FORTY-SECOND DAY.

BISMARCK, *Wednesday, August 14, 1889.*

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

Prayer was offered by the Rev. Mr. KLINE.

Communications were read from Mayville, Clifford, Hillsboro, Baltimore and Mandan.

Mr. WALLACE. I object to those Traill county people saying that Steele county endorses the action of the Convention.

Mr. STEVENS. Before we commence with the third reading of articles, there is a question of privilege I desire to speak to. At the time we commenced our labors the question arose as to the plan we should adopt in forming this Constitution. It was agreed that articles should be prepared, referred to the different committees; that those committees should report; that the articles would receive their second reading before the Committee of the Whole; they whould then be passed on by the Convention to the Committee on Revision and Adjustment, whose duty it was understood to be to settle any ambiguities that might have arisen between any two sections—harmonize any discrepancies and correct any grammatical errors or inconsistences that should appear in the sections. This committee have taken to themselves an authority that was never recognized, and never delegated to them by this Convention. They have seen fit in their report to this Convention not only to correct errors that may have appeared—not only to strike out ambiguous sentences that may have been incorporated, but they have seen fit to go further, and recommend to this Convention to strike out articles that this Convention has, by a unanimous vote, passed to that committee. They have seen fit, when compromises have been made between the different factions for the purpose of having harmony, they have seen fit to recommend the striking out entire of the section that has been compromised

upon and agreed upon as one of the articles to be incorporated in this Constitution. I refer more particularly to the article which appears on page twenty-nine,section 174 of the printed Constitution. This Convention will remember that was a discussion here as to whether or not we should have a township organization system in North Dakota. Some of the members were opposed to it and some were favorable and it was finally agreed that as a compromise measure, satisfactory to all parties and unanimously passed by this Convention, that the vote should be taken in each county—that the question should be submitted to those counties where there was a desire to have the township organization system. The gentleman from Cass was the most loyal man in this Convention in opposition to the township system, and he agreed that the measure which we incorporated in the Constitution was just and fair and that the compromise was one that every member of this Convention could agree to. Now this self-appointed committee—because it is self-appointed so far as its action in regard to this section is concerned —have seen fit, because they were in opposition to this township system, to relegate to themselves a power that no man ever voted they should have, and they ask that this section be stricken out. Last night there was a motion passed in this Convention that where there was no opposition to the sections they should be passed, and where there was opposition to the suggested amendment of the committee or to anything else it should be considered by the Convention. The Chair in its very first ruling said: "If there are no objections, this section will stand approved as amended by the committee." By what authority have they done this? Can you find a single resolution in our proceedings giving this authority? If you are going to concur in this way in the recommendations of this committee you will find something before this Convention that will keep us here till next week. If that is the proceeding we are to have, we should before this have stood here and fought for something that is nearer and dearer to us than public institutions—the proper organizations of our counties. We will rebel, and will fight your Constitution. If we have to have a fight on the floor of this Convention to get a measure that we have compromised upon, we want to know it, and we want to know it soon.

Mr. BARTLETT of Griggs. I would like to ask the Chair if the gentleman is at liberty to fire off that kind of a speech every time he wants to do it?

Mr. PARSONS of Morton. I desire to heartily endorse the remarks of the gentleman from Ransom.

Mr. NOBLE. I move to amend section twenty-nine by inserting after the word "district" in the next to the last line: "And no county shall be entitled to more than one Senator."

The motion was seconded. Lost.

REPRESENTATIVE DISTRICTS.

Mr. Purcell introduced the following resolution:

Resolved, That the Legislative Assembly shall divide the senatorial districts into representative districts, and no more than one representative shall be elected from one district.

Mr. PURCELL. I am well aware that this matter was under discussion in the Committee of the Whole, but it seems to me that proper care and thought has not been given to the subject. The intention of having a lower house is that members may come from the different sections of the country directly from the people to express the sentiment of the different localities which they represent. As the matter stands now the Representatives and Senators are elected without regard to districts. The same people vote for Senators who vote for Representatives, and the Representative is as directly a Representative of the senatorial district as the Senator is. The intention of this motion is that the Representative districts shall be specific—that they should be limited in territory and the party who represents that district simply comes here to represent the specific people who sent him. The people in the district will under this motion be divided into senatorial and representative districts. As stated before, in the National Congress the Senators represent the states, and each state is entitled to two Senators, and each state is entitled to members in the lower house in accordance with their population. But the intention is that the states should be divided into congressional districts, and each congressional district sends its Representative to Congress—to the lower house. The purpose is that the different interests in the different parts of the State may be represented, and instead of fighting over the Congressman at Large, they have the Congressman each come from his district. That is exactly the premises we argue from in this matter and that is the reason why the representative districts in this State should be fixed so that the people of a certain locality can have to themselves exclusively the right of selecting the man they want in the

lower house to represent them. To say that the Representative shall be elected in the same way as the Senator—you make no distinction. In that case the Representative not only represents the locality from which he comes, but he also represents the district at large, and so does the Senator from the same district. But if the districts are fixed, and if the law requires that from each district there shall be a representative, then as in the National Congress the interests of that particular district will receive the attention of that member. Then again, under the present plan it places it in the power of the large cities to say not only who shall be the Senators, but the Representatives, and there is no guarantee and no safeguard thrown around the people of the country to have their interests or their measures looked after here. The large cities will be able to make their nominations and force the elections. But if the districts are fixed, and the law requires the Representatives to go from separate districts, the people of the several districts will have their interests looked after. For that reason I think this matter should have careful consideration.

The motion was lost by a vote of 30 to 34.

THE TERMS OF SENATORS.

Mr. JOHNSON. I ask leave to offer an amendment to section thirty. Insert after the word "class" where it last appears in the sixth line the words, "in the Senate first elected under this Constitution."

Mr. BARTLETT of Griggs. Do we elect Senators this fall? My idea was that we did not until after this Constitution is adopted.

Mr. SCOTT. I desire to call the attention of the delegates to the fact that this amendment would only apply to the Senators first elected. The Senators we elect now should only be for three years. One class will hold their term for one year, retiring after this next session, and there will be some more elected for four years a year from now.

Mr. JOHNSON. The Schedule undoubtedly provides the same for these officers as for other officers that they shall hold the first term for one year instead of two, but according to the explanation of the gentleman from Barnes this section as it appears in the printed copy is intended to apply in future years. See what confusion we shall have. If it is not intended to apply at the first session only, they would have to divide by lot every time. You

would always have this question arising—which of these clasess should hold for two years and which for four years. It is evident that this casting of lot should only occur at the start, so that it can be determined which of the Senators shall hold the short term and which the full term. If not it will be a question at the opening of each Legislature to be decided by casting lots to see which class shall hold for two years and which for four years. Unless this amendment carries the objection will always be before every Legislature.

Mr. CAMP. I think if the gentleman from Nelson will examine section sixteen of the Schedule he will find the objection is all covered.

Mr. JOHNSON. I submit to the gentleman if there is any provision in section sixteen of the Schedule providing for when these lots shall be cast and what Senators shall hold for two years and what for four.

Mr. SCOTT. It seems to me that if they cast lots in the fall of 1890 they cast lots to see who will hold two years and who will hold four. The short term men will go out in two years, and there is no necessity of the members of the Senate ever again casting lots. They can only cast lots once.

The amendment of Mr. JOHNSON was lost.

Mr. SPALDING. I desire to amend section thirty by inserting after the word "class" where in last appears in the sixth line the words "elected in 1890." I do that for the reason the gentleman from Nelson offered his amendment, but I think that this will make it a little more specific. It seems to me that it is the intention of the section to have lots cast only once, and after that the Senators will hold their office for four years each. The way it reads now it is very indifinite, and it might mean that they should continue to cast lots at every election.

