more likely to be right than men who are not clothed with official positions. They are no more likely to be right than the Attorney General. He will be elected for his integrity, ability and reputation he has obtained in a professional way. The Legislature should have some right. The men who come here to make the laws should be clothed with some power to put them on an equality with those who are learned in the law. The only question is, what department of justice shall they call on. You take in our counties. Here in Dakota very few of us have had any experience beyond county politics. I hold the office of district attorney, and it is the duty of the district attorney to furnish legal advice to the county officers and the county commissioners when called on. That is exactly the province of the Attorney General in the State—that is the province of the Attorney General at Washington. In order to harmonize and be consistent throughout, we should adopt the amendment offered by the gentleman from Burleigh.

If there is one principle we have become familiar with, and that the people believe in, and that our history and our laws and Constitutions have been adjusted upon, it is that a judge should not sit on the bench to try a case in which he is personally interested, or in which he has given counsel. In this very report we have provided that where a Judge of the Supreme Court has been interested in a case the other judges are to call in a District Judge to

sit in his place. Our Supreme Court will be made up of practising attorneys that have practised law in the courts of the Territory. Many of their cases that they have been interested in will come before their court, and we have foreseen this. The same argument applies here. They should be free and untrammelled when the time comes for them to decide a case, to decide it according to the law and the evidence and the letter of the statute, without being warped by any opinion that they may have had to give in an hour of excitement possibly, or political anxiety—in an hour when the authorities were not given and the argument was not made. The Attorney General, the proper man to dispose of these questions and give this advice, would be in a different attitude altogether. His position would not be compromised. He would have one side. The people who would say that it was unconstitutional could in no possible contingency call on the Attorney General, and he would consistently make the best fight he could.

Mr. WILLIAMS. The gentleman in criticising my remarks insinuated that I had cast some reflection on the lawyers of the Legislature. I heartily agree with the gentleman when he said that the lawyers elected as a rule are quite as honorable as any other men chosen, but there are always in attendance at every session of the Legislature a great many lawyers who are not members and who almost always represent corporations. They appear before the legislative committees and make arguments and work with members privately, and in the committee rooms, and in that way confuse and annoy the members. Now my understanding of this provision is this—that the Legislature will only on very extraordinary occasions ask the opinion of the Supreme Court and that will be on measures affecting the whole people—very important pieces of legislation. They will be asked to give their opinion on the constitutionality of proposed bills.

Mr. CARLAND'S motion, that the section as reported by the Committee of the Whole be stricken out, was adopted.

Mr. PARSONS of Morton. I have serious objections to section seventeen (in the original File) as it now stands. The judges are human, and may be sick. They may be unable to attend to their duties, and under this provision none of the other judges can issue a writ or interfere in any way. All legal processes in that district must be at once stopped till the judge returns from the visit he is making or gets well. It seems to me that there should be a provision made here whereby if a judge is interested

in a case, there may be an exchange of judges, and another judge can occupy his seat, or if a judge is unable to attend to his business they may apply to the judge of another district, not to try cases necessarily, but to issue remedial writs and so forth. I don't believe that the mover of this section ever intended that it should work the hardship that it will work if allowed to go as it is.

Mr. BARTLETT of Griggs. I would refer the gentleman to section thirty.

Mr. PARSONS of Morton. I withdraw my objection.

THE SUFFRAGE QUESTION.

Mr. POLLOCK. I move that the report be adopted without further reading.

Mr. MOER. I move that the report be adopted, except as to section two of the Franchise report, which shall be made to read after the word "sex," (striking out all thereafter)—"But shall not extend or restrict the right of suffrage without first submitting the question to the voters to be ratified by a majority vote." Then the substitute which I move for that recommended by the Committee of the Whole will read as follows :

SEC. 2. The Legislature shall be empowered to make further extensions of the suffrage hereafter at its discretion to all citizens of mature age and sound mind, not convicted of crime, without regard to sex, but shall not extend nor restrict the rigl t of suffrage without first submitting the question to the voters to be by them ratified by a majority vote.

In offering this I do it with the view that all questions involving so much to the people as the extension of the right of suffrage, of fully extending it, doubling it in fact, should be submitted to the voters to be ratified. I believe the voters should have a chance to say whether they want it or not, and that it should not be left to their representatives, who may not represent them on that issue. The effect of the adoption of this section in the Constitution would be to place it in the power of the Legislature at any session to pass a law granting the right of suffrage to women, but before that law would take effect—before they could exercise the right of suffrage—the question would have to be submitted to the voters for their ratification. If it were defeated, then at the next session, or the second, or third or fourth, they could again submit it. So the matter is left in the hands of the Legislature to submit the question to a vote of the people, once or forty times. It leaves it so that when any demand is made on the Legislature

to extend the suffrage to women it is within their power to grant it so far as the legislative power goes, but the people must ratify it. I believe that that is what we should have, and I don't believe that anybody can consistently or logically defend any other position, for whatever great changes we want made should be first voted on directly by the people. We have a prohibition question, and it is universally agreed that the people should be the ones to say whether we shall have prohibition or not. The Legislature can enact a law, and if it fails of ratification they may again at some future time enact another law to be again submitted.

Mr. SCOTT. I was not in favor of the resolution or the section as it passed the Committee of the Whole, and under the form in which it was discussed and the manner in which it came up it admitted of no amendment whatever. The section had to stand as a whole or fall altogether. I believe that this is a matter of great importance—that the question as to whether or not there shall be woman suffrage is of equally as much importance as anything that will come before the people of this State. I regard it as being a matter of far greater importance than prohibition, which we will submit to the people for their acceptance or not. If we consider that the question of prohibition is of so much importance that it should be submitted to a vote, why should not this question of woman suffrage also be submitted? I would as soon, and rather, see the word "male" stricken out of the first section right here and now, and extend suffrage to women right in the Constitution, as to have the clause as it now stands form a part of this Constitution. I am satisfied if this clause as it now stands becomes a part of the Constitution, it is only a question of a very short time—from now to the next Legislature, or perhaps a year longer—when it will become a law. The question is not one that has been sufficiently thought of by the public, or demanded sufficiently by the public for us to take this step at this time. There has been no serious discussion of the question—it has only been agitated by a few, and so far as I am personally concerned I should be willing to leave it to the women of the State themselves, provided they would get out to vote—to leave it to them to say whether or not there should be woman suffrage.

Whether we want woman suffrage or not is not a question to be discussed here, but when we adopt section two and leave it in the shape it is now in, with the number of people who come here year after year for the purpose of influencing the Legislature, we might

as well just strike out the word "male" and have woman suffrage at once. I don't believe that it is a fair proposition that we should confer on the Legislature the power to enact a law that they have no right to repeal, and that is just what we are doing if the section which we carried yesterday is adopted. We say that the Legislature shall be empowered to make further extensions of suffrage at its discretion. If they pass a law of this sort, it is gone beyond their control, for the words of this section provide that they shall not restrict the suffrage without a vote of the people. Why should we give to the Legislature power to extend the right, when we take from them the power to restrict it? Is it not equally fair that the people should vote as to whether or not it shall be extended, as that they shall vote as to whether it shall be restricted? I am in favor of the proposition of the gentleman from LaMoure, and if section two passes as it is now, I would rather have the word "male" stricken out of the section, and let us have woman suffrage at once. I don't believe that it is demanded except by a very few people who live in the State. It has not been agitated; it has not come up sufficiently for discussion, and we should be careful. I believe in letting the people vote, and if they desire it I don't know of any better judges as to whether or not we should have it than the people. The Legislature is certainly not superior to the people. Why, then, should they have superior wisdom that they should say what the people want, whether they have been elected on that issue or not?

Mr. POLLOCK. I have very little to say for the reason that this matter was thoroughly and ably discussed in the Committee of the Whole yesterday, and it was passed by a good vote. It seems to be unnecessary that we should go over all this ground to-day before proceeding with a vote on this report. But I desire to refer to one or two of the objections urged in connection with this amendment. In the first instance the gentleman from LaMoure says that no matter of importance should be intrusted to the Legislature. I would ask why permit the Legislature of the incoming state to pass any law of importance without submitting the question to a vote of the people? If it is good in one instance it is good in another. It may be urged that this is of greater importance than many other questions that will come before the Legislature; but no Legislature is going to pass on a subject of as great importance as this without knowing the will of the people is behind them. They may determine that it is in ac-

cordance with the will of the people, that the matter be submitted to a vote of the people for ratification. It is in their power under this section to do that, or to pass on it in some other way in their discretion. The further objections urged that they may pass a law that they cannot appeal. In the first place they are acting as representatives. If they are required to submit it to the people they submit it, not to the whole people, but to a portion, taking in as it does the negroes, the naturalized citizen, the civilized Indian, and the man who may have declared his intention of becoming a citizen—in fact to all except those who are vitally interested in the matter. On the other hand if you restrict the Legislature, and prevent them from repealing the law of their own motion, then they must submit it to a vote of the whole people to determine whether or not the women shall continue to exercise the franchise. I hope that no amendment to this section will be permitted. If it is to be amended, it might as well be stricken from the Constitution altogether, for if we are to have a vote of the people and it is to be necessary to vote on it, we might just as well have a constitutional amendment substituted as to the question of woman suffrage. This is as long as it is broad, and if the amendment prevails we might as well exclude the section entirely.

