

Mr. HAY. Mr. President.

Mr. PRESIDENT. The gentleman from Laramie, Mr. Hay.

Mr. HAY. If there is nothing else to engage the attention of the house, I would like to offer a proposition.

Mr. PRESIDENT. The gentleman from Laramie, Mr. Hay, asks the unanimous consent of the house to introduce a proposition. Is there any objection. The chair hears none, the proposition will be received and read.

SECRETARY. File No. 79, by Mr. Hay.

Mr. PRESIDENT. Will the gentleman indicate the committee to which he wishes it referred?

Mr. HAY. I think it should go to the committee on bill of rights.

Mr. PRESIDENT. Proposition No. 79, by Mr. Hay, will be referred to committee No. 1, on preamble and bill of rights, unless otherwise ordered. There being no objection, it is so ordered.

Mr. RINER. If there is no further business before the house, I move we adjourn until ten o'clock Monday.

Mr. IRVINE. Second the motion.

Mr. HOYT. I would suggest that it be made half past ten so that those who are out of town can get in in time.

Mr. CONAWAY. I would ask permission to call a meeting of the judiciary committee immediately after adjournment.

Mr. GRANT. The committee on taxation and public debt will please meet after adjournment to arrange for a meeting.

Mr. JEFFREY. I would like to give the same notice to committee No. 5.

Mr. BARROW. Will committee No. 14 please meet immediately after adjournment.

Mr. FERRIS. Committee No. 10 will please meet as soon as we adjourn.

Mr. PRESIDENT. It is moved and seconded that we do now adjourn until half past ten o'clock Monday. Are you ready for the question? All in favor of the motion will say aye; those opposed, no. The ayes have it, the convention stands adjourned until Monday morning.

THIRTEENTH DAY.

MORNING SESSION.

Monday, Sept. 16th, 1889.

Convention assembled at 10:30 o'clock, assistant secretary Glafcke called the meeting to order in the absence of the president.

ASS'T SECRETARY. The convention will proceed to appoint a president pro tem.

Mr. CAMPBELL. I move that Mr. Teschemacher be called to the chair to preside.

Mr. GRANT. Second the motion.

ASS'T SECRETARY. Mr. Teschemacher has been named as president pro tem. All in favor of the motion will say aye; contrary, no. The ayes have it, Mr. Teschemacher will please take the chair.

Mr. PRESIDENT. The convention will please come to order. The secretary will call the roll.

(Roll call.)

Mr. PRESIDENT. The secretary will read the journal.
(Reading of the journal.)

Mr. PRESIDENT. You have heard the reading of the journal; are there any corrections? The chair hears none; it will stand approved.

Presentation of petitions and memorials.

Presentation of propositions and resolutions.

As there seem to be no propositions this morning, the next thing is the reports of standing committees, are there any this morning. The secretary will read the reports in the order presented.

SECRETARY. Report of committee No. 10.

(See journal, page 61.)

Mr. GRANT. I move the report be referred to the printing committee and ordered printed.

Mr. POTTER. Second the motion.

Mr. PRESIDENT. Gentlemen, you have heard the motion; are you ready for the question? All in favor of this file being referred to the printing committee will so signify by saying aye; contrary, no. The ayes have it, it is so referred.

Mr. ELLIOTT. It is only the substitute offered by the committee that is ordered printed, is it not?

Mr. PRESIDENT. It is so understood.

SECRETARY. Report of committee No. 16.

(See journal, page 61.)

Mr. PRESIDENT. Gentlemen, you have heard the report of your committee, what is your pleasure?

Mr. GRANT. I move it be referred to the printing committee and ordered printed.

Mr. MORGAN. Second the motion.

Mr. PRESIDENT. It is moved and seconded that the report be referred to the printing committee. Are you ready for the question? All in favor of so referring it will so signify by saying aye; contrary minded no. The ayes have it; it is so referred.

SECRETARY. Report of Committee No. 4.

(See journal page 61.)

Mr. PRESIDENT. You have heard the report of your committee; what is your pleasure?