The amendment of Mr. SPALDING was carried.

Mr. SCOTT. As I understand it when a section is read it will be adopted. I move that hereafter when that is done we cannot return to a section to reconsider, unless by unanimous consent.

Mr. JOHNSON. I think the precedent set last night was a very fair and reasonable one. Some of us have not had an opportunity to study the sections that have been prepared by the committee as thoroughly as those we have been working on. We have not the time in the few minutes or seconds that it takes to read a section to think what it applies to. It can do no harm to not defi-

nitely pass any sections until the article in which these sections are contained is passed altogether.

Mr. PURCELL. It seems to me that this motion should not prevail because if we have inadvertently overlooked a section that contains something ambiguous this Convention should not hesitate to go back and correct it. There may be some misunderstanding as to the effect of some section, and the fact that it has been passed should not hinder a correction. We are here to make a Constitution that the people want to understand and where there is any clause we don't understand it is our duty to go back and rectify it.

Mr. BARTLETT of Dickey. I can see how dangerous it would be. There are a good many sections that we have not digested yet, and we see intelligent men who have examined them, and voted in favor of them, and yet we find things that need changing. It would be dangerous in the extreme to pass this motion.

Mr. SCOTT. If a section has already passed a critical examination from all the committees, from the members of the Committee of the Whole and by the Committee on Revision and Adjustment, it should be enough. If we keep going back to these sections we are liable to stay here till next fall. If we can't see where a section is ambiguous without going back to it so many times we had better quit.

Mr. PURCELL. That may all be true, and yet the different sections of this Constitution, after having received a critical examination, are liable to have slight errors. As a fair example, in the Senate of the United States the Judiciary Committee is supposed to be as well versed in the law as anybody, yet we know that acts have passed that committee and the Senate, that have been found afterwards to be unconstitutional. Wherever a division of opinion exists as to the meaning of a section we should make it plain, so that there may be nothing ambiguous about it. We should do this if it takes all the year.

Mr. CLAPP. I move that whenever any changes are desired to be made they only be considered at the end of the article, after we have been through the article. That would give members an opportunity to bring matters up.

The motion was seconded.

Mr. WILLIAMS. It seems to me that this Convention should not at this time start in to adopt new rules. The motion made by the gentleman from Barnes contains a harsh rule, and if this Convention should make a mistake in a section it could not be

corrected without unanimous consent. I think our rules that we have adopted are sufficient and I don't see why we should change them at this late day.

On motion the motion and substitute were laid on the table.

NEW APPORTIONMENTS.

Mr. CAMP. By some unaccountable oversight the Constitution has failed to provide for any census or reapportionment of the senatorial districts. I offer the following addition to be made to the end of section thirty-five.

"The Legislative Assembly shall, in the year 1895, and every tenth year thereafter, cause an enumeration to be made of all the inhabitants of this State, and shall at its first regular session, after each such enumeration and also after each Federal census, proceed to fix by law the number of Senators which shall constitute the Senate of North Dakota, and the number of Representatives which shall constitute the House of Representatives of North Dakota, within the limits prescribed by this Constitution; and at the same session shall proceed to re-apportion the State into senatorial districts, as prescribed by this Constitution, and to fix the number of members of the House of Representatives, to be elected from the several senatorial districts."

This proposed amendment is based on File No. 33, introduced by the gentleman from McIntosh early in the session.

Mr. WILLIAMS. It seems to me that this should not prevail. This is a new country, and if we have to wait ten years before we can have a re-apportionment, this western part will suffer. I think this matter should be left to the Legislature as it has been under the territorial system. They can take the vote, while under the proposed system counties containing a large population might be denied representation for several years.

Mr. CAMP. I am willing the apportionment should be made every five years, and this does not prevent the Legislature making it every five years. It simply compels them to make an apportionment every ten years. There is one State that has suffered seriously from the effect of the system proposed by the gentleman from Burleigh. That is Delaware. They have been in shackles because the Legislature refuses to re-apportion the State, and I believe a similar section, carrying out the same idea, will be found in almost every constitution requiring the census and territorial apportionment.

The amendment of Mr. CAMP was adopted.

Mr. JOHNSON. I move that the words "and also after each Federal census" be inserted after the word "enumeration."

The motion was seconded and carried.

Mr. PARSONS of Morton. I move the reconsideration of section thirty-five. I desire to make this point. The tide of immigration is westward, and there is no question but in years to come every county west of the river, except, perhaps, a very narrow portion of the country, fourteen miles wide and thirty miles long, will be settled nearly as thickly as any other portion of the State to-day. It seems unjust that we should take from the Legislature the power to regulate that matter in the future. Do we wish to hamper the immigration to this State by saying that no matter how many people you have—no matter how many counties you have, you shall not have more than so many Representatives? It seems unjust to all the country to do this. Here is an open country to be settled up. It is not a question of local interests—one part of the State against another, but one of fairness and justice. I don't believe there is a man on this floor that wishes to retard immigration to this country or wishes to work injustice to anyone. It very frequently happens that the population of a county will double or treble, and perhaps quadruple in one year. It is a known fact that the railroad has been sending all these immigrants to Washington Territory this year. What would be the effect if during the next year they were to locate their emigrants in Dakota? The section as it stands would prohibit any apportionment, and there might be a hundred for one that is here now, and yet you would not allow any Representative for these people. I ask in a spirit of fairness and justice to these people who come here, that we may have the same privilege that we have now, and the Legislatuoe may have the power to change the apportionment when it is desirable. If we were in an old state, where this question of immigration does not come up—where it is thickly settled, I would vote for ten or twenty years, because the population would increase in such a state all over alike. But our circumstances are entirely different. I think this section would be a barrier to the population of portions of our country which are not taken up now, and I hope the motion to reconsider will prevail, so that whatever part of the State is settled by new immigration may be reapportioned according to the number of votes it has got. We have a stretch of country north, and west and south of us, and the time is coming when just as surely as the eastern part of the State was settled, so the western part will be settled. Do you wish to place a provision in this Constitution which will debar these people from securing their rights? If the matter is left to

the Legislature it can be readily adjusted to meet the needs of the day.

Mr. BARTLETT of Griggs. If the gentleman had been in his seat he would have learned that this section did not restrict the Legislature from making an apportionment every year. It simply compels them to do it once in ten years. I hope we shall not have a re-discussion of this matter. I don't think it is right that a member who does not happen to be in his seat when a discussion is going on should be permitted to come in here and force us to re-discuss a question. It is left to the Legislature with the injunction to do it at least once in ten years.

Mr. PARSONS of Morton. Do I understand that when this Constitution says that the Legislature shall do a certain thing at a certain time, that they can step in and do it at some other time?

Mr. CAMP. In my opinion there is nothing in this section to prohibit the Legislature from apportioning the State every six weeks. It simply requires them to do it every ten years.

Mr. PARSONS of Morton. I simply wanted to protect the counties west of the Missouri. I want to see the Legislature compelled to re-apportion the State once every five years.

Mr. ROLFE. I desire to add the following amendment to section thirty-five: "Provided that the Legislative Assembly at any regular session may re-district the State into senatorial districts and apportion the Senators and Representatives respectively."