Mr. ROLFE. The gentleman from Cass refers to the point made by the gentleman from Burleigh that we permit negroes, ignorant negroes, full citizens, partial citizens, persons of Indian descent who have severed their tribal relations to vote, and therefore they are not capable of passing on this grave question. But we must not forget that the Legislature to which he proposes to relegate this problem, are elected by the very class of citizens whom he thinks are not capable of self-government Yesterday when this section was passed, the vote by which it passed surprised me, and I cannot yet believe that all who voted in favor of the section as it now stands clearly understood that they were voting for the incorporation of this in the Constitution, thereby taking it out of the power of the people to settle this matter except through their representatives in the Legislature. I desire to remind the gentlemen of the Convention that the amendment of the gentleman from LaMoure simply and solely leaves this grave question to be settled by the people and all the people, rather than by a small body—often times not clearly representative—namely, the Legislative Assembly.

Mr. HARRIS. I don't propose to take up the time of this Con-

vention, but I have one objection which has not been mentioned. I am perfectly willing that the Legislature shall have the power to give the vote to women, but I am not willing that one Legislature shall enact a law which another cannot repeal. This section says that the right of suffrage may be extended, but shall not be restricted without a vote of the people. For that restriction I am not in favor of the section.

Mr. BARTLETT of Dickey. I am aware that there are a great many things in theory that are very good, as long as they are theories, and I am also aware of the fact that we heard a very earnest speech in favor of female suffrage here—a subject that I did not know was before the house. I am also aware of the fact that in all my travels wherever I have been, if the question was put to a promiscuous crowd of ladies as to whether or not they wanted to vote, they have always said no. The answer to that made by the advocates of the theory is that the ladies are enslaved. They have lived so many years and they don't know what they do want, simply because they are enslaved. I ask every gentleman here, and every woman here, if by their experience there is true happiness in those families where they are calling for female suffrage. What is your life's experience? Echo answers every time, that where two parties fight with one another in the same family, that happiness does not follow. In some churches they prohibit marriage because of differences in religious views. Do you know a family where one of the members of that family is strongly orthodox and the other is strongly liberal, that in nine cases out of ten it does not make sorrow in the family? Certainly it does—it is the history of the world. The only way we can tell about this thing is to take experience—what we have seen in life. Three years ago in St. Paul, the women of America who believed in woman suffrage met in convention and they had a lady reporter that reported that convention. There were there 500 of the most talented women in America. I don't deny their talent and ability, but I do deny most emphatically that the principle they advocated would bring any happiness into the world. The lady who reported that meeting wrote me and, said she: "In their countenances you could see intelligence, but you could also see sorrow and woe. They are anything but happy people, and their countenances show that their homes are not happy." Show me one single individual family that is in favor of woman suffrage —I mean those who make a business of it—and how are their

children? Do they raise a family equal to those who don't believe in it? No. That is life's experience of those who have noticed these things. Do you believe for one moment that where a man and woman are living together and they are both seeking for greatness—has not your life's experience taught you that they do not get along well together? Are you not aware of the fact —every gentleman here—that in such a case they won't pull in unison together. They may be both republicans or both democrats together, but the moment there is a discord, and unfortunately it will come in a great many cases, that very moment if the man is a republican the woman will become a democrat, or if the man is a democrat the woman will become a republican. That is the history of the world, and there will be bickering. Anything that brings discord and sorrow into the family is not for the best interests of the people.

Mr. PARSONS of Rolette. I move the previous question.

The question as to whether the main question should be now put was carried.

The amendment of Mr. MOER was adopted by a vote of 35 to 25.

Mr. HARRIS in explaining his vote said that he was in favor of giving the Legislature the power to extend the franchise to women, but thought it should also have the power to repeal the law.

Mr. SPALDING. I move the following amendment to the substitute of Mr. MOER:

SEC. 2. The Legislature shall be empowered to make extensions of suffrage to females of mature age and sound mind, not convicted of crime, and if such extension is made, may at any time thereafter restrict the same.

I move this because in private conversation with members I have heard them express themselves as willing to vote for this, provided the Legislature is given power to repeal such a law as a previous Legislature may have passed, and such was the tenor of the remarks of one or two gentlemen.

Mr. LAUDER. I hope this motion will not prevail. It seems strange that in regard to this particular question the advocates of woman suffrage are so very much averse to leaving this question to the people. I am opposed to this amendment for the same reasons that I stated here yesterday. If we leave it to the people to determine it will be settled finally as the policy of the State, but as long as it is left to the Legislature it will be up this term, and next term and the Legislature will be overwhelmed

with petitions and lobbies and their work will be obstructed. I don't care to criticise the advocates of this measure here, but my impression always has been that any proposition, the mover of which was afraid to submit to the people, was not a proposition that should be received with favor. The people are the source of power in this country, all the power is vested in the people, and it seems to me that in a question of this importance the people should be allowed to speak, and when they do, be it one way or another, it should be final. That question is then settled and accepted as the policy of the commonwealth. I would not oppose an amendment here providing that when it is submitted by the Legislature all persons over 21 years of age should vote, women and all. I would give them a chance in the Constitution—in the document we are forming here—to vote on this question as well as the men. I don't want the Legislature to go to work and pass this law without saying a word to the people about it until after it is done. Probably there will be a lobby to repeal it and then another lobby to pass it again. Leave it to the people—that is the tribunal to which this question should be referred for final adoption.

The amendment of Mr. SPALDING was lost by a vote of 26 to 34.

Mr. TURNER. I move that the report of the Committee of the Whole be amended so as to read:

"The Legislature shall be empowered to make further extensions of the suffrage hereafter at its discretion to all citizens of mature age and sound mind, not convicted of crime, without regard to sex, but not to hold office, but as otherwise provided for in this Constitution, without being submitted to a vote of the people."

Mr. TURNER. I rose twice before to say something on this question, but there seemed to be an effort to shut off anyone that had something to say on the side that I take. It has been argued that if this matter is left to the Legislature to grant the privilege or right of suffrage to women, and also the privilege as so provided in the last amendment, of restricting that at their pleasure, it would lead to the enactment at one session of the Legislature of a law that would be repealed at the next session. I submit that that has not been the case where this question has prevailed in other states—in those states where the suffrage has been extended to women. In Kansas where suffrage has been granted to women in municipal matters, it has met with such favor that it has not been a matter for the Legislature to deal with at one session since

it was granted. It has been argued here that if the elective franchise was granted to ladies, the result would be unhappiness in the home, and to prove that position it was presented before you as a consideration that would influence your votes that at a large gathering of ladies that met at St. Paul some time ago, they were described as being very unhappy in appearance. Now, Mr. PRESIDENT, I want to present to you the fact that persons who are enslaved are not usually very happy. Some time ago an individual was down in the Southern States when slavery prevailed there, and he saw a slave girl on the block to be sold. The tears were running down her cheeks—her eyes were fixed on the ground, and she was the very picture of misery and unhappiness. The gentleman went up near the block, and when bids were invited he bid, and the girl was sold to him. He then said to the poor creature: "Now you are free." She did not understand the meaning of the term. When he began to give her advice and tell her what she should do, saying that she was free, the thought dawned on her mind what was meant by the gentleman's purchase. As he moved away she ran after him exclaiming: "I'll serve him for ever; he redeemed me." Is there any reason why these women should be happy when they are deprived of their just rights and privileges, and are compelled to obey laws in which they have no right to cast a vote or say whether these laws shall prevail? Is it not reasonable that these women should be unhappy when they see their sons dragged from their protection, under the influence of those who are following what they hold to be an unlawful business, dealing out that which destroys the manhood of their sons, and which curses and blights——

Mr. NOBLE. I think that the gentleman should confine himself to the amendment.

Mr. PRESIDENT. The gentleman will speak to the amendment.