Mr. CONAWAY. In regard to this report, the main provisions, or the main subject of this report, the organization of our courts, is a question upon which I understand this convention is divided in opinion, and it may facilitate business to discuss that proposition now as to the organization of our supreme court, and if the convention does not agree with the report of the committee, it would facilitate business to have them say so now, and refer the matter back to the committee with instructions as to what they do wish in regard to this matter. I say this because we have recommended the establishment of a separate supreme court, consisting of different judges from those who constitute the judges of the district courts. I know there is a difference of opinion as to the policy of that method, or that organization of our courts, the principal objection being that very important one of economy. If a majority of the convention is not in favor of a separate supreme court and so expresses their opinion, and wish the present system of a supreme court to be adopted, that is, making the judges of the district court judges of the supreme it would facilitate business to have the matter referred back at once to the committee with recommendations to that effect. We are not aware what the wishes of the majority of the convention are, and if this matter takes the usual course, and we refer it to the printing committee now, we cannot get it back until to-morrow, and perhaps if it is amended in committee of the whole, or referred back to the judiciary committee for revision after that it will take at least one additional day, and it seems to me that it would be a matter of expediency to have an expression of opinion upon its main feature at this time, as to whether or not a separate supreme court is desired.

Mr. GRANT. I move the report of the committee be read so that we may know something about what we are discussing.

Mr. ELLIOTT. I move that the report be referred to the committee of the whole, and have its merits discussed there, and if they see fit, they can refer it back to the judiciary committee.

Mr. CAMPBELL. Second the motion.

Mr. PRESIDENT. It is moved and seconded that the report of committee No. 4, be referred to the committee of the whole. Are you ready for the question? All in favor of so referring will so signify by saying aye; contrary minded, no. The ayes have it and it is so referred.

Are there any reports of special committees?

Mr. JOHNSTON. I would like to state that the senate committee which we expected here on Wednesday will arrive to-morrow at about twelve o'clock, and they have requested that they have a meeting here of as large a number of parties as

we can secure, and I would suggest that this hall be placed at their disposal to-morrow afternoon, as soon after their arrival here as possible. I suppose a great number of members wish to attend the races to-morrow afternoon about four o'clock. I suggest that we have a meeting here up to that time and make provision for taking them to the fair grounds, if they should care to go. I make a motion that the use of this hall be tendered them for to-morrow afternoon.

Mr. CAMPBELL. Second the motion.

Mr. PRESIDENT. It seems to me that you will have to make it a special order, that this hall be tendered to the use of this senate committee and not used at all for the convention. Is that the wish of the special committee?

Mr. JOHNSTON. I think it is the sense of all the members, and that they be given the freedom of the floor, and I believe that it is the sense of all that they be invited here to address us.

Mr. COFFEEN. I think the matter should be carefully considered, so that the committee on reception may know just what is desired.

Mr. PRESIDENT. It is moved and seconded that this hall be tendered by the convention to-morrow afternoon to the senate committee on irrigation. In that case the gentlemen will understand that this convention will either have to adjourn to-morrow afternoon, or hunt up some other hall.

Mr. JOHNSTON. The idea I intended to convey was that the convention be in session when the senate committee arrives, and tender them the use of the hall at that time.

Mr. MORGAN. I would suggest that the convention do not adjourn to-morrow afternoon, but that it assemble here at the hour when the senate committee is expected to arrive, and then, of course adjourn as soon after we have received them as may be deemed advisable. The idea is to receive them formally as a convention, with the president in the chair.

Mr. PRESIDENT. The trouble with all the suggestions is just this. That by unanimous vote of this convention, to-morrow has been made special order for file No. 68, on suffrage and elections, consequently that being the special order on that day, you will have to do away with that before you can take any other action.

Mr. BAXTER. Would it not naturally follow that after the transaction of the routine business, the next thing would be the consideration of the special order of the day. It seems to me that that would be the case, and this matter will properly come up and be discussed the first thing tomorrow, and if we don't get through with it then, it would be the first thing in order for discussion when we assemble again. I certainly think it would come up for consideration the first thing to-morrow forenoon.

Mr. POTTER. There is only one objection which occurs to my mind and that is this. If we adjourn with the understanding that we are to assemble at any hour which they may appoint to meet us, if they are pressed for time they may designate to-morrow night for the hour of meeting, and I am opposed to giving up to-morrow night to the senate committee.