Mr. ROLFE. I think there is a fair question as to whether the article as it has been adopted would not prohibit the Legislature from making a new apportionment oftener than once in five years. I suppose we know as much about this Constitution as anybody, aud with us there is some question whether under the section as it stands, whether the Legislature would not be prohibited from making an apportionment oftener than once in five years. If we have doubts the people will have them, for they have not had occasion to study the matter as a good many of us have, and this amendment will certainly settle a question in regard to the matter. Of course, the Legislature need not apportion oftener than once in five years if they see no occasion for it.

Mr. JOHNSON. I think the section is well enough as it is. I think once in five years is enough. If you apportion for the term of one State Senator, I think that is enough. We have seen in the older states that where the apportioning is done too often there

are shoe string and panhandle districts made, and this practice has always led to confusion and bad morals in politics. I think the census arrangement is the only fair one. If there is a storm raging in the western part of the State and not in the eartern part on the day of the election, you will have an unfair apportionment if it is based on the vote. In some places in the larger counties you will have to go forty miles to vote and that county will have a disadvantage over the more thickly settled counties. In the thickly settled states they will poll a larger vote in proportion to population. Another thing in regard to the western counties—as we have now this morning passed on the fact that representation shall be based on population and not on counties, the preponderance will be immensely in favor of the Red River Valley, and if the State should be re-apportioned by the vote this part of the State—the western part—would be at a disadvantage.

Mr. PARSONS of Morton. I repudiate the arguments of the gentleman. I have not the pleasure of having visited the Red River Valley country except in Fargo, but I expect as fair treatment from the people there as I would have from the people outside the Red River Valley. I don't believe that gentleman will come in here and subscribe to a solemn oath and then try to cheat us out of our rights. I am sorry the gentleman from Griggs (Mr. BARTLETT) has left his seat. I object to any criticism of any member for leaving his seat. If he has not a right to do this what rights has he?

Mr. PURCELL. I move the following amendment to the amendment of the gentleman from Benson:

"The Legislative Assembly shall have the power to apportion the senatorial districts into representative districts."

Mr. HARRIS. I trust the amendment of the gentleman from Benson will pass. The tide of immigration in 1890 will be turned into North Dakota. The Northern Pacific and Manitoba railroads are doing all they can to turn the tide of immigration into this State next year, and it is coming. It will not only be the counties in the west that will feel it, but every county in this Territory is going to receive the benefit. I don't think we should be tied down to an apportionment for five years. New counties may be organized, and if they come in as organized counties in 1892 they will have no representation till 1895. As to the shoestring districts and panhandle districts, if one Legislature makes

districts of this kind we want the next Legislature to have the power to correct the fault. I believe it should be left to the power of the Legislature in this new State to make the apportionment as they see fit. The older states are no criterions for us to go by. The State of Delaware is settled up. It has been an even thing for years, but in this new country where it is settling rapidly, we want the matter left in the hands of the Legislature. I trust the amendment of the gentleman from Benson will prevail.

Mr. CAMP. I have not the slightest objection to the amendment of the gentleman from Benson.

The amendment of Mr. PURCELL was carried by a vote of 29 to 28.

The amendment of Mr. ROLFE as amended was adopted.

AFTERNOON SESSION.

President FANCHER called Mr. NOBLE to the chair.

Mr. FANCHER. On Thursday evening of last week I, as President of this Convention, received three telegrams—two from Grand Forks and one from the Governor of Idaho. These telegrams were received at my boarding house while I was at supper. Immediately on going to the Convention a gentleman met me at the door who had learned that these telegrams had been received, and stated that he should raise a point that as they were addressed to me personally they should not be read in this Convention. I immediately told the gentleman—Mr. STEVENS of Ransom—that I should overrule his point of order when it was made, and these telegrams would be read promptly. I then stepped to the Clerk's desk at 8 o'clock in the evening and gave the telegrams to the Chief Clerk with instructions that they be read at the first opportunity. I have in my hand the Grand Forks Herald of date August 11th. One of the delegates from Grand Forks on this floor, Mr. BENNETT, in making a speech at Grand Forks on the night of the 10th made this statement: "At the evening meeting President FANCHER refused to have the Grand Forks telegrams read." Since that time editorials have been written in this paper and in others denouncing me for unfairness in not reading these telegrams. I feel quite certain that there is not a delegate on this floor who since I have been presiding officer honestly believes that I have ever in any way treated any delegate, or any message received for this Convention, unfairly. I therefore ask the gentle-

man who made that statement to correct it here and now. Various gentlemen on the floor of this Convention saw the Clerk take those telegrams in his hands and attempt to read them. As you all know, we were very much hurried that night for some reason. When I took the chair I had no idea that we were going to adjourn at all. But we did adjourn. Various motions came up to adjourn till the next day, till Monday, and for two weeks, and the members were engaged in fixing their papers and matters of that kind. I desire to have a correction. The Chief Clerk will substantiate what I have said, and I am sure there are a good many delegates who will do the same.

Mr. BENNETT. I shall be very happy to correct any mistake I may have made in the meeting at Grand Forks. I did not state in my speech that the Chairman refused to read the telegrams. After I was through with my remarks some gentleman in the audience asked me if President FANCHER refused to read the telegrams. After thinking for a moment, I said: "Yes, by his acts I consider he refused to read the telegrams." I stated that with all sincerity at the time and I believe now and here that by his acts he refused to read the telegrams.

Mr. FANCHER. I beg to state that under the rules of this Convention it would have been a perfectly proper ruling for me to make, that those telegrams could not be read that night. Our rules provide that letters, petitions and remonstrances should be read immediately after the Journal. We had long since passed that order of business; we had been in discussion and had other business before us, but I was very careful in this matter that I went out of the regular order of business so that these people might make their protests known. In view of that fact it seems to me remarkable that "the President by his acts tried to suppress those telegrams."

Mr. STEVENS. What the gentleman states as a conversation between himself and myself is exactly correct. He came up and I said, "FANCHER, I am going to object to those telegrams being read. They are addressed to you." He said, "Yes, and I will overrule the point of order."

Mr. PARSONS of Morton. Inasmuch as there has been free expression in regard to this matter, no matter with the subject matter may have been in the telegrams; inasmuch as there has been free expression on both sides, and there has been no check placed on anyone, and there has been no check placed upon anyone

from the day when we first assembled to the present time—the Chair has been lenient in his rulings and allowed people to speak out of order, and has gone ahead with the earnest desire to oppress and gag no one, I move that it is the sense of this Convention that we entirely exonerate the President of the Convention from the charge as presented by the gentleman from Grand Forks.

The motion was seconded.

Mr. WILLIAMS. I am perfectly satisfied that the President of this Convention is innocent of this charge. On Thursday night I made a motion to adjourn several times and it was, I believe, on my motion that the Convention finally adjourned. Once or twice when I was on my feet to make this motion the Chief Clerk was also on his feet for the purpose of reading these telegrams, and I was cognizant of the fact. I had seen the dispatches but I thought that they pertained to matters that we should have time to consider before we allowed them to be read. I really moved for the adjournment in order to prevent their being read.

The motion of Mr. PARSONS was adopted by a vote of 71, four members being absent and not voting.

Mr. JOHNSON. It is my recollection that at least twice, delegates on the floor that Thursday evening asked if there was anything else for disposition, and my recollection was that the answer given was in the negative. If I am mistaken it would be a great relief to me to be informed of the fact.

Mr. MOER. I should like to hear the Chief Clerk explain the matter.

Chief Clerk HAMILTON. The recollection of the gentleman from Nelson is entirely at fault. No such question was ever asked on Thursday night at the time when those telegrams were here. I am not in the habit of prevaricating or lying. I try to do my duty faithfully, honestly, without fear, favor or affection, and I believe that that is the sentiment of the Convention.