Mr. TURNER. It has been argued on this floor that the right of suffrage should not be granted to women by the Legislalature on the ground that the Legislature would have no power to withdraw that suffrage, under the article that is being considered. I hold that when the privilege has been granted to a people of exercising the franchise, that then after exercising that privilege, after having lived in the enjoyment, it is improper to take away the privilege granted to them without giving them a voice to say whether they should have it taken away or not. I hold that when

the suffrage has been granted to men who may come to this Territory who have not become citizens of the United States—that privilege should not be taken away from them except by a vote of the people. I hold that when Indians have severed their tribal relations and they become proper citizens, and are given the enjoyment of the franchise, they should not be deprived of it without having a voice in the question as to whether they should suffer that deprivation or not. When the suffrage is granted to females they should have a voice to say whether that privilege should be restricted, and whether they should further enjoy that privilege or not. Holding these views as I do, I am anxious that this amendment should pass, so that the right of the franchise may by the Legislature be extended to women, but not the right to hold office unless the voice of the people so declare.

Mr. FLEMINGTON. It seems to me that this question has been very thoroughly discussed, and the two sides represented, and I move the previous question.

The motion of Mr. TURNER was lost.

The article as amended by Mr. MOER was then adopted.

EVENING SESSION.

Mr. RICHARDSON. If it is in order I would move that the Convention resolve itself into a Committee of the Whole and take up the report of the Legislative Committee in reference to the number of senators that there shall be.

Mr. PRESIDENT. The unfinished business is the report of the Judiciary Committee.

Mr. PURCELL. I presume the purpose of the motion of the gentleman from Pembina is to allow the Apportionment Committee to get to work. They have delayed in getting their report out till the Committee on Legislative Department have reported.

Mr. SCOTT. Would it not be well for us to complete the adoption of the report of the Committee of the Whole of yesterday? We have still a part of that before us.

Mr. WILLIAMS. I think we would expedite matters by following the resolution of the gentleman from Pembina. The Committee on Apportionment desire to get to work and they cannot proceed till the Convention has acted on section two of the report of the Legislative Committee. I think we would do well to dispose of that question.

Mr. MILLER. I move to amend the motion in this—that we proceed to the consideration of section two and eight of the legislative article as it now exists without going into the Committee of the Whole. I think that our experience has been that the work in the Committee of the Whole has been almost useless. We spent the entire day yesterday and the evening in considering matters in the Committee of the Whole, and we have spent all today in undoing what we did yesterday. I object most decidedly to going into Committee of the Whole. I see nothing to gain by it except procrastination and delay. Our rights are all protected in this body more fully than they can be in Committee of the Whole, and when we do something here we have got it done ready to go to the Committee on Revision and Adjustment. If we do it in the Committee of the Whole it will be taken up here again, and spend more time over it, which will be wasted.

The motion was seconded by Mr. BARTLETT of Griggs.

Mr. ROLFE. I think that the Committee of the Whole has acted on section eight, and the Convention has adopted the report of that committee on section eight.

The motion of Mr. MILLER was carried.

Section two of the report of the Committee on the Legislative Department was then read as follows:

"The Senate shall be composed of not less than thirty nor more than fifty members."

Mr. PARSONS of Morton. I move the adoption of this section.

The motion was seconded, and carried.

Mr. STEVENS. I understand that section two is adopted. Does that adopt it as one of the articles of this Constitution?

Mr. PRESIDENT. The Chair is of the opinion that under the rules that takes it to the Revision Committee. It has to be adopted again as the Chair understands it after it comes back from the Revision Committee.

Mr. PARSONS of Morton. I suppose it is generally understood that when we use the word "adopt" we adopt it as a proposed article or section, and it goes to the Revision Committee, and then comes back to us for third reading.

LEGISLATIVE APPORTIONMENT.

Mr. NOBLE. I understand that the Chair rules that section eight of this report has been adopted. I would like to ask if that

section is adopted as reported by the committee in the Journal page eight, July 31st.

Mr. ROLFE. The report of the Committee on the Legislative Department was withdrawn except as to section eight, and the report that was subsequently introduced is File No. 129. File No. 129, section eight, reads as follows: "The House of Representatives shall be composed of not less than sixty nor more than 140 members."

Mr. SCOTT. I am laboring under a mistake if that is the fact. Has the last report of the Legislative Committee been printed and laid upon our desks?

Mr. ROLFE. It has.

Mr. SCOTT. That is certainly not the section that was reported by the Legislative Committee. The report had been submitted, but the members had not signed it, and the Chairman requested leave of the Convention to withdraw the report and section eight was amended.

Mr. FLEMINGTON. As I remember it the Chairman of the Legislative Committee simply asked leave to withdraw the report of the committee except these two sections, and these two sections remained before the Convention as first submitted, and as considered by the Committee of the Whole.

Mr. NOBLE. If that is the case there must be a supplemental report of the committee to the report that was adopted by the Committee of the Whole. What I am opposed to is this section eight as amended by the Legislative Committee before the new report or the supplementary report being considered here, as adopted by the Committee of the Whole. I would like to know whether this portion of section eight reading—"who shall be apportioned and elected at large from the senatorial districts" has been adopted by the Committee of the Whole?

Mr. PRESIDENT: That is not as I understand it.

Mr. SELBY. I understand that the proposition was that the Legislative Committee requested to withdraw the article with the exception of sections two and eight. If you will turn to page fifteen of the Journal of Thursday, July 25th, you will find the matter was discussed in Committee of the Whole and the recommendation was made that the Convention adopt section eight. The report was adopted by this Convention with the recommendation that section two be postponed till a future time.

Mr. CLAPP. We find the final determination of the subject

in the next day's proceedings on page two, in which Mr. WILLIAMS is reported to have asked for the unanimous consent to withdraw the report of the Committee on the Legislative Department except sections two and eight, which request was granted.

Mr. SCOTT. The Legislative Committee were acting under a mistake and did not know of the fact, or if they did know, had forgotten. A majority of the committee reported section eight with the amendment which will be found on page eight of the Journal of the 25th of July. The manner in which the section came to be amended was this—we had amended section five—it was the bone of contention, and was the reason the report was asked to be recalled. We amended section five and would have inserted in that the part that we put on to section eight, but we thought it was better arranged and in a better place to add it to the end of section eight. We had it all prepared and added to section five, but at the suggestion of Mr. WILLIAMS and some other gentlemen of the committee we came to the conclusion that the better place for it was at the end of section eight, and therefore I would move if it is in order that section eight be amended by adding to it the following words: "Who shall be apportioned to and elected at large, from each senatorial district."

Mr. NOBLE. This seems to me to be amending the report of the Committee of the Whole which I think we have had a ruling upon. Section eight has been reported back from the Committee of the Whole and adopted. Now it is proposed to amend that section.

Mr. SCOTT. I will withdraw that motion and put it in this form: That the following words be added to section eight of File No. 129: "Who shall be apportioned to and elected at large from each senatorial district."

Mr. NOBLE. Then you will be amending the report of the Committee of the Whole. That is a point of order I shall make. I will say further that at the proper time I shall object to that clause, but I want to do it at the proper time.

Mr. SCOTT. I don't see why we cannot add anything we choose to something that is before the Convention. As section eight originally stood it was adopted by the Committee of the Whole and the report of the Committee of the Whole was adopted. The Committee of the Whole is discharged so far as that is concerned. Now the section is before the Convention for consideration. I don't

ask that any portion of the section that we have adopted be reconsidered, but merely that something be added on to that section. The section is all right so far as it goes, but it does not go far enough.

Mr. ROLFE. I think the gentleman from Barnes is all right in the position he takes. The first portion of section eight has been adopted by the Committee of the Whole, and their report has been adopted by the Convention. Now the gentleman from Barnes proposes to add a clause to the section which has been adopted by the Convention. It cannot be considered as being an amendment to the report of the Committee of the Whole at all, because as he states, that which he proposes to amend, if you please to call it so, is the action of the Convention and not the action of the Committee of the Whole, and it does not come within the ruling of the Chair of a few minutes ago.

Mr. NOBLE. It seems to me that this matter ought to be plain enough. Section eight originally was adopted by the Committee of the Whole and the report of the committee was adopted by the Convention. Under the rules that portion of the article that was adopted is now before the Revision Committee. It is not before us at all.

Mr. PRESIDENT. I think the report of the Committee on the Legislative Department has not been adopted yet. It is still in the hands of the Convention—is unfinished business.

Mr. PARSONS of Morton. Look on page fifteen of the minutes of July 25th.

Mr. CARLAND. I move that the Convention proceed to consider the report of the Committee on Elective Franchise, and let the Legislative Committee find out in the meantime what has been done.

SCHOOL AND PUBLIC LANDS.