Mr. JOHNSTON. The senate committee have decided to remain here only over to-morrow. They disband here Wednesday morning, and it was at their request that we meet them to-morrow afternoon.

Mr. CAMPBELL. I would suggest that in as much as there is a committee appointed to arrange for the reception of this senate committee, it might be better to have the chairman of that committee make a report, and incorporate in that report whatever plans the committee may deem it best to make, and have the matter come before the convention in that shape.

Mr. PRESIDENT. The special committee have made a verbal report through their chairman. Is there any further discussion on the matter.

Mr. ELLIOTT. In order to bring the matter before the convention, I move that when this convention adjourn to-morrow that it take a recess until 7:30 in the evening.

Mr. GRANT. Second the motion.

Mr. PRESIDENT. It is moved and seconded that when this convention do adjourn to-morrow it take a recess until 7:30 to-morrow evening. Are you ready for the question?

Mr. MORGAN. I trust, Mr. President, that this motion will not prevail. It seems to me the better plan would be something like this. Let us continue our business to-morrow, the convention holding the hall tomorrow forenoon. Let the convention invite these gentlemen here, at whatever hour they may desire, and let the convention be in session and receive them at that time. It would not be the proper thing at all to invite them here and have nobody here to receive them, and I am satisfied that will be the case if this motion should prevail.

Mr. CONAWAY. I think that the intention of the gentleman who made the original motion, and the gentleman who offered the amendment, is the same. The necessity of our acting upon this matter now is that this committee on reception shall understand if this hall is to be the place for receiving this senate committee on irrigation. The hour of their reception seems to be the only matter that we have any difference of opinion about. I assume that there is not a member of this convention who would vote in favor of a recess, and then be absent at the hour appointed for re-assembling. I think, Mr. President, the proper way to receive this committee is for the convention to be in session and the president in

the chair, and I desire to offer an amendment to the amendment, and move that this convention do receive this senate committee in this hall at the hour set by the committee on reception.

Mr. CAMPBELL. Second the motion.

Mr. PRESIDENT. It is moved and seconded that this convention do receive this senate committee on irrigation in this hall at the hour suggested by this special committee. Are you ready for the question?

Mr. BAXTER. I fully agree with the sentiments just expressed by the gentleman from Laramie and the gentleman from Sweetwater as to the method that should be pursued in receiving this committee, but I do not think that either suggestion will accomplish the purpose desired. I hope that when we adjourn this afternoon the adjournment will be taken until nine o'clock to-morrow morning, in order that we can in that way get in some work to-morrow that will not be entirely wasted, on the special order of the day, and I think it would be best to leave the fixing of any hour for the reception of this senate committee until some time during tomorrow forenoon, when we shall have more explicit information as to the hour of their arrival.

Mr. PRESIDENT. Are you ready for the question? All those in favor of the motion will say aye; contrary minded no. The ayes have it; the amendment is carried. Inasmuch as the amendment to the amendment is carried, and as it entirely takes the place of either the amendment to the original motion, or the original motion itself, no other need be put. Any more reports of special committees.

Mr. PRESIDENT. There is nothing on the general file this morning but the report of Committee No. 4. What is your pleasure, gentlemen?

Mr. ELLIOTT. I move we now resolve ourselves into committee of the whole for consideration of the report of committee No. 4.

Mr. BAXTER. Second the motion.

Mr. PRESIDENT. It is moved and seconded that this convention now resolve itself into committee of the whole for consideration of the report of committee No. 4. Are you ready for the question? All in favor of the motion will so signify by saying aye; contrary minded, no. The ayes have it. The president will call to the chair, Mr. Coffeen of Sheridan county.

Mr. CHAIRMAN. Gentlemen, you are now in committee of the whole for consideration of the report of committee No. 4, judiciary. What is your pleasure?

Mr. CAMPBELL. I would like to hear that report read as I don't know what it contains.

(Reading of report of committee No. 4.)