REPRESENTATION.

Mr. ROLFE. I move that the Convention do now reconsider the vote by which it resolved that the Legislature may subdivide senatorial districts into representative districts.

The motion was seconded.

Mr. PURCELL. I move that the motion of the gentleman from Benson be laid on the table.

The motion of Mr. PURCELL was lost.

Mr. MILLER. I move the adoption of section thirty-five as it appears in the report of the Committee on Revision. It reads as follows:

"The members of the House of Representatives shall be apportioned to and elected at large from each senatorial district."

Mr. CAMP. The motion to reconsider only went to the amendment of the gentleman from Richland.

The Chair ruled that the point was well taken.

Mr. STEVENS. I understand the question is now before the House. I move to strike out the words, "the Legislative Assembly shall have power to apportion senatorial districts into legislative districts."

The motion was seconded and carried.

RESTRICTIONS ON MEMBERS.

Sections thirty-five, thirty-six, thirty-seven and thirty-eight were read and approved, and section thirty-nine was read as follows:

Sec. 39. No member of the Legislative Assembly shall, during the term for which he was elected, be appointed or elected to any civil office in the State which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected; nor shall any member receive any civil appointment from the Governor, or Governor and Senate, during the term for which he shall have been elected.

Mr. STEVENS. I move to add at the end of the section the following words: "Unless he shall have resigned before his appointment."

Mr. MILLER. It strikes me that a better plan would be to strike the section out entirely, than to add these words, for "Unless he shall have resigned" will simply give him an opportunity to talk it over with the Governor in advance, and get his appointment.

Mr. STEVENS. A Senator is elected for four years. Under this section he cannot be appointed to any office during that four years. He serves the first term as a Senator—the first session—and he cannot again appear as a Senator for a year and a half. It is unreasonable to say that during that year and a half he may not, if properly qualified and if the choice of the appointing power, receive the appointment for some office he is capable of filling; and under this section he would have no right to accept

any office during that year and a half, except holding down the position of Senator, waiting for the next session.

Mr. MOER. It seems to me that the suggestion made by the gentleman from Cass is correct. The gentleman from Ransom says he could not be appointed during the second year and a half, but he knows that before he is elected to the State Senate. I guess we can get along with the section as it is.

Mr. WILLIAMS. The intention was to prohibit members of the Legislature from using their position to secure appointments from the Governor, and at the same time it is a very good provision to place in the Constitution. Cut the members of the Legislature off from using their influence in that body to secure for themselves an appointment from the Governor. I think if the amendment proposed by the gentleman from Ransom prevails, we might just as well strike out the whole section. I think we will have plenty of Senators and good Senators, and plenty of men to fill every position. When a man accepts a position in the Legislature he knows that he won't receive any other appointment.

Mr. STEVENS. If the gentlemen who are going to return to the Senate are willing it should stand, I am willing, for I am not going to return.

Mr. STEVENS withdrew his motion.

Sections thirty-nine, forty, forty-one, forty-two, forty-three and forty-four were adopted.

When section forty-five was reached Mr. JOHNSON moved to strike out the words "five dollars a day," and insert in the place "$500 per session."

When the vote was taken Mr. PARSONS of Morton said: I vote aye simply because I wish to make it possible for a poor man to attend the Legislature.

Mr. STEVENS in voting said: I vote no, because I believe it is the poorest place in the world for a poor man.

There were 11 votes aye and 62 no.

Sections forty-five and sixty-eight inclusive were adopted.

Mr. POLLOCK. It seems to me that the provisions contained in sub-division fifteen of section sixty-nine are covered by sub-division twenty-four. The first named sub-division reads as follows:

"The sale of mortgage of real estate belonging to minors or others under disability."

Sub-division twenty-four reads as follows:

"Affecting estates of deceased persons, minors or others under legal disabilities."

I move that sub-division fifteen be stricken out.

Mr. JOHNSON. The gentleman from Cass and I argued this question in the Committee of the Whole, and at that time the committee sustained my views. I still hold that the real estate under our laws as now provided for in section fifteen is no part of the estate. That goes directly to the heir. An administrator has nothing to do with it. I think they should both be left in.

The motion of Mr. POLLOCK was lost, and the section was adopted.

The article was adopted and the Convention proceeded to consider article three.

RESTRICTING THE GOVERNOR.

Section seventy-one was read and adopted, and section seventy-two was then read as follows:

SEC. 72. No person shall be eligible to the office of Governor or Lieutenant Governor except a citizen of the United States, and a qualified elector of the State, who shall have attained the age of 30 years, and who shall have resided five years next preceding the election within the State or Territory, nor shall he be eligible to any other office during the term for which he shall have been elected.

Mr. ROLFE. I move to strike out all after the word "Territory" in the fifth line. I believe we are tying up the hands of the people too closely in prohibiting them from exercising the right of choice of a Governor.

Mr. BARTLETT of Griggs. I hope this amendment will not prevail. If there is any reason for adopting this section which we have just passed, that members of the Legislative Assembly should not be appointed by the Governor, there is certainly a much stronger reason why the Governor should not be appointed or elected by the Legislative Assembly during his term. I hope we shall not strike out a part of this section that will enable the Governor to use his appointing power to secure his election to the United States Senate or any other office.

Mr. WILLIAMS. I fully endorse the remarks of the gentleman from Griggs. This provision was put into this section with the express understanding that it disqualified the Governor from election to the United States Senate. We don't believe the Gov-

ernor should use the patronage at his disposal to promote his elevation to the Senate, and we desire him to know in advance that he is not eligible to election to the United States Senate. If we strike this section out, the section disqualifying members of the Legislature from holding other offices should be stricken out also. This has been placed here in the interests of good government.

Mr. LAUDER. The arguments urged by the gentleman from Burleigh for the retention of this clause is that it would prevent the Governor from being elected to the United States Senate. I do not understand that that section would have that effect, because we cannot prescribe the qualifications for a United States Senator. The United States Senate is the judge of the qualifications of its own members, and this clause will be inoperative so far as affecting the election of the United States Senator is concerned. I was opposed to the section to which he refers, rendering members of the Legislature ineligible to any other office. It seems to me that we are going in the wrong direction. The people of Dakota have the right to select any man they choose—to select whom they please, and it seems to me that their hands should not be tied in this way.

Mr. WILLIAMS. The gentleman from Richland has told us nothing but what the Convention fully understood—that the United States Senate is the judge of the qualifications of its own members. But we were of the opinion that no honorable man would take the oath to support the Constitution of the United States and the Constitution of the State of North Dakota, and threafter accept an election to the Senate of the United States with this provision in our Constitution, which he was sworn to support.

Mr. LAUDER. I don't understand that an unconstitutional law has any binding force on anybody. When the Governor says that he will support the Constitution he implies that he will support every clause that is constitutional. So far as it refers to the election of a United States Senator—or his qualifications—it is so much waste paper, and amounts to nothing.

Mr. STEVENS. If I recollect aright the gentleman from Richland was one of the warmest supporters of having salaries placed at such figures or at such a rate that we could command talent in judicial and other offices. Following that to its legitimate conclusion, we would have a thousand dollar man to fill a

thousand dollar place, and a three thousand dollar man to fill a three thousand dollar place. A thousand dollar man would not be supposed to be as talented as a three thousand dollar man. It would therefore probably interfere with the best interests of the Territory to have a Lieutenant Governor become Governor of the State when he was never intended to have been elected to fill that position. You see here that a State Senator when he assumes the duties of that position, assumes it with the full knowledge that he can never be elected to any other office while is State Senator. Why not let the Governor have the same understanding? Why should not the same rule apply to the Governor? Surely if a man can take the petty office of State Senator with the full knowledge that he will be debarred from having any other office for the next four years, a man could accept the greater office—the greatest office under the State government—with the full knowledge that he could not have any other office while he was Governor. I say that this amendment is not moved for the best interests of the State, but it is somebody's scheme for this fall.