Mr. MILLER. I move that the report of the Committee of the Whole be adopted with the exception of section eight and that section eight be re-referred to the Committee on School and Public Lands. I do so for this purpose. In brief it is provided by the Enabling Act under which we are building this Constitution that there shall be a half a million acres of land in addition to the school lands, sections sixteen and thirty-six, set apart for educational and charitable purposes. Now then as to the school lands, sections sixteen and thirty-six in each township, the En-

abling Act or Omnibus Bill provides that they must not be sold for less than $10 per acre. This is all proper enough, for these lands are in localities where they can be sold. As to the half million acres of land which may be used as an endowment for various educational and charitable institutions, the Enabling Act fixes no price at which they may be sold. In section seven of this article it provides that:

"All lands, money or other property donated, granted or received from the United States or any other source for a University, School of Mines, Reform School, Agricultural College, Deaf and Dumb Asylum, Normal School, or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such land as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased, but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the State, and the State shall make good all losses therefrom that shall in any manner occur."

This covers, of course, all of the lands donated to the State except the 50,000 acres donated for the purpose of constructing buildings at the Capital. In section eight which I move to have re-referred to the committee, occurs the following:

All lands mentioned in the preceding section shall be appraised and sold in the same manner and by the same board, under the same limitations and subject to all the conditions as to price and sale as provided above for the appraisal and sale of lands for the benefit of common schools, but a distinct and separate account shall be kept by the proper officers of each of such funds.

The point raised is this—we might just as well provide that the 450,000 acres of land donated for school and charitable purposes in addition to the school lands proper, shall never be sold, as to put in this clause here that they may be sold on the same terms and conditions as the school lands—to-wit, at $10 an acre, for we all know that a large portion of that half million acres has got to be selected west of the Missouri river, in what is commonly known as the Bad Lands, or in the poorer district east of the Missouri river, and they will never bring $10 per acre during the lifetime of any member of this Convention. I desire to have this section re-referred to the committee and ask them to make an amendment leaving the price to be paid for these lands to be fixed by the Legislature, or in some way not to take them forever away from the purpose for which they were intended.

Mr. GRAY. I move that sections nine and eleven also be referred back to the committee.

Mr. STEVENS. The object of the gentleman from Cass in having this section eight re-referred to the committee is this—it has been provided that the land may not be leased to any one person, company or corporation in greater amounts than one section. That was done because the Enabling Act prescribes the same thing. Now the gentleman from Cass desires that remodeled so that in the Bad Lands or places where the lands will be used solely for grazing purposes, if Congress should be induced to pass a provision allowing us to lease more than one section to an individual, we would be able to do so without having an amendment to the Constitution. If we put it in this Constitution we can never get the relief by merely getting it from Congress, for the Constitution will still tie us up. That as I understand it is the object of the gentleman from Cass in getting this re-referred to this committee.

Mr. MILLER. I will add to my amendment that sections nine and eleven also be referred back to the committee.

Mr. CARLAND. No one will say that any institution is mentioned in section seven except educational institutions—to-wit: the University, School of Mines, Reform School, Agricultural College, and Deaf and Dumb Asylum. Section eleven of the Enabling Act says that all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than $10 per acre. It involves the determination of what those institutions are for in section seven. Most of them are for educational purposes.

Mr. MILLER. I thought at first that this covered all lands granted for educational purposes. I don't now believe it bears that construction.

Mr. ROBERTSON. I would invite Mr. MILLER'S attention to that word "herein" in the Enabling Act in section eleven. I think that word is broad enough to cover the whole act. I don't think there is an attorney in this room but will say that in his opinion it covers the whole act—every section in it.

Mr. MILLER. If that is a fact, it could do no harm to have these three sections re-referred to that committee that this specific question might be carefully considered by them and other members of this Convention. If we pass these sections as they are, we irrevocably tie up this land.

Mr. ROBERTSON. I have no objection to having it re-referred, but I do object to have the minds of delegates misled in regard to the meaning of section eleven of the enabling act. That is all. If I had any objection to re-referring this it would be on the ground that it is taking up time to no purpose.

The amendment of Mr. MILLER was adopted.

Mr. TURNER. I wish to call the attention of the Convention to the report of the Committee of the Whole which is now under consideration. It states that after the word "saleable" in line eight, the words "at not less than $10 per acre," should be stricken out, and that when so amended the section should pass. I would say that that will be in direct conflict with the Enabling Act. The Enabling Act says that, "All lands herein granted for educational purposes shall be disposed of only at public sale and at a price not less than $10 per acre."

Mr. MILLER. That is all very clear. The words "not less than $10 per acre," were stricken out of the File because they were superfluous, and served to make the whole File a little doubtful as to construction. The whole point is covered in section six of the same File, "No lands shall be sold for less than the appraised value, and in no case for less than $10 per acre."

Mr. SCOTT. I don't see why, if the report of the Committee of the Whole is not adopted, this should go back to the Committee on School and Public Lands. It will be some time before it can be reported back again to us, and then it will come to the Committee of the Whole again, and will then be reported by the Committee of the Whole to the Convention. Why can't we consider this just as well in the Convention, and decide what we want?

Mr. BEAN. I agree with the gentleman from Barnes. The Committee on School Lands considered this question, and they have been unable to find how they can sell lands for less than $10 per acre. I see no reason for re-referring this ——

The point of order was called on the speaker by Mr. BARTLETT of Griggs, who said: "It seems to me that this Convention went over this report the other day very thoroughly and adopted it, and now a week later we want to refer it back to the committee. I say let us adopt this report of the Committee on School Lands. If we became convinced that we have committed an error, we can remedy it when it comes before us again after it has gone to the Committee on Revision."

Mr. BEAN. I would like to know if I am in order.

Mr. PRESIDENT. You are.

Mr. BEAN. I am entirely opposed to referring this back to the committee without some reason being given. The supposition has arisen in the mind of one man that perhaps we can sell these lands for less than $10 per acre. If there is any ground for that supposition I would like to have the ground brought forth. If we can so sell them I would be glad to receive this report back, but until there is some ground, something brought up in the Omnibus Bill, I don't think there is anything but loss of time to refer it back.

Mr. MILLER. Section eight provides that you shall not sell for less than $10 an acre. The Omnibus Bill does not say that you shall sell these lands for no less than $10 an acre. I am satisfied that if the Omnibus Bill does not require that they shall be sold for $10 an acre, that the committee does not desire that we shall fix the price at that high figure. I think we would all like that the Legislature should fix the price, and if possible so fix it, with the consent of Congress, that more than one section can be leased to one party. We may want to ask Congress, if the Omnibus Bill does really fix the minimum price at $10, to change it by a new congressional enactment as to price, but if we put this in the Constitution, then we shall have to change the Constitution to be allowed to sell them for less than $10, in addition to getting the congressional enactment. It is not necessary that we should have sections eight, nine and eleven to conform to the Omnibus Bill, for if we are debarred by the Omnibus Bill from selling these lands for less than $10 an acre, where is the sense in our adding another obstacle by putting it in this article? We all concede that it would be idle to appraise these lands at $10 an acre, and I would like to have these go back to the committee.

Mr. McKENZIE. For what purpose is section eleven re-referred to the committee? I can see no good reason for so doing.

Mr. MATHEWS. I don't object to section eight being referred back to the committee, but I do object to having sections nine and eleven referred back.

Mr. STEVENS. The motion to refer these back has already been carried, and the question is now whether we shall adopt the report with the exception of these sections which have already been referred back to the committee. In relation to what the gentleman from Cass says, that these lands, if they cannot be sold

for less, Congress might be induced to reduce the price, I would also say that we have already stricken those very words, or words similar, from another section because they were considered, and were shown by the gentleman from Burleigh to be surplusage. If it is true that we can sell these lands for less than $10 an acre, and not conflict with the Enabling Act in so doing, then these words are surplusage and should be stricken out. It cannot possibly do any hurt to strike them out, and as I understand it, the only question before the house now is—shall the report of the committee as amended be adopted? If we do not adopt it, it is still before the House. The question is not before us now as to whether these sections shall be referred back, for we have already voted on that.

Mr. CARLAND. I would move that the report of the Committee of the Whole now under consideration be adopted with the exception of sections eight, nine and eleven. That will leave these sections before the Convention.

Mr. McHUGH. Has not that motion been already made? If so I move the previous question.

Mr. SCOTT. I call for a division of the question.

Mr. STEVENS. The amendment was that sections eight, nine and eleven be referred back to the committee, which becomes part of the original motion and the motion now stands—shall the report be adopted with the exception of those sections?

The main question was then put and carried.

Mr. PRESIDENT. The question is on the motion of the gentleman from Burleigh that the report of the Committee of the Whole, with the exception of sections eight, nine and eleven be adopted.

Which motion was carried.

PROBATE AND COUNTY COURTS.

Section twenty-seven of the report of the Committee on Judiciary was then read as follows:

> 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.