Mr. CAMPBELL. I don't rise to make any amendment. As I understand the reading of that report there is no provision for an emergency where a vacancy occurs on the supreme bench, there is no way provided for filling an unexpired term. Now, the intention of that report no doubt is not to have two judges elected at one election; now, a vacancy might occur so that two judges might have to be elected at one time, or all three might go out at the same time, something might happen, and something ought to be put in there so that when a judge dies, resigns, or is removed, that the governor should have power to appoint someone to serve until the next election. My idea is not very clear about it, as I don't remember just what is provided for from hearing the bill read over once.

Mr. TESCHEMACHER. I think the gentleman has forgotten why we went into committee of the whole. We can't be expected to remember this whole judiciary bill and consider it without its being printed. We went into committee of the whole to decide the question whether this convention wanted to have a separate supreme court or not, and if not, to refer back the bill to the judiciary committee to make another bill. That is all we went into committee of the whole for.

Mr. CHAIRMAN. The last statement is correct. The purpose for which this was referred to the committee of the whole, was to get the sense of this convention on the separate supreme court question.

Mr. CONAWAY. I made the suggestion that that point be considered by this convention at the present time in order to expedite business. The question the gentleman has just raised will come up among various other points which will come up in discussion later. But what we want now is to get the sense of this convention we are to adopt a separate supreme court for the organization of our judiciary. If that is the sense of this convention, then let us refer this proposition to the printing committee, but if this convention does not want to adopt that system in the organization of our judiciary, but want the supreme court to consist of the district judges, then this report will have to be modified, and I think it can be done more expeditiously to refer it back at once to the committee on judiciary than to consider it here in committee of the whole.

Mr. MORGAN. I desire to ask the legal fraternity to explain to this committee of the whole the advantages of a separate supreme court, the additional expense and such other matters as they may be able to state, and what are the chief objections to it.

Mr. CHAIRMAN. I would prefer that the discussion and explanations for and against should be done to a motion.

Mr. TESCHEMACHER. To bring this question before this committee I move when this committee rise, it report back to this convention the report of committee No. 4, with the recommendation that it be printed. That motion being carried, would signify that we are ready to take that as a subject for discussion.

Mr. RINER. Second the motion.

Mr. CHAIRMAN. Are you ready for the question?

Mr. CONAWAY. If this convention recommend the printing of the report as made, it will be an expression of their opinion that they will consider the judiciary system in the main as provided for in that report. Then we shall have a separate supreme court, consisting of judges separate and distinct from the judges of the district courts of the proposed state of Wyoming. It has been suggested that we discuss briefly at the present time the different considerations which may be in favor of this system of judiciary, and those which may be urged against it. In considering the matter in my own mind as to the considerations which may properly be urged against this system of judiciary embodied in the report, I could conceive of no single consideration which carries any weight against it, except the single one of economy. Now, in regard to that consideration it is a very important one with us at present, I admit, but is it of importance enough to outweigh the considerations in favor of the proposed system? I am aware that some persons are disposed to look upon this proposition as a kind of pet scheme of the lawyers, in which the general public have not much interest. Nothing can be more erroneous than that. The attorneys in the district courts and supreme courts, in any objection which they may have to a different system of adjudicature, are merely the representatives of the public at large; their interests are not separate or distinct from those of the general public, and what they do or say in criticism of, or in reference to these courts, they speak as the representatives of the general public, and what is for the benefit of the general public is for the benefit of the attorneys. The only object of having a supreme court is to have the benefit of a different tribune, of a higher and better tribune than the one which had jurisdiction to try the case originally. It has been the experience of us lawyers on the committee, that in order to get a fair and unbiased consideration, or reconsideration of a question decided by a court of law, in order to have a real reconsideration of the question of law decided by the lower courts, it is necessary to have a separate supreme court. The judges of the district court are men of the highest integrity, men of great ability, learned in the law, but a judge having made up his mind once upon a question, it will be very apparent to every man, whether an attorney or not, that he