Mr. LAUDER. The gentleman from Ransom intimates that I have had a good deal to say about judges' salaries and so forth. I think, Mr. PRESIDENT, the gentleman is very much mistaken. The subject has not been under discussion.

Mr. STEVENS. The matter was talked of more than once in the Committee on Judiciary, and you took part in it. You don't deny that do you?

Mr. ROWE. I conceive that in all the list of officers named, there is not one paid for his services and his ability that he exercises better than the Lieutenant Governor. Furthermore, it is generally considered when you place a man in the second position on a ticket, that he shall be qualified to hold the highest position should circumstances demand. We have plenty of cases where we have secured some of the finest, ablest Senators in the United States that have gone from the gubernatorial chair, and some of our ablest war Governors went from the Lieutenant Governorship. I say it is no more than right and fair to citizens of North Dakota, that they have the right to send their Governor to the United States Senate if they choose, and also their Lieutenant Governor to the Governor's chair. I say there is no question about this, and I am heartily in favor of striking out this sentence.

The motion of Mr. ROWE was lost by a vote of 13 to 55.

Sections 72, 73, 74, 75, 76, 77 and 78 were adopted.

Section seventy-nine and the recommendation of the Committee on Revision, were read as follows:

SEC. 79. Every bill which shall have passed the Legislative Assembly shall before it becomes a law, be presented to the Governor. If he approve, he shall sign, but if not, he shall return it with his objections, to the house in which it originated, which shall enter the objection at large upon the Journal and proceed to reconsider it. If after such reconsideration two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections of the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members present, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the Journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the Legislative Assembly by its adjournment, pevent its return, in which case it shall be filed with his objections, in the office of the Secretary of State, within fifteen days after such adjournment, or become a law.

[Committee recommend that all after the words "shall be a law unless" down to the words "with his objections," be stricken out, and that the following be inserted, "he shall file the same," also that the last four words be stricken out.]

Mr. PARSONS of Morton. Here is a case where the committee has been legislating for the benefit of the Convention. If there is a grammatical error they should point it out, but here is a recommendation that they strike out a certain important provision which this Convention has passed upon. It is simply a matter of legislation. There is one committee that has sat upon and determined these matters; reported them to the House; they have been before the Committee of the Whole and now comes a recommendation of the Committee on Revision in which they pretend to do a little legislating on their own hook. As the gentleman from Ransom said this morning, there should be a stop put to this. It cuts out one important provision which the House has passed.

Mr. CARLAND. I don't see where the committee has cut off anything or exceeded their duty, and I dont see why this committee should periodically be talked about in this way. It will be seen that this section closes as follows: "In which case it shall be filed with his objection, in the office of the Secretary of State, within fifteen days after such adjournment, or become a law." It was the opinion of the committee that the words "or become a law" in the place where they occur, were not as well phrased, grammatically and otherwise, as it would be to end the section as

recommended. It was considered by the committee that it would be better to end the sentence in the way recommended.

Mr. FLEMINGTON. I move the recommendation of the committee be adopted.

Mr. PARSONS of Morton. I have no objection to the recommendation as read by the Secretary, but I claim that the wording of the Committee on Revision as printed is very different from what was read by the Clerk.

Mr. MILLER. I move that the word "present" wherever it occurs in this section be stricken out and the word "elected" be substituted.

Mr. SCOTT. If I remember correctly the amendment of the gentleman from Cass is the way this thing was originally passed. It was not two-thirds of the members present, but two-thirds of the members elected. I don't know how it happens to be printed this way.

The amendment of Mr. MILLER was carried.

A SALARY QUESTION.

The sections were adopted up to section eighty-four. This was read as follows:

SEC. 84. Until otherwise provided by law, the Governor shall receive an annual salary of $3,000; the Lieutenant Governor shall receive an annual salary of $1,000; the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Insurance, Commissioners of Railroads, and Attorney General shall each receive an annual salary of $2,000; the salary of the Commissioner of Agriculture and Labor shall be as prescribed by law, but the salaries of any of the said officers shall not be increased or diminished during the period for which they shall have been elected, and all fees and profits arising from any of the said offices shall be covered into the State treasury.

Mr. WALLACE. I move that this section be amended by fixing the compensation of the Lieutenant Governor at double that of a State Senator.

The motion was seconded.

Mr. WALLACE. I wish to say that in most constitutions this provision is incorporated—that the Lieutenant Governor shall receive double the pay of a State Senator. As it now stands he receives about $33 a day for the same services, practially as are performed by a State Senator who receives $5 a day. His duties are to preside over the Senate. You pay $1,000 for a year that he does not do anything. He receives $2,000 for sixty days service in the Legislature. I think there is such a thing as consistency. Paying $2,000 for this service is ridiculous.

The motion of Mr. WALLACE was lost.

Mr. BARTLETT of Griggs. I move to amend section eighty-four by striking out the words "and Attorney General" in line six, and inserting the same words after the words "Lieutenant Governor" in line three; also in line three insert the word "each" after the word "shall." I believe the salary is too much. I think we have have got all the salaries too high. The office of Attorney General is one that takes but a small part of the time of the occupant; it is in his line of business, and I believe that $1,000 is ample for the duties he is called upon to perform.

Mr. CAMP. I have never been Attorney General, and don't know how much time it would take, but it strikes me that $1,000 will not go far toward paying for the services of a competent Attorney General in trying the cases of the State of North Dakota for the State in the Supreme Court. Every prosecution that is appealed from the District Court will stand for the Attorney General to prosecute in the Supreme Court. He will be the counsel for every officer of the State, and it seems to me, although it will not take one-quarter of his time, yet the services are of such a nature that they are well worth, and if paid for by a private individual would cost, more than twice—more than three times—the sum specified as his salary.

Mr. WALLACE. I hope the motion will prevail. The gentleman from Stutsman does not know how much time it takes. I have never been Attorney General myself and don't expect to, but I think we all have a general opinion as to how much time it takes. I undertake to say it is a pretty good time for us to make some amendment in regard to this matter of salaries. The pay is too high. It is beyond that which men in other callings receive, and I think we should do ourselves credit by reducing it at least one-half.

Mr. LAUDER. It seems to me that the gentleman from Griggs cannot have seriously considered the responsibility that devolves upon the Attorney General, and the nature of the important duties that he is called upon to perform, when he gets up and advocates a salary of $1,000 a year. Why, Mr. PRESIDENT, nearly every organized county in North Dakota pays a greater salary than that for its district attorney. What are his duties in comparison with those of the Attorney General? He simply advises the county board and county officers, and represents the county in any litigation it may be engaged in. But as

the gentleman from Stutsman says, any case that is appealed from the district court, the Attorney General has to take care of before the Supreme Court. I would remind the gentleman that that work requires the highest order of ability. Almost any lawyer can thrash around in the justice court, or the district court, but when he comes to the Supreme Court it requires the highest order of talent,and that is where the most of the work of the Attorney General will come. Besides that, he is the legal adviser of every one of the State officers. He is also called upon to advise the Legislature when they are uncertain as to the constitutionality of a law. If he is a competent man for the position, certainly his services are worth more than $1,000 a year. An opinion from this man— one single written opinion—if he is competent to fill that office, is worth at least $100. His opinion on the constitutionality of an act if it is worth anything, is worth at least one-fourth of his salary, and you could not get a competent lawyer to prepare an opinion that the Legislature would be authorized to rely upon for less than a quarter of his salary.