Mr. CARLAND. When the Convention adjourned we were considering this matter, and the pending motion was to strike out section twenty-seven in File No. 121 as just read and substitute therefore section twenty-four of File No. 131 which 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.

Mr. MOER. I made that motion. This question of minority and majority reports is simply on the question of county courts —the only question that is reported on by the minority. It seems that the committee was very nearly divided on this question, standing about eight to seven. The Convention, also, seems to be very nearly divided on the same question, and many who oppose the county court system are willing that it should be tried under certain circumstances and to-day, so as to avoid further conflict, I would move that the Convention refer the matter of county courts back to the Judiciary Committee, and that the Judiciary Committee be instructed to prepare an article creating county courts, but making a provision that any county desiring to adopt the county court system shall first submit the question to the voters of such county, and that in no case shall any county elect a judge of the county court before the general election of the year 1890.

The motion was seconded and lost by a vote of 28 to 29.

Mr. MILLER. I move the adoption of section twenty-seven of File No. 121.

Mr. STEVENS. There is a motion pending that section twenty-four of the minority report, File No. 131, be substituted for the original section twenty-four of the majority report.

Mr. PRESIDENT. But that was made in the Committee of the Whole.

Mr. STEVENS. But the motion that was made in the Committee of the Whole under the understanding of the resolution to-night, would be operative here, as it was said that we were not to go into Committee of the Whole because we would have our work to go over again. It was decided to be the sense of the Convention that we should take up these matters in the Convention instead of going into the Committee of the Whole. I move to amend the gentleman's motion by making it read that we consider File No. 131, section twenty-four.

The amendment of Mr. STEVENS was voted upon and lost.

Mr. PARSONS of Morton. To bring the matter before the House I offer as an amendment that File No. 131 be substituted in lieu therefor.

Mr. MILLER. We voted on that question once, and then we voted to take up and consider the File.

Mr. MOER. I do not think we are here considering this as the report of the Committee of the Whole. We are considering it as a Convention. As I understand the gentleman's motion from Ransom, he moved that we proceed to consider the minority report. The gentleman from Morton offers now section twenty-four as a substitute for section twenty-seven of the majority report.

Mr. O'BRIEN. As I understand the matter, last night or yesterday afternoon we went into the Committee of the Whole for the purpose of considering this and other matters, File No. 121. We proceeded with the matter down to what is now section twenty-seven of the majority report. At that time it was getting late, the committee arose, and a few minutes after we adjourned. No report has yet been made by the Committee of the Whole, or at least no consideration by the Committee of the Whole has been had of the sections from twenty-seven on down to the end of the File. Now it seems to me that the proper thing would be for us to resolve ourselves into a Committee of the Whole and take up these different sections, or do it as a Convention.

Mr. STEVENS. I desire to ask what was done with the report of the Committee of the Whole on the Judiciary so far as was reported ?

Mr. PRESIDENT. It was adopted.

Mr. STEVENS. Did not they also ask for further time to sit, and was not that time granted them ? How are you then to get this out of the Committee of the Whole, having granted them further time ?

Mr. FLEMINGTON. I move that we do now resolve ourselves into a Committee of the Whole for the purpose of considering the Judiciary report.

Mr. PARSONS of Morton. I will withdraw my motion, for I only made it for the purpose of placing these gentlemen in the same light as last night.

The amendment of Mr. FLEMINGTON was seconded and adopted.

Mr. BARTLETT of Griggs. I move that section twenty-seven of File No. 131 be substituted for the same section in File No. 121.

Mr. MILLER. The motion as made by the gentleman from Griggs was covered in the last sitting of the committee, for I at that time moved to substitute twenty-four for twenty-seven.

The CHAIRMAN. The Clerk says that the records do not so show it.

Mr. WALLACE. I wish to move an amendment—that in the minority report after the words "organized county" in the first line, these words be inserted: "In which a majority vote in favor of the establishment of the county court shall have been had."

The amendment was seconded.

Mr. BARTLETT of Griggs. I can see no reason why any man on the floor of this Convention should oppose this amendment. If this Convention or the members of it desire to deal fairly, certainly there can be no opposition to it. All we ask is—as all we have asked is—that those counties that desire the benefit of the county court shall have it, and those counties that don't want it, shall not be forced to have it. They have been saying that they don't want us to force the county court on them, and we have come here prepared to say that we don't want to do it. We will meet you half way and say if you will give us the benefit of the county court, we will give you the benefit of your probate court. We are not trying to create a new court. We are seeking to improve the character of the one we have now, and I hope this amendment will prevail simply in the spirit of fairness and justice.

Mr. MOER. Upon the report of the minority of the Judiciary Committee there might have been a question in the minds of some delegates whether they could support it. There might have been those who were opposed to it for the reason that it enforced a county court system on all counties in the State above a certain population. Now the amendment proposed entirely obviates that difficulty. It simply gives each county of the State the right to have a county court if the majority of the voters desire it. In the name of all fairness what possible objection can any delegate see to this proposition? It is a proposition to leave the matter to the people—not a proposition to force on them something that they don't want. Whether it is a good system or not enters but little into the case. What possible objection is there to be raised against leaving the people to say whether they desire a county court, or whether they desire to retain the probate court? It is useless to go into an argument as to the respective systems—it is a question whether you will let the people say what they want. Many counties desire it, many possibly don't. Then allow each crunty to have its say in the matter and settle it at home. It does not cost the counties of Cass, Grand Forks or the other large counties a cent if we have a county court in LaMoure county. If LaMoure county votes for it I don't see what concern it is of

Cass county. The opposition has come from the larger counties, the reason being that their probate courts are now full of business, and if they gave additional jurisdiction to the probate court it could not take care of the business.

Mr. ROLFE. I wish to say just a word. It was urged last night by the gentleman from Cass that the probate system was the system. I suppose he means that he thinks this, and bases his opinion on the experience he has of it; and his experience of the probate system comes during his residence in Cass county, which must always be presumed to have within its borders talent enough to fill the office of probate court with credit to itself and satisfaction to the litigants. The same is true probably of Grand Forks. We have in this Convention, as one of the delegates, the judge of probate of that county, and his record here has been a good one. It simply strengthens the position which we took, that the larger counties are enabled to have good probate courts while in the outside counties they do not have probate judges of sufficient intelligence to send here. It has been urged by members of the Convention from the larger counties here to-day that the Supreme Court should be a traveling court to accommodate litigants. Now that argument came from gentlemen whom, if I am not mistaken, oppose county courts. They live in the larger counties, want litigants in the larger counties accommodated, but they are not willing that litigants in smaller counties should be accommodated in their inferior and primary litigation. If the interests of the people are sufficiently important to make it requisite that the Supreme Court shall travel about the Territory to accommodate litigants who are supposed to have heavy interests involved, then certainly the county court should be granted to the lesser litigants who are less able to pay the heavy expenses entailed otherwise. We plead simply for fairness, and ask to impose nothing on the larger counties which they don't want, but simply that we in the smaller counties shall have the privilege of establishing a court in our own borders which can handle the comparatively insignificant business that we have.

Mr. BARTLETT of Griggs. I hope this Convention will not be misled. I speak from some little experience, and as a man who has had to put his hand down in his pocket. I know if I know anything that the farmer, the poor man, ought to have a county court. I know as well as I know anything that it will be the means of saving them a great deal of money. It will keep busi-

ness from centralizing, and save money that would be spent hiring lawyers to attend to cases between terms. If these gentlemen don't want a county court in their own counties they are not obliged to have it, but why not give it to those who do want it ?

Mr. CARLAND. Perhaps it devolves upon me to say something in behalf of the report of the majority of the Committee on the Judicial Department. The majority of the committee have reported to this Convention a provision providing for probate courts. A minority of the committee has reported a system of county courts, and asks that it be substituted in place of the majority report. Now, of course we are all here for the purpose of doing our best towards making a Constitution which will be adopted by the people, and which will best subserve their interests on every particular subject that the Constitution treats upon. It thus becomes necessary for the gentlemen proposing the minority report to establish to the satisfaction of this Convention that they have substituted and presented a better scheme than that presented by the majority. Now let us look at the minority report. Even as amended—as the question is now put—providing that the people shall vote on this—of course on this amendment arises the whole question of the county courts; for if this amendment is adopted it virtually adopts the whole minority report, and it must stand or fall by its provisions. We have provided a probate court with ordinary probate jurisdiction in every county. We have provided a district court which shall hold at least three terms in each county. What is provided by this minority report ? It starts off in section twenty-five with the following :

"County courts shall be courts of record and shall have a clerk and seal. They shall have original jurisdiction in all matters of probate guardianship and settlement of the estates of deceased persons, and in all cases of lunacy."