stands in a very different position to the question than a judge, of no superior learning, but a judge who has not made up his mind on that question, and it is surprising how many questions there are upon which judges honestly differ. It is absurd to say this separate supreme court is in the interest of lawyers, it is simply in the interest of the litigants, which means the general public. How often it becomes important to parties in defending their rights to have an appellate court to pass upon questions of the law which have been passed upon by the courts below. It is not important to the lawyers merely, but to the general public that we should have an appellate court, free from a suspicion of bias in favor of either of the parties to an appealed case. Now, the question of economy comes up in opposition to these considerations which must be recognized as valid by all our citizens. The question of economy is important, but we must remember that we don't expect always to be poor. In order to cut off part of the expense, we have agreed that the office of attorney general shall be dispensed with. We have agreed also to reduce the salaries of the judges from three thousand dollars, as at present, to twenty-five hundred dollars per annum, which will shut off a portion of the expense, and we have agreed to recommend to the convention, and through them to the people of the proposed state of Wyoming, that the object, the main object of having a separate supreme court, is of more value to the people of the proposed state, that the points in favor of the acceptance of the proposed system, far outweigh any considerations which may be offered against it.

Mr. POTTER. With reference to some portions of this report, it is but just to say that this report has been hastily drawn up after formal and informal discussions between members of the committee, and that few of the committee have seen this report as finally formulated. The main provisions of the report very many, a majority in fact, of the committee have agreed to, but there may be some minor matters in the report to which they object. Now, in regard to this supreme court question, I desire to say a few words. While my inclination owing to the abuse which I believe comes generally from the joining of district judges with the duties of justices of the supreme court, is in favor of an independent court, while I believe that that is the greatest safeguard to the public, if we are going to have any supreme court at all, yet on this matter I believe I stand in such a position that I can vote upon this measure with a desire only to adopt that system which would be the best for the people of the new state, all things considered, and say that if it be thought, or if I shall be convinced that the economical question is one that appeals more strongly than any other to the people, I believe I stand where

I can forego my inclinations about the matter. This is in my judgment one of the most important questions that will come before this body. Now, with reference to the economical question, and that is all I care to speak about. Everyone will admit, I think the convention would be ready to adopt, in case we had our district judges also judges of the supreme court, to adopt four judges instead of three. Then we would have four judges in the territory who would also be judges of the supreme court, who would be paid not less than three thousand dollars each, and who would be elected from their district. That would be four judges. It would then probably be provided that the judge who decided the case in the lower court could take no part in the argument in the supreme court. Now, as against that proposition, economically considered, it would provide for two more judges than the other system would do under any circumstances, I take it. Now, the proposition embodied in the report of the committee provides that the salary of the judges shall not be less than twenty-five hundred dollars a year. I know that this does not meet the ideas of some of the members of the committee, who think that is a small salary for a judge who attends to his duties and has any thing to do. He cannot do anything else, cannot practice his profession if he goes on the bench. Three judges at twenty-five hundred a year would be at an expense of seventy-five hundred dollars a year as against the other system, so that in considering this question economically I think we need go no further. I don't believe, although it has been said that the extra expenses of this supreme court will be considerable. I don't believe that the extra expense will be more than six thousand dollars. That is the way it appears to me.

Mr. CAMPBELL. I believe it has been said that the lawyers in this convention have been talking too much, but as this is a question which they are pretty well informed about, I suppose the convention wants to hear from the attorneys, about it, especially those who are on the judiciary committee. The supreme court as at present organized provides for three judges who shall be what is known as judges, and also supreme court judges. Now, you try a case before the district court, before one of these judges, the party may feel that justice has not been done him, and he appeals his case to these three judges who constitute the supreme court. Now, he goes to that supreme court with one judge against him. That is, if he is a good judge, and no person has any business to be a judge unless he is a good judge, and under the present system you make your appeal to a court one-third of whose members are dead against you when you make your appeal. What show has the defeated party got? In certain cases you can go to the supreme court of the United States, but in cases involving life