Mr. SPALDING. I don't believe in fixing the salaries at an extravagant figure, and especially when we are just coming into the Union, and I would draw a line in fixing salaries between those offices which are honorary in their nature and those which are not honorary—those which take all or nearly all the time of the occupants, and those which take very little time. The office which is purely honorary, like that of Lieutenant Governor for the great portion of his time, I would reward by a small salary. I would give him ample compensation for the time that he has to devote to the State, but no more than that. On the other hand the office which takes a man from his business—requires a profound education to fill it—and requires much deep study and investigation in complex subjects I would give him such a salary as would be a reasonable compensation—as would be reasonable compensation for the skill required. I have been partner of an attorney general, and I know something about the time it takes, and I apprehend the duties of the Attorney General of the Territory of Dakota will not take up one-half the time of that they will take during the first year or two of the existence of the State of North Dakota under its present Constitution, and during its transformation from a Territory to that of a State. The officers will be met with conundrums and questions continuously as to what their duties are under this Constitution. I do know that the office of Attorney

General in this Territory has required the careful, close attention of a skilled occupant for more time than there is in a day, and I believe that it will require the skill and attention of more than two men for the first year after we come in as a State, to properly counsel and advise the officers, and perform the other duties of the office. It is true, also, that the Attorney General has many duties to perform in court, but they are the smallest part of his duties. It is made the duty of the Attorney General to advise the county officials and the district attorneys on all questions that they may ask his advice upon. There is not a day passes that the Attorney General has not a large number of inquiries asking his opinion on complex questions of law, many of which take several days or a week to investigate. That is the fact as it has existed under the territorial system, and it must of necessity continue to be the same under statehood. For that reason I say the Attorney General should be given such a salary as will command the ability and time of a man competent to fill that office and advise these officers on grave constitutional questions that will come before them. No man with any knowledge of the subject—with any knowledge of what a competent attorney can earn, will say that $1,000 will secure such a man. Two thousand dollars is a small salary. You are giving your members of the Legislature $5 a day, and they are men, many of them, or probably will be, if we are judges of the past, who will not have spent one hour to fit themselves for the performance of their duties. They will come from the farm, the workshop and the store, or anywhere else when they are elected, without any special preparation for filling the office, and you pay them at the rate of $1,500 a year, and yet here is an office requiring to be filled by a man who has spent years in preparation—who has spent years in obtaining the reputation as an attorney that will for one moment make the people of the state consider his name, and yet you propose to cut him down to two-thirds of what you give a member of the Legislature.

Mr. WALLACE. I would call attention to the fact that the Constitution of the State of North Dakota provides that the salary of the Attorney General shall be $1,000. I think their business will be fully as important as ours, and I think they are very good judges of what time they will be employed and what the attorney will have to do.

The motion of Mr. WALLACE was lost by a vote of 10 to 52.

Sections eighty-four, eighty-five, eighty-six and eighty-seven were read and adopted.

Section eighty-eight was read as follows:

SEC. 88. Until otherwise provided by law, three terms of the Supreme Court shall be held each year, one at the seat of government, one at Fargo, and one at Grand Forks.

Mr. NOBLE. I move as a substitute that the section shall be made to read, "three terms shall be held each year at the seat of government."

Mr. BARTLETT of Dickey. I believe it is the feeling of the people of the State that the terms of the Supreme Court should be held at the seat of government, and I hope the motion will carry.

Mr. FLEMINGTON. I agree with my colleague.

A call of the House was made, and the Convention subsequently adjourned.

EVENING SESSION.

The substitute of Mr. NOBLE for section eighty-eight was lost by a vote of 21 to 49.

The section was adopted; also section eighty-nine, and section ninety was read as follows:

SEC. 90. The judges of the Supreme Court shall be elected by the qualified electors of the State at large, and except as may be otherwise provided herein for the first election for judges under this Constitution, said judges shall be elected at general elections.

Mr. STEVENS. I move to lay the motion of the gentleman from Cass on the table.

Mr. SPALDING. I move to insert the word "not" after the word "shall" in the fourth line.

The motion of Mr. STEVENS was carried.

Sections ninety, ninety-one and ninety-two were read and adopted. Section ninety-three was read as follows:

SEC. 93. There shall be a Clerk and also a Reporter of the Supreme Court, who shall be appointed by the judges thereof, and who shall hold their office during the pleasure of said judges, and whose duties and emoluments shall be prescribdd by law and by the rules of the Supreme Court not inconsistent with law. The Legislative Assembly shall make provisions for the publication and distribution of the decisions of the Supreme Court, and for the sale of the published volumes thereof.

Mr. JOHNSON. I move to amend section ninety-three by inserting after the word "clerk" the words "of the Supreme Court, whe shall be elected by the people for the term of four years."

Mr. MOER. I move to lay the motion on the table.

A vote was taken and Mr. LAUDER explained his vote as follows: I wish to explain my vote. As one of the members of the Convention, particularly those who were members of the Judicial Committee, I was opposed to the appointment of this Clerk. I was in favor of the election of the Clerk, and took the position that the people were as competent to judge of their services in the capacity of Clerk as the judges were, and I think now that that is the better plan—that the power of electing a Clerk of the Supreme Court should be left with the people. But that question was fought over in the committee and the Convention, and it was voted upon and the vote was decisive, and I vote to lay this on the table because I am opposed to fighting these battles all over again. It consumes time and in all human probability there will be no change made.

The motion to lay on the table was carried by 45 to 27.

Sections ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, 100, 101 and 102 were adopted. Section 103 was read as follows:

DISTRICT COURT JURISDICTION.

SEC. 103. The district court shall have original jurisdiciion each within its territorial limits, except as otherwise provided in this Constitution, of all causes both at law and equity, and such appellate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of habeas corpus, *quo warranto*, *certiorari*, injunction and other original and remedial writs, with authority to hear and determine the same.

Mr. CARLAND. I have grave doubts about the effect which the expression of this section, in the second line, is going to have "each within its territorial limits." I know what it was put in there for. It was for the purpose of preventing persons from being sued in counties other than those in which they reside. It is a question purely of venue. I think it is a proper thing to be left to the Legislature. I can conceive that it will prevent the issuance of a writ or judgment by the district court of the Sixth District which can be levied on any other county out of the district. I can conceive of a good many instances where a party who had commenced his action in the Sixth District would de-

sire to get provisional remedy. He might want to have it served in another district. If this court is going to be confined to its own district for the purpose of trying cases, it seems to me it is going to tie up the hands of the court in a very serious manner, and I think it is a very dangerous provision to leave in this section. I move that the words be stricken out.

Mr. MILLER. I desire to second the motion. The practical effect of that section will be such as is not intended by the parties who desired to have the jurisdiction of these courts limited. In case a writ of attachment in the Sixth District was issued, and there was other property in other districts, that writ would be useless in the other districts. The plaintiff would have to commence action in the other districts, and it would hamper all business in a thousand ways.

Mr. STEVENS. While that may be true it would also relieve a thousand persons of being sued away from home and putting them to unnecessary expense, and while it may be true that it would be inconvenient for the lawyer who has a large collecting business or an insurance business, or a vast amount of foreign collections to make, to go to the district where the party lives, it would be very convenient for the man against whom the suit was brought. We have fought this thing over before, and I hope the Convention will vote the motion down. Remember the hardships that could be imposed upon a person if these words were stricken out.