Up to that point the county court has the same jurisdiction as has been given by the majority of the committee to the probate courts. Then the section goes on and reads:

In counties having a population or 2,000 or over, these courts shall also have concurrent jurisdiction with the district court in all civil cases, wherein the amount in controversy or the value of the thing sued for does not exceed $1,000, exclusive of the interest and costs, except in matters of probate, guardianship and the settlement of the estates of deceased persons.

There are a few counties that that section is drawn to especially benefit. They are counties in which reside the advocates of this report on the floor. This minority report puts the county court

into these counties with the same jurisdiction that we have provided for the probate court. I desire to call the attention of the Convention to this fact in reference to the allegation of the gentleman from Benson—that these probate courts have become a nuisance to litigants before them, on account of the irregular manner in which proceedings are had. It is a fact that in every new county the proceedings in courts of justice are irregular, and it takes a great many years before they become systematic, and before everything is done in proper order, and I say that if there has been irregularity, and if there have been actions which would subject the probate courts to criticism, it has been in the new counties, and will continue under this minority report to be the same, for there is no change in it except to change the word "probate" to "county." It is further provided that the county judge shall have jurisdiction in civil cases of $1,000. It is also provided that:

"Writs of error and appeals may be allowed from county to district courts, in such cases and in such manner as may be prescribed by law; *Provided*, That no appeal or writ of error shall be allowed to the district court from any judgment rendered upon an appeal from a justice of the peace or police magistrate for cities and towns. County courts shall have such jurisdiction in criminal matters as the Legislature may prescribe."

So it appears that there is to be established a court between the district court and the justice court. In order to get from the justice of the peace to the district court, according to the minority report, you cannot get from the justice court into the district court direct, because it is provided that appeals shall lie from the justice court to the county court, and appeals shall not lie from the county court where they have rendered judgment on appeal from the justice court. Secondly, you have established an inferior court that has supervisory and appellate jurisdiction over justices of the peace, and it is possessed of such jurisdiction as to subject matter and territorial limits, that it will never command the respect of any person who is seeking to review the judgment of an inferior court, as you will be no more satisfied with the judgment of the county court than with that of the justice of the peace, and you are precluded from appealing from, and getting out of, the county court. I cannot see why this system of courts should be established in counties of more than 2,000 inhabitants—certainly it should not go into effect merely to change the name from probate to county, and make county courts instead of probate courts in those counties. In section twenty-eight it is provided:

"County judges shall receive such salary as the Legislature may prescribe, and the salary may be different in different counties but until so prescribed the salary of county judges in counties having a population of 2,000 or over shall be $1,500."

I say the salary is too high for a justice of the peace, and too low for a man of sufficient ability to hold a court any better than a justice of the peace in the county. As an item of expense, also, if these courts are established in every county, it would work greatly against them, in that they would be very expensive. These courts would be possessed of such jurisdiction that where a man has a district court in his own county that sits twice a year where he can go in the first instance, he will go and these county courts in such a case will only be engaged in trying petty offenses and petty civil cases, which would have been tried by a police magistrate or a justice of the peace. I don't agree with the gentleman from Dickey that these courts will obviate the expense of litigation so far as the attorneys are concerned, because if he starts in the county court it is a certain thing if it is a case that is litigated very closely an appeal will be had to the district court, and if it is fought there hard, there will be another appeal to the Supreme Court. I leave it to any gentleman of intelligent judgment whether he can go into the county court and appeal to the district court, and from there to the Supreme Court at as little expense as if the county court was not in the way. If we only have the justice of the peace or police magistrate, if the suit is commenced there—if the party desires to appeal he may appeal to the district court and from there to the Supreme Court. But here he would be obliged to appeal to the court of inferior jurisdiction. He would not probably be any more satisfied with this judgment than with the judgment of the court from which he appealed, especially if it is a jury case. Of course I can imagine how those gentlemen who advocate county courts, have been inconvenienced. I have experienced the same thing myself. It was because we have not had enough judges in the Territory for the last ten or twelve years, but that system is going to be changed. We must not judge the future by the past. It would be unfortunate for us if we were not going to better our condition by forming a Constitution. That is what we are trying to do, and we have made these judiciary districts with a term of court in each organized county twice a year, and I don't think the grievances will ever occur again, and I think, that if we were to-day practicing law under

the system proposed by the majority report, they would not be in favor of this county court system.

Mr. MOER. I want to call attention to one thing—the gentleman's remarks will, perhaps, call attention to some defects in the minorty report—things that should be remedied and perhaps changed. But the gentleman begs the whole question, because he pays no attention to the amendment of the gentleman from Steele. The change is to be made by a vote of the people. What objection can he raise to allowing the counties, if they see fit, to have a county judge ? The objection is to the population. Possibly that objection would be well taken were it not that the amendment had been offered. Under the minority report it was proposed that the Constitution should fix county courts in all organized counties of over 2,000 population. Now, under this amendment, it merely fixes them in counties that vote for them. As to the salary, the gentleman thinks it too low. Perhaps it is. If so, the gentleman can make an amendment to raise it. As far as that is concerned, I know in certain states in this Union judges of the district court get only $200 or $300 more, and possibly they will compare very favorably in point of ability with the district judges that we will have. But the question resolves itself to this—will this Convention allow the people of the counties to say whether they will have a county court or not ? Is there anything unfair about that proposition ? I have talked with a number of gentlemen who have opposed the county court system, and their position has been based entirely on the question that it was to be forced upon them. Give the county court to those counties that want it, and to those only—give them the right to say whether they will have it. We are safe in leaving this to the people themselves.

Mr. BARTLETT of Griggs. I agree with the gentleman from Burleigh in this—that we are here for the purpose of giving the State the best judiciary system we can, but it strikes me that a man who rises and says that he opposes this amendment, is actuated by some other motives than the best interests of the State. The county court system has been tried before. It is in use in Illinois, Colorado, New York, Nebraska, Missouri, and several other states. I have letters from some of the most eminent lawyers in Colorado and Illinois. They say that it is unquestionably the most popular court with the attorneys and the people, and yet these gentlemen here say that the counties of North Dakota

that want to take advantage of the system shall not do it at their own expense. I think it is an outrage and unjust. We have had gentlemen wax eloquent in behalf of bringing the Supreme Court to their doors—we have had attorneys grow eloquent on behalf of sitting in their offices and suing a man anywhere in this Territory. Now it does seem to me in view of the fact that the opposition comes from where?—from solely and absolutely and entirely the counties that know they would be the centers of the judicial districts, and would always have the judges of the district right at their doors—it does seem to me in view of this, that something else enters into our deliberations other than the best wishes for the welfare of the State. Last winter I read some remarks made by Judge Walter Q. Gresham. The question under discussion was the relief of the higher courts. He said that Illinois suffered less than any other state so far as his knowledge went in that regard, and he said that it was due in a measure to the superior quality of their inferior courts. He said that a state could afford to pay $10,000 a year to a Cooley to sit on the county or district court bench, better than $5,000 on the Supreme Bench. I believe that the better the judge we get in the courts of original jurisdiction the cleaner and better is our litigation. We don't propose to put a Cooley on the county court bench, but we propose to get better men than we have as justices of the peace. We propose to try to improve and elevate our courts of original jurisdiction. That is all we ask. I want to read a portion of a letter from John P. Altgeld, of the Superior Court of Cook county, Illinois. I wrote him—I did not know him, except by reputation, and I wrote him particularly as to the popularity of the county courts throughout the state, and not in the City of Chicago. His words ought to have some weight with the members of this Convention who have not made up their minds on this question. He says:

"In answer to your letter inquiring about the jurisdiction, usefulness and popularity of county courts in this State, and whether they could not be made to take the place of justices of the peace, so as to do away with the latter, permit me to say that in this State, county courts have jurisdiction in all tax matters, insane cases, all probate matters, election matters and in civil cases where the amount involved is less than $1,000. In this county owing to the press of business, the Legislature created a probate court several years ago to relieve the county court. I may say that the county courts have jurisdiction in those matters which come

nearest to the people, and most directly affect them; and all things considered, I believe they are the most useful and the most popular tribunals in this State. So far as I can observe, business is usually done, not only in a legal, but in a businesslike and common sense way by them, and without unnecessary delay, the latter being something which cannot always be said of our higher courts. I would recommend the abolition of the office of justice of the peace, and give the county court jurisdiction in all such matters, taking care, however, at the same time, to provide that the county judge, as well as the clerk and sheriff, should be paid a fixed salary—should under no circumstances have any fees, but that all fees, where any are collected, should be paid into the county treasury. If you have justices of the peace you cannot pay all a salary, because of their number. And while there will be here and there one to whom the office will be incidental, there will be a great many who will depend largely on the fees for a living; and this leads everywhere to the same results, viz., injustice, oppression, extortion and frivolous lawsuits, ruinous in the expense and loss of time they entail. The courts become clogged with business, while the poor and ignorant suffer. Do away with both justices and constables, for they must depend on fees; and it is difficult to conceive of a worse demoralization and rottenness than usually grows out of the system. Provide for sufficient deputy sheriffs to do all the work required to keep peace and do the court work, and pay each a salary, and under no circumstances let any keep the fees. To permit any officer, whether judicial or executive, connected in any manner with the administration of justice, to collect and keep fees, is to offer a standing temptation, if not a bribe, to do wrong in very many matters. And it is asking too much of human nature to expect a hungry man to be very particular about the means or methods which will secure him bread.