and liberty you cannot appeal to the United States supreme court unless there has been a radical departure from all forms and practices of law. Property is dear to a man, but his life and liberty are dearer. You try your case before a judge of the lower court, say it is a murder case, where life is involved, the man feels he has not been justly dealt with, and he appeals his case to the supreme court, one of whose members is dead against him. What show has that man got before that court with one judge already against him? Take it in the matter of property, you cannot go to the supreme court of the United States, under a law recently passed by congress, unless the interests involved in the suit amount to over five thousand dollars, or unless the suit involves the validity of some United States law. Now, ninety- five per cent of the criminal business brought within the territory of Wyoming, and which will be brought in the state of Wyoming, must stop at the supreme court of the territory when you get it there; it cannot go further. Now, there is no use in appealing you may say, gentlemen, you who are familiar with this subject, that you cannot understand why a man cannot get justice in the supreme court as at present constituted. I will give you an illustration why you cannot. About six months ago, Mr. Potter and his partner brought a suit in the Third Judicial District, before Judge Corn, involving the Ticknor-Edmunds law. There is a provision in that law which provides for the right of dower; that all married women shall have the right of dower. It is well known that the right of dower does not exist here, it does exist at common law, but has been abolished by statute here in Wyoming. This law, the Ticknor-Edmunds law, was adopted to protect the first wife of the Mormon. Now, my friends thought that while the statute was a little ambiguous, they believed that the right of dower did exist in the territory and they brought a suit in the Third Judicial District, before Judge Corn, for Mrs. France, widow of the late James France, who made an assignment shortly before his death, with the request that her dower interest be set aside in the real estate. That case was argued before Judge Corn. Judge Corn sits in the next supreme court of the territory of Wyoming. His mind is made up; there is no use appealing to him. Mr. Van Devanter is the chief justice of the territory, and can take no part in that suit whatever. Now there is no necessity for Mrs. France or her attorneys appealing that case to the supreme court unless it involves over five thousand dollars, and they intend to take it to the supreme court of the United States. It is well known to all lawyers that where you appeal to a court which consists of three members, that unless two of the judges decide that the lower judge was wrong the decision stands affirmed. Judge Corn in this case has made up his mind, he has decided adversely to their client's interests; Judge

Van Devanter can take no part. Suppose Judge Sautfy, the other member of the supreme court, should say Judge Corn was wrong, the decision of Judge Corn stands affirmed because only one judge says he is wrong. There are a number of cases of that kind. What kind of a court is it that is constituted in that way? What rights have litigants? It is not the lawyers who are interested in this at all; it is the persons who have business before the courts who are interested; it is to their interest to have a court to review the rulings of the lower court, and if that lower court is composed of judges who sit on the case above, you are simply appealing from one judge to himself again sitting upon that judge. Now, as my friend Gen. Thompson says, there is a sort of free-masonry among the judges in this respect. No judge wants to be reversed; he wants his opinion as once delivered to stand, they feel as Judge Sener said about himself, "When a case of mine is appealed to the supreme court of the territory, I consider myself on trial in that court," and when he said that he was only giving expression to what is the truth in that matter. They are on trial, their opinions are on trial; the decisions that are made are on trial, and while I don't charge, and don't believe there has been a case where judges have traded off at all, yet there is a great temptation to do it, and when one judge has passed his opinion upon a question, as our supreme court has been constituted heretofore, the other judges do not care to reverse one of their associates, if they can help it, and I say they will endeavor to find out some way, some manner in which they can affirm the decision of the court below, and they will often go out of their way, and not meet the point raised in the case at all, but will fly off upon some tangent in order to affirm the decision of the court below. A case was tried before Judge Maginnis; he based his opinion upon a statement of fact I believe. It was appealed to the supreme court, and the judge who decided the case did not touch upon that point at all, but went off upon some other points that had been raised. Now, there is a temptation to do that very thing and we should take the temptation away from them, and have a supreme court, an independent body, for the purpose of reviewing and for that alone, to correct errors and mistakes made by the decision of the court below. Now, in relation to this question of expense. I must say, Mr. President, that I don't believe three district judges are sufficient. I believe we should have four, and that you ought to provide for the expenses of the supreme court judges at least nine thousand a year. It is a principle as old as jurisdiction itself that a good judge will save his salary to litigants and to the people of the territory. What is nine thousand dollars, compared with the vast interests that may come before the courts for adjudication, and this supreme court, if it constitute an independent