Mr. BARTLETT of Griggs. The gentleman from Ransom has expressed my views exactly. I am happy to be in accord with him in this matter. As he says, this matter was thoroughly discussed. It was simply a question whether the district court should have territorial jurisdiction or jurisdiction within its district. Why have any limits to the district court? Why not have five district judges and have them elected at large from the State? Why have any district if they can sue as well out of the district as in it? It seems to me if we have district judges, and the districts are limited, their districts should be limited each to that district. I will admit that some hardships will occur, but it may be remedied by an amendment. We don't expect these gentlemen who live in the center of a judicial district will vote for it. It is very nice for them to sit in their offices in Fargo and sue every man in the Territory, and if this is to prevail, let all the attorneys go to Fargo and live, and let the district judges live

there, and we can sue farmers in Walsh county, or any other county without leaving our offices. A man should be sued in the district and county where he lives, and no where else.

Mr. MILLER. The question of suing a man outside the district in which he lives is not one that disturbs me at all. I am satisfied to require a man to be sued in his own county unless personal service is made on him elsewhere. But there are grave questions about this matter of jurisdiction. For instance, the judge in the Third District is sick, or is inevitably away from home. A man is incarcerated in jail who is unable to give bail. A writ of *habeas corpus* would lie for the release of the man as soon as you could get to a competent court. It would be impossible to go into any other district, and he might lie in jail till he dies, or his family dies waiting for the judge to come home or to recover from sickness. No other judge could interfere. In the second place a judge sick, or away from home, or worn out, or interested in some particular case that is in his court, may have been an attorney in the case, and he cannot call in a judge from another district to hold his court. No, the judge has jurisdiction only in his territorial limits. So the business is suspended if the judge is sick or disqualified. What are you going to do with suits now pending? It is to be presumed that lawyers now practicing will be elected as judges. It is presumed that they have some cases pending in court, and they cannot be tried in their courts because they are disqualified. They cannot call in another judge because the business would be outside his territorial limits. In the next case, suppose a man in Griggs county desires to procure an injunction. Immediate and irreparable damage is to be done. The judge of the district has gone to St. Paul on business. He cannot go into any other district court for the injunction—he has got to allow the man to destroy the property at stake, or run away with it. He is powerless; he cannot go to the Supreme Court. It seems to me that every reason, if a man stops to consider the matter, exists in favor of giving the judges of the district court, jurisdiction much wider than is provided in this section. In regard to the cry to startle people that somebody is to be sued out of his county, I don't think it is worthy to be considered in a question of this importance, because that can all be arranged and provided by law. It seems to me the plan proposed by this section would hamper justice in a very serious manner.

Mr. LAUDER. I appreciate the force of the arguments used

by the gentleman from Cass county, but it seems to me under the pretext of asking for a thing that is just and right, the gentleman is going to get a great deal more that is wrong and that ought not to be granted. I can understand why provision should be made here for one judge—a judge of one district—to act for and instead of another judge who may be inevitably absent or sick, or is disqualified, or for any other reason. It would be all well enough to have a provision of this kind in this Constitution. And that is the only argument I have heard on this point to my mind that has any force. I desire to heartily concur in what has been said by the gentlemen from Ransom and Griggs counties. I don't believe we want to leave this Constitution in such shape that a man in Griggs or Stutsman or Richland counties may be sued in Cass county and compelled either to go down there and defend his suit away from home, or incur the expense of procuring a change of venue. This was all gone over when it was before the Convention before. The same argument was used then. The statute provides for a change of venue, but it entails on the defendant an expense to go into another county for the change of venue. It should be his right, without cost and price and trouble, to have his case tried in the county in which he lives. As was stated before, these insurance or machine notes are small, and a man had better pay the note than go to the expense of procuring a change of venue. If he lives here he must go down and hire a lawyer at Fargo—appear there on a day certain before the court to present his motion. The judge may be absent. If so he will have to go again. I know how this thing goes. I have had experience, and it is an outrage on the people of the State to permit even the possibility of their being sued out of the county in which they live.

Mr. CAMP. I also have had some experience, and it has never yet cost a client of mine 1 cent to have his case tried in the proper district. It has never put me to more than this trouble—I have written a letter to the attorneys on the other side and told them I should demand a change of venue, and I have never found an attorney so obtuse or so bull-headed but that he at once signed a stipulation granting a change of venue, for the law is mandatory as it now stands. This talk about the expense and cost is the simplest nonsense in the world. The law is perfectly plain as it now stands that a man can compel a suit to be changed to his own county, and he can do it without any cost. He does not have to go to Fargo, and if the attorneys on the other side are so persis-

tent as to refuse the change of venue, they have to pay the costs of obtaining it.

Mr. LAUDER. The gentleman from Stutsman has been very fortunate in his experience in securing a change of venue of his cases. I will ask him—when he demanded a change of venue, suppose the attorney had refused to sign the stipulation, then what would he have done?

Mr. CAMP. I would have made a motion before the judge.

Mr. LAUDER. You would have been obliged to go before the court and present your papers or employ some other lawyer to do it for you. If there is any other way to procure a change of venue I would like to have my attention called to it.

Mr. CAMP. The change is always granted as a matter of course.

Mr. LAUDER. Yes, when the proper showing is made before the court. But that can only be done by appearing before the court and making your showing there, either by yourself or by employing some other lawyer. The gentleman from Stutsman has an easy way of doing work which I have never acquired.

Mr. CAMP. I have never found any attorney so ignorant or discourteous as to put me to the trouble of going before the court.

Mr. CARLAND. I ask leave to withdraw the motion.

Mr. MOER. So far as this question is concerned, I don't believe there is any Constitution in the United States that attempts to limit the district court like this. I believe the arguments offered for it are the merest demagoguery. Any lawyer knows that all he has to do to get a change of venue in such a case as we are discussing is to forward his motion with proper affidavits. A change is granted as a matter of course on any showing. The danger of limiting the jurisdiction of the district courts is greater than any possible harm that can come from being sued outside the district. It seems to me that this is pure demagoguery to take such a position as is being taken here.

Mr. LAUDER. I rise to a question of privilege. My remarks have been criticized as demagoguery. I desire to say that what I have said here on this question has been the result of conviction. There is no demagoguery about it. My remarks have been based on convictions based on actual practice in Dakota Territory.

Mr. PARSONS of Morton. It seems that the principle argument advanced against this section is the fact that the judge may be absent, sick or disqualified. Simply to meet this, I would

offer the following to be inserted in section 103 after the words, "confered by law" in the fourth line, "and whenever a district judge is absent, sick or disqualified, any other district judge may have jurisdiction during such sickness, absence or disqualification in remedial writs."

Mr. STEVENS. I desire to say one thing only. Our support of this motion which has been sustained by a large majority in this Convention has been denominated demagoguery. The arguments in support of their position by the opposition yesterday were that if this section stands as it has been reported by the committee, no judge could act in the district of another judge and hold court. As far as the charge of demagoguery is concerned, I am willing to abide by section 116 of this Constitution, which reads as follows:

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

The amendment of Mr. PARSONS was lost.

The motion of Mr. CARLAND was lost.

Mr. BARTLETT of Griggs. I move that the vote just had be re-considered, and the reconsideration be laid on the table.