"Have the courts easily accessible and always open for business. There is no sense in having terms of court, and these held only a few times a year, so that there must be delay in getting a trial, whether there is much business or not. If the same judge is to hold the court in several counties, or if there is but little business, he can easily arrange matters by having the clerk give notice as to when a case will be heard. There is no reason why the average case should not be tried in the circuit court in fifteen days after service, just as it would be before a justice of the peace.

"In regard to reforms in the administration of justice, I will say that last winter at the request of the Hon. Sherwood Dixon, then a member of the Legislature, I pointed out some of the most glaring defects, as well as the results following, and made some suggestions as to amendments. This was published at the time in all of the Chicago papers. * * * * Although no general amendment of the law relating to the practice in our courts was passed last winter, yet there is no doubt that it will soon be brought about, as the sentiment in its favor is becoming general."

Mr. BARTLETT continued: That testimony ought to be worth something. It should stand somewhere on a par with that of the man who gets up here and says we don't want county courts, and that the county that asks for them cannot have them. I have another letter here from L. C. Rockwell of Denver, Colorado. I wrote him asking the same question. Mr. Rockwell has a more extensive and lucrative practice than any attorney in Dakota or Minnesota. He is recognized as the leading civil lawyer in the city of Denver, and I venture to say that there is not a county in that state that he has not practiced in. He says:

"Your favor of the 8th inst. is at hand, and I regret the delay in answering, but owing to a multiplicity of duties, was unable to give it attention until now. I gladly reply to your inquiry, which is as to the working of the county courts under the system of laws in force in Colorado, and you will pardon me if I go a step further and offer a few suggestions upon other points as to what in my judgment ought to be embraced somewhat more fully than is usually found in Constitutions. First, as to your inquiry. We have found the county courts very useful and likewise the jurisdiction bestowed upon them very beneficial to the people. Before the adoption of our Constitution, the Territorial Legislature bestowed upon probate courts then, now county courts, jurisdiction not to exceed $2,000. In several cases the judges elected to preside over these courts were disqualified, but generally they were competent, upright men. If an incompetent man was elected he did but little business. Suits were brought in the district court. In many of our counties, which are unreasonably large and quite difficult of access, it is expensive to summon a jury as well as costly to have the full machinery of a district court put in motion to try perhaps three or four cases when that business could be as well done by the judge of the county court. I would advise the same qualifications as to learning, and experience in practice of

the law in a county, as the district judge. You need not be afraid but what some man in the county is eligible to the position, if not, politicians are numerous, and they will soon migrate and present themselves to supply the want.

"Another improvement could be made, which is that a jury might be summoned without either party advancing the costs. It not infrequently happens that the party can ill afford to advance $16 or $20 for the sake of getting a jury, and, too, there is no reason why a jury should not be called and paid for in the county court the same as in the district court."

I have other letters here which I will not read. But I will read a portion of a letter from A. P. Rittenhouse of Denver, which has some good points. He says:

"The county court is a good one and a popular feature of our system of jurisprudence. Both lawyers and people like it. There is a strong feeling among us that all judges should be learned in the law; also that they ought to be paid in salaries rather than by fees. People who litigate ought, of course, pay for their litigation, and fees therefor should not be abolished. The trouble with the fee system is that in large towns it makes the compensation of judges and other officers large beyond reason, and in small rural places by no means adequate. Let fees be paid, turned into the treasury, and withdrawn in well regulated and adjusted salaries for the officers."

Mr. BALTLETT continued: In Griggs county the expense of the district court, aside from the expense of summoning the grand jury, was $3,200. The amount of civil judgments rendered in our last two terms was between $800 and $900. We could better have paid every judgment that has been rendered there and have saved 400 per cent., than to have held these expensive district courts to try those cases. I believe the man who litigates should in a measure pay for his litigation. If I owe a man $100, no other man has a right to pay for a jury to try that case. I ought to pay it if I lose, and that is the system usually adopted in the county courts. There is no expense to the county court except the salary of the judge, and it will be found that when a system of fees are established, they will more than balance the salary. In Colorado there was a fee system up to this winter. In some counties, while I was there, the fees ranged from $2,000 to $15,000 a year, and it was deemed too much, and they were making strong efforts to have the county court a salaried court, and if

I mistake not it was so made last winter. They also increased the jurisdiction of their county courts. If it was unpopular why did they do this? If it is unpopular, why did the representatives of the people increase, instead of diminishing its jurisdiction? In counties that wish it, we desire that they shall have a county court at their doors. All we ask is that when a man comes into our offices and says that he wants a stay or an injunction, we won't have to go to the expense of going thirty or fifty miles to get it, and I venture to say that if the gentlemen who are opposing this motion had this to do very often, they would be asking for some such system. There is not a note in Griggs county but has a defense on account of usury. Nearly every one of these are secured by chattel mortgages. There is hardly a day in the fall but some one comes into my office and wants to know if he cannot get an injunction preventing a foreclosure. He will say: "They say they are going to take that stock." There has, perhaps, been a portion paid, and there is no endorsement on the note of that payment. Or perhaps he says he is willing to pay the principal and legal rate of interest, but not the expenses that are charged up. I tell him he can get an injunction compelling the plaintiff to foreclose in the district court, but that I would have to go to Jamestown or elsewhere to see the judge, and there is an expense, and if the stock has been taken possession of, it will eat its head off before you can get the case to trial. We ask that these people can have a county court in their own county if they want it. The gentleman from Burleigh has gone over the whole matter, not confining himself, and perhaps I have not, to the amendment. As he has gone that far, I will go a step further and mention the provisions in the original report in regard to justices of the peace. It proposes to force every man justice-of-the-peacewards if his claim is $50 or less. You might as well have a rule that the two men shall go into a room and flip a coin to see which shall have it. Any lawyer who has had experience in a justice court knows that it is so, and that is one of the provisions in the majority report. We ask simply and solely that we have the benefit if we want it, of the experience of other States in regard to county courts. I have been surprised at the position taken by a good many members in this matter. I have been told by a delegate to the South Dakota Constitutional Convention in 1885, that they put the system of county courts into their Constitution, and he does not remember that there was one word of opposition to it at

that time. It went through as a matter of course, as the best system they could devise, as an improvement on the probate court —not as the establishment of a new court, but as an improvement on a court already established, and he says he has never heard one objection raised to the county courts in that state.

Mr. PURCELL. As the presiding officer said, the question before the committee was whether the amendment should be substituted for section twenty-four. But I judge from the discussion of the question that it has not been confined to the motion under consideration. This is a very important matter to the citizens of the State of North Dakota, whether or not this motion prevails. It is sought by this substitute to do away entirely with probate courts and establish in their stead county courts. In this substitute nothing appears to be said about the abolishing of the justice of the peace, but on the other hand it allows their existence, and leaves it to the Legislature to say how they shall be located and how many there shall be. If there is any man in this Convention who can state here a sufficient reason for the abolishing of the probate courts as they are now constituted, I should like to hear him. The gentleman from Benson states that they are not all they should be in many respects—that those who occupy the position of judge of probate to-day in the numerous counties of North Dakota are not by experience and practice fitted for the duties necessarily devolving upon them. Mr. PRESIDENT, in many of the older states of this Union, the same position of judge of probate is filled by officers who are not lawyers and who have not had experience in the practice of law. In the State of New York the estates of widows and orphans, the estates of minors, and of those under guardianship are passed upon, supervised and handled by men who are not lawyers. The office of surrogate as constituted in that state and in New Jersey and many of the old states in the Union, possesses duties precisely like those of our judge of probate. The surrogate of the county of Queens and of the county in which the City of New York is located, are not required to be lawyers, but can be laymen, and the way these men perform their duty meets with the approval of the people. The system by which estates are settled does not require a man learned in the law to faithfully carry out the duties that are imposed upon him. All he has to do is to understand the nature of the work before him, and it is plain sailing if he has judgment. Our statute is simple and plain in regard to the settlement of estates, and the judge can get

his printed blanks, and if any man suffers by the act of the judge of probate he has a right to appeal to the district court. There all matters go up on appeal. If there is error in his judgment; if his acts have been illegal, or if it is necessary for his acts to be supervised, the judge of the district court can supervise them, precisely as they could be by the judge of the county court.