body, I venture to say, will save their salary to the people every year, if they are good judges, as they should be. Nine thousand dollars is a mere bagatelle compared to the interests that will come before the supreme court for decision, and it should not be taken into consideration at all. Now, why should we be stingy and stint ourselves in this all important matter, this matter of having our questions of law, and questions perhaps involving our titles to property, our interests in property, and in the lives and liberty of our citizens, why stint ourselves when it is only a matter of nine thousand dollars at best, and I say to wind up, I say that this matter of the supreme court, I consider one of the most vital questions that has come before this convention. Wherever this mongrel court business has been tried it was found to be a mistake, and they have had to correct it. Nebraska, when it started out, adopted this system of a territorial court in its constitution, and they found that it did not work well, and they changed it just as soon as they could. No state ever tried it in their constitution but came back to this principle, and adopted an independent form of a supreme court. You say it is for the lawyers; the lawyers are in favor of it. We don't care anything about it at all, it is a matter for the litigants. I suppose it will put a few more dollars into the pockets of those who have a large practice in the supreme court, and that is confined to a very few lawyers, it would not effect many of us very much, I know it won't make much difference to me.

Mr. TESCHEMACHER. I would like to ask one question of the chairman before I make up my mind. Now, this system provides for three supreme judges and three district judges, now won't the three supreme judges have a soft snap and the three district judges have their hands so full they won't know what to do? Is that not going to be the trouble just at present at least, very little work for the three judges who are going to get three thousand dollars a year, and a great deal for the three who are going to get twenty-five hundred dollars a year?

Mr. CONAWAY. There is a good deal in that. That is one objection we considered, and tried to overcome it to some extent by giving the supreme judges original jurisdiction in matters of the United States court, mandamus and some other rights of that character.

Mr. SMITH. I cannot talk much this morning, but wish to say a few words. Now, considering the difference in the work to be performed this is certainly very much against the district judges, and for the work that will have to be done the compensation will be ample certainly for the first few years of the existence of the state, but I think that that can be remedied. It is in the hands of the legislature to change the compensation in the future. Considering the amount of

labor to be performed now, I should favor this, that the district judges should have equal compensation with the judges of the supreme court. That I find one at least of the new states has done; there may be more. Now the fact that a man gets into the supreme court does not make him any better, or more learned, or his services worth any more than a judge of the district court. The district court will want good judges just as well as the supreme court, and both will take the best they can find. As to their ability to perform the work, the greatest labor our district judges have to perform in this territory is traveling in the outer counties. You take in the older states, such as Pennsylvania, New York and Ohio, and all those states, and I will venture that the majority of the judges have more business than the entire amount of litigation there is in this territory. If you were to put all the business of this territory together, one judge could do all the business and not be constantly employed, or anywhere near constantly employed. If it were not for the scattered condition of our counties I, as a member of the committee, should have favored two judges; they could do the work easily if it was not for the extent of country they would have to travel over; the three judges that have been here in this territory have not been employed on an average of half of their time. I say two judges in this territory could do the work and not be under paid, but I think three judges certainly are sufficient, and they can very easily perform all the work in this territory, so the increased expense will not be so great as has been stated by the gentleman from Laramie. As to the reasons why we should have an independent supreme court, he has given them pretty well, and I don't care to say anything except that I endorse every word he has said in regard to an independent supreme court. What is a matter of a few thousand dollars compared with the rights of life and liberty?

Mr. CHAIRMAN. The question is before you, gentlemen. Are you ready for the question? The chair regrets that the sense of this committee cannot be taken by an affirmative motion, but you will understand that it is intended to take the sense of the convention in favor of the establishment of this supreme court. That this committee do recommend that the report of the judiciary committee be ordered printed; are you ready for the question? All in favor of the motion will say aye; contrary no. The chair is in doubt. All in favor of the motion will rise and stand until counted—13; those opposed will rise and stand until counted—8 in the negative. The motion is carried. We are still in committee of the whole, unless there is a motion to rise.

Mr. TESCHEMACHER. I move that this committee now rise and report.

Mr. CHAIRMAN. Gentlemen, you have heard the motion; all in favor of the motion will say aye; contrary, no. The ayes have it, the committee will now rise.

Mr. PRESIDENT. The gentlemen will please come to order.

Mr. President, your committee of the whole to whom was referred the report of committee No. 4, file No. 50, recommend that the substitute for said file be printed.