Mr. SCOTT. It seems to me that we are acting hastily in this matter. We have the judgment of as competent men as there are in this Convention, for whom I have the greatest respect, that this section in its present shape is improper, and should not stand in this way, and that some amendment should be made to it. If we turn to section 116 we find the only authority conferred is on judges in other districts, to hold court out of their districts, but should a judge be sick in his own district or be absent temporarily or otherwise, there is no provision by which any person can go to the judge outside of his district and obtain any relief. It is a very serious state of affairs, and there is no reason why we should be left like that. If the gentlemen of the Convention would consider for a moment they would not ask to have this re-considered and laid on the table so that no amendment could be made. There is not one case in five hundred where a person is maliciously sued, and my experience is it is very little trouble to obtain a proper change of venue. If we consider the matter candidly, and coolly and seriously, and look at all the serious objections there are to this section, which were fully stated by Mr. MILLER, I don't believe the gentlemen of the Convention will insist on leaving this in this

way, but will at least leave it so that we may have the matter changed by the Legislature if it is deemed necessary.

Mr. LAUDER. I have just as high a regard for the legal ability of the gentlemen on the other side as my friend from Barnes has, but I think the gentlemen who are advocating this change have too much sense to feel that there is any reflection on their ability or on them personally, when the Convention does not agree with the views they put forth on this or any other question. Now, there might be some force in the remarks of the gentleman from Barnes were it not for the fact that this question was argued for more than two hours, when it was considered on its second reading. I don't wish to gag anybody, and I don't wish to hurry over this question without due consideration, but it does seem to me that all of these disputed questions that were fought over before ought not to be brought up now and fought over again. If there is any part of this Constitution that this Convention should be prepared to adopt without further consideration, it is the section here that we are now considering, because we have given to it as much consideration as any other part of this Constitution, and I now move the previous question.

Mr. BARTLETT of Griggs. I desire to say that if there was any indication that there was any harm being done, I would ask that the motion be taken from the table, but the very fact that they have voted down an amendment offered by the gentleman from Morton that remedied the trouble they complained of, tells me that they are not sincere in their objections.

Mr. PARSONS of Morton. I would like to second the words of the gentleman from Griggs. The motion I introduced was voted down deliberately, which answered the objections of the gentlemen on the other side. If that was voted down in a spirit of fairness, I would like to know what reason there was for doing it? It answered every objection that had been raised to the section, and I incorporated in it the very words of the gentleman from Cass—absence, sickness or disqualification. Now it seems to me that the other side were not sincere in the matter.

Mr. STEVENS. The previous question has been seconded.

Mr. MOER. Motion to reconsider was carried.

The motion to lay reconsideration on the table was lost.

Mr. FLEMINGTON. As there is such a difference of opinion on this subject I move that the further consideration of the section be postponed.

Mr. ROLFE. I apprehend we will know nothing more about this matter at 2 o'clock to-morrow than we do now, and I think the Convention has pretty well settled in its mind what it wants. I hope the motion will not prevail. As a substitute I move the adoption of the section as it now stands.

The motion was seconded.

Mr. PURCELL. This is a very serious matter, in my judgment. It seems to me it ought not to be hurried through with. If we give it a special order for to-morrow, in the meantime this matter can receive a great deal of discussion between the members. There is a good deal of opposition on both sides, and I hope the motion of the gentleman from Dickey to postpone till to-morrow will be carried, for it should not be hastily passed.

Mr. SPALDING. It was my misfortune, and that of several other members, to be occupied elsewhere when this discussion took place before, and this matter as it has come up is the first I have heard of it. So far as I am concerned I am inclined to think it would apply to each member of the Joint Commission. I should like to have a chance to examine this a little, and look into it before taking a final step to adopt or reject this section. It seems to me that it would be but fair that the matter which goes to the very root of the district court business of this State and to the very foundation of the rights of the people in the courts, should be amply discussed and considered, and it should be laid over till to-morrow.

Mr. MOER. All I would like to be shown is that the words "each within its territorial limits" does not limit the process of the court at all. I believe it does. If it does it is in my judgement a serious mistake. If it does not I will vote for it. I think it should go over till to-morrow and be made a special order.

Mr. FLEMINGTON. Undoubtedly a large majority of the members of this Convention are in favor of a substitute of that portion of this section which is under consideration here. It is a matter of some little importance, and this is why I am in favor of postponing its consideration till to-morrow. There can be no harm done by this.

Mr. ROLFE. There has not been an argument advanced here in opposition to this section that has not seemed to be in the interest of attorneys who live in judicial centers The matter has been fairly discussed, and I think we know what we want and I hope the motion to postpone will not prevail.

Mr. WILLIAMS. I have been voting with the majority on section 103, and I feel like supporting the section, but I think the request made by the minority is very fair, and as it is a very important question I can see no good reason for the Convention refusing to postpone the consideration of this matter till to-morrow. It is of such general interest and importance, and as there is such a stubborn minority, I think the majority should treat them with respect, so that there may be further discussion on the subject.

Mr. HARRIS. I have been voting with the majority, and I have not had reasons enough presented to my mind to change my vote. I am open to conviction, and I think it is fair and right that we should put this over till to-morrow. If any reason can be shown me why this section should be stricken out, I am willing to do what is for the best interest of the State of North Dakota. For that reason I would like to see it go over.

Mr. ROLFE. Since I made the motion I did, it has been suggested to me that it might make it impossible for a process of the district court to run over into another district in case of emergencies where it might be very necessary that they should run over. While I am in favor of the section as it stands, still I think it should be modified a little with an amendment. I am in favor of so limiting the jurisdiction of the district courts that every man shall have a right to be sued in his own county, and his case to be tried there, but for the reason I have stated I would withdraw my substitute.

The motion of Mr. FLEMINGTON to postpone the subject was carried.

COUNTY COURTS.

Section 111 with the recommendations of the committee were read as follows:

SEC. 111. The county court shall have jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians, the sale of lands by executors, administrators and guardians, and such other probate jurisdiction as may be conferred by law. *Provided*, That whenever the voters of any county having a population of 2,000 or over, shall decide by a majority vote that they desire the jurisdiction of said court increased above that limited by this Constitution, then said county courts shall have concurrent jurisdiction with the district courts in all civil actions where the amount in controversy does not exceed $1,000, and in all criminal actions below the grade of felony, and in case it is decided by the voters of any county to so increase the

jurisdiction of said county court, then the justices of the peace of such county shall have no exclusive jurisdiction, and the jurisdiction in cases of misdemeanors arising under State laws which may have been conferred upon police magistrates, shall cease. The qualifications of the judge of the county court in counties where the jurisdiction of said court shall have been increased shall be the same as those of the district judge, except he shall be a resident of the county at the time of his election, and said county judge shall receive such salary for his services as may be provided by law. In case the voters of any county decide to increase the jurisdiction of said county courts, then such jurisdiction as thus increased shall remain until otherwise provided by law.

[Committee recommend that all after the words "county court" in the proviso, commencing with the words "then the justices etc.," down to the words "the jurisdiction in cases etc.," be stricken out.

Mr. ROLFE. I move that in the first line of the section, before the word "jurisdiction" the word "exclusive" be inserted.

Mr. SPALDING. I move that the recommendation of the committee be adopted.

Mr. SCOTT. I want to understand the changes. I want to know whether in case the recommendation of the committee is adopted, whether the justice of the peace will have the same criminal and civil jurisdiction as he would have if no county court was established? Is that the intent of the committee in striking this out?

Mr. BARTLETT of Griggs. The words struck out refer to the exclusive jurisdiction of the justices of the peace, because the justices will have no such jurisdiction.

The section was adopted as recommended by the committee.

The amendment of Mr. ROLFE was amended by including also the word "original," and as so amended was adopted.

Mr. SELBY. I move to adjourn.

The motion prevailed, and the Convention adjourned.