Why is it that this measure is so strenuously insisted on by the gentlemen who are supporting it? Is it because of necessity? Is it because in this great Constitution that we are now forming we have not made ample provisions for the dealing out of justice? Heretofore we have had but three district courts in which all the business of North Dakota was supposed to be done. It is true that this was not satisfactory, but we have already adopted a clause in the judicial bill which gives us six judges instead of three, and deprives those Judges of Supreme Court powers, and we have created a Supreme Bench, making nine judges to take the place of three. Can it be claimed that the business of this new State is six times behind what it should be? The district court judges of the past not only had the cases of the Supreme Court of North Dakota, but they had to sit in judgment on cases in South Dakota, so that they did other work besides that which arose in North Dakota. Is it possible that the business of this new State cannot be safely and successfully carried on, and safely and successfully disposed of by all the judges that we have provided for? Is it necessary that we should establish an intermediate court—a court between the court of the justice of the peace and the district court for the pleasure of a few men who ask it, because in their counties they do not have a judge residing there? The reason they insist so strenuously is this, and it must be obvious to everyone who has sat here and listened to the arguments—it creates an office, and it gives some man an opportunity of becoming a county judge. There are fifty-three counties in North Dakota as shown by our File No. 121. Of these counties I am informed that thirty-two possess a population of over 2,000 each. Those counties with a population of over 2,000 each would be entitled to a county judge. That would make it nearly $50,000 that would be paid out every year in this State for the salaries of county judges alone; $50,000 a year paid out in North Dakota for salaries for what? For the office standing midway between the justice court and the district court, and what do you get after your case has gone from the county court judge? You get no

nearer the law than when you started, for in many counties the man who will occupy the bench as county judge will be the same man who in the past has been justice of the peace, and we all know that in many counties in this territory the judges have abused their power, and admitted men to practice law—have stood them up in rows and sworn them in—who were a disgrace to the profession and they are now practicing. They are the men who are working to have this office created—they are the men who stand here (not that I wish to reflect on anyone here) and plead for the establishment of these courts, and will be most likely to occupy the position of county judge. Is it possible to receive from these men the law you are asking for ? Are you not in just the same position that you were when you started ? Is it not necessary to go from them to the district court or to some other court that is supposed to know the law ?

Think of over $50,000 paid in salaries, and this is a small item compared with what the aggregate will be. Why? Because if the county court runs there must be the bailiff—the sheriff who lives by his fees will be active—the clerk of the court will also need pay. The general jury, or the jury that sits around and asks to be called occasionally, will be active. This court will cause an activity in law matters that will be surprising. Where a court is open and where men can go into court with their grievances, litigation will be encouraged, and parties when they get there will bring in all the witnesses and expenses they can. All the officers of the county court will pile up every dollar they can pile. I say this is a fact, for they have existed in the past and it has been the experience where county courts have existed. There are fifty-three counties in North Dakota, and at $1,500 a year each it would mean $79,500 for salaries, and then the litigant would be in the same position that he was when he left the justice of the peace. This bill which is so strenuously insisted on requires that a man who becomes county judge must have the same qualifications as the district judge, except that he must reside in the county in which he is elected. If he is a man of equal qualifications, he is working for too low a figure, and if he has not the qualifications he is not worth it. In my practice the getting of an injunction is a very seldom proceeding. It is something that is not very often indulged in, and if there is a man who comes into the office of the gentleman from Griggs, and tells him some one has a chattel mortgage on his stock, all he has to do is to say that the man must

go home and refuse to give up his stock. If he does that, this man who is so afraid his stock will be taken, will be protected, and instead of that man taking the stock, the sheriff will take it according to law, and then the bond of the officer will protect the client from any damage he may sustain.

When these gentlemen stand here and hold up these little incidents we should remember that our statutes and our Legislatures have protected every man in his rights, but there are instances, and I don't deny it, in which it is necessary in a very short order to have an injunction. But these cases will exist if the judge boarded in the house—they will always exist. The practice as it is proposed by the majority bill is this—that with the Supreme Court separate and distinct from the district courts they will be sufficiently ample to attend to all the business brought before them. As six district courts are required to hold two terms of court every year in each organized county, the judges will be enabled to go over each district and hold four terms of court a year where it is needed. Under our present practice it requires thirty days from the service of the summons or complaint within which to put in an answer. It requires ten days to give notice, virtually, so that a case cannot possibly be got into court within less than fifty days from the time the case is commenced. With a court twice a year a man will have no time to lose to get his cases prepared for the coming trial. I presume the same rule would prevail in the county court, and what is the use of having a county court and a district court, when there is no provision for getting your case tried quicker in the county court than in the district court. Therefore, Mr. PRESIDENT, it seems to me that those who go to work for the county court, or seek the privilege of voting for it, do it simply because it would be convenient for them, and not because it would be a benefit to the people. It is a very nice turn the gentlemen have made from the original proposition when they now ask by their amendment to submit this to a vote of the people, and only those counties that vote on it will have it in force. I say that it will be comparatively easy for any man or set of men to have this done when the people are not prepared for it, and we all know how easy it is to spring a matter of this kind when the people have not looked into the matter, and know nothing of the merits of the case. It has always been the province of Constitutional Conventions to fix the different branches—executive, legislative, judiciary. It has been the province of every Constitutional Convention to do

that, and they are generally called specifically for that purpose—to say what shall be the executive, and what shall be the legislative and what the judiciary. That is what we ask you to do by the majority judiciary report.

Mr. PARSONS of Morton. I should like very much to answer the gentleman, but I respect the feelings of some, and will not. It has been charged here that any man who would dare to advocate the county court system was guilty of personal feeling or personal aggrandisement. I repel the accusation. I stood here and advocated this, and I dare to stand here and advocate it again, and I would like to say that I am just as free from any aspirations to the position of county judge as the gentleman from Burleigh or the gentleman from Richland may be for a judgeship of some of the higher courts. It is a poor rule that won't work both ways. It may be that some of the gentlemen who are opposing county courts are doing so because they think that these courts will detract from the dignity and importance of the district courts. Briefly consider the situation: We are met with this question. The objection was raised to making the Supreme Court from the judges of the district court, and we have gone to an expense of nearly $20,000 to keep the Supreme and the district courts separate. Now they bring in the most preposterous theory that it would cost the people $70,000 to run the county courts. As one gentleman has said, the opponents of this system beg the question. I would ask if the arguments they have adduced is all they can produce in favor of the district court system? I trust to the good sense and the common sense of the delegates here to detect the fallacy. As a principle of right and justice I don't believe that there is a gentleman here that wishes to take the probate court from the county that wishes to have it, but I do believe that county courts are the courts of the people. They are close to the people, and it is a fact that when speedy justice is meted out, it in a great degree determines the prosperity of localities and sections, and it is a fact, and the records show it, that county courts have been a benefit. I wish it left on the records in such a way that when any county wants to have a county court, it can have it. We don't seek to take away the probate court, but we do seek to have the opportunity of having the county court if we want it. If you will look you will see the enormous sums of money that have been paid for the terms of the district court. We have had our jails full when they should have been clear. All we ask is

that those counties that wish to, shall have probate courts, and those that want county courts shall have them.

Mr. MOER. I move that the committee do now rise, report progress and ask leave to sit again.

The motion was carried.

Mr. SELBY. I move to adjourn.

The motion prevailed, and the Convention adjourned.

THIRTIETH DAY.

BISMARCK, *Friday, August 2, 1889.*

The Convention met pursuant to adjournment, the PRESIDENT in the Chair.

Prayer was offered by the Rev. Mr. KLINE.

EXEMPTION LAWS.

Mr. GAYTON introduced the following resolution and moved its adoption:

"*Resolved*, That the Committee on Judiciary be instructed to report an article prohibiting the Legislature from ever changing or repealing the present Territorial Homestead and Exemption Laws."

Mr. SCOTT. I am in favor of the resolution. It appears to me that this is one thing that Dakota is sought for by the people of other states. People who have been unfortunate in business relations elsewhere, and knowing that we have a liberal exemption and homestead law, will come here and take up their residence if there is any guarantee that that exemption will never be repealed. As it at present stands there is 160 acres of land and $1,500 worth of personal property, and I believe that that very fact is a great inducement to settlers from other states to come in here and make this place their home, and for that reason I am in favor of the adoption of this resolution.

Mr. BARTLETT of Dickey. I want to enter my protest against any such resolution. I do so as a farmer. The very idea