H. A. COFFEEN, Chairman.

Mr. PRESIDENT. You have heard the report of your committee, what is your pleasure?

Mr. RINER. I move that the report of the committee be adopted, and the file returned by the committee be referred to the printing committee and ordered printed.

Mr. PRESIDENT. It is moved and seconded that the report be adopted, and that the substitute be referred to the printing committee. Are you ready for the question? All those in favor of the motion will so signify by saying aye; contrary minded no. The ayes have it, it is so referred.

Mr. BAXTER. Mr. President.

Mr. PRESIDENT. The gentleman from Laramie, Mr. Baxter.

Mr. BAXTER. I gave notice a day or two since of my intention to offer an amendment to rules 18 and 19; the amendment I wish to offer is by adding to such sections these words, "This rule shall apply to committee of the whole." My idea in doing this is that in committee of the whole, three members shall have the right to demand a call of the convention. This question was raised the other day, and the chair decided we had no such right. This would also give any five members the right to demand the previous question. I would, therefore, move, sir, that the clause "this rule shall apply to committee of the whole," shall be added to rules 18 and 19.

Mr. MORGAN. Second the motion.

Mr. PRESIDENT. Gentlemen, you have heard the motion; are you ready for the question?

Mr. POTTER. If that rule is adopted I don't see any reason for having a committee of the whole. What is the object of going into committee of the whole, where debates are not permitted, except that gentlemen may have a free chance to express their opinion in an informal manner, and where you are not bound by the rules of the convention necessarily adopted for the purpose of facilitating the dispatch of business. We have not had any very long speeches in this convention or anything of that kind, but the very object of the committee of the whole will be dispensed with if we pass this amendment, and we might as well never go into committee of the whole at all. I think it would dispense with the committee entirely.

Mr. BAXTER. I am compelled to differ with the gentle-

man who has just spoken. It seems to me that more than one-half of the time of this convention has been spent in the discussion of these rules. Rule 50 provides that the rules of the committee shall be the same as in the convention, so far as may be applicable; now the other day the chair ruled that the previous question could not be put in committee of the whole. If I entertained any fear that any gentleman, a member of this convention, desired to shut off debate and could be sustained in his position by the assistance of five others assisting him to demand the previous question, when the debate had not gone to that extent when it should be shut off, I should not offer this proposition, but I do not believe such would be the case, and I don't see any reason why this should not apply to the committee of the whole, and think it would facilitate business.

Mr. MORGAN. I see the reasons why the gentleman from Laramie, Mr. Baxter, has offered this amendment to the rules, but at the same time in my judgment it disposes of all necessity for committee of the whole. The purpose of committee of the whole is to have a free interchange of opinion, to express our opinion on propositions here without being required to express that by an aye and nay vote. It is for that purpose. If it is thought that too much time is being consumed, that can be met by a motion that the committee arise. That takes the place of the previous question. Whenever you compel members to put themselves on record, you at once destroy a certain freedom of consideration of any questions brought before them in committee of the whole. It is understood I think whenever a majority think too much time is being consumed a motion that the committee arise will be to the same effect as the previous question.

Mr. BAXTER. The objection of Mr. Potter and the gentleman from Laramie, Mr. Morgan, is directed solely to rule 19, on the previous question. There objection may be sound so far as it refers to rule 18, but take it in connection with rule 18. We had here a few days since in committee of the whole, a decision from the chair which was questioned. It seems to me we should have the right to demand the aye and nay vote, the roll call, in order to settle just such difficulties as that, as we had here the other day, when two or three thought the vote had been announced incorrectly. Now what possible objection can there be to having the roll called when there is any question as to what the decision is? That is the object of the proposed amendment to rule 18.

Mr. PRESIDENT. The very reason why the ayes and noes cannot be taken is that no record is kept on the journal or anywhere else of the proceedings of the committee of the whole, and consequently no record of this aye and nay vote. Whenever the committee of the whole gets into difficulty they

can arise, report disorderly conduct to this convention and have some punishment meted out by the convention, but the committee of the whole is no different from any other committee sitting in any of the committee rooms, and there is no record kept of its proceedings at all.

Are you ready for the question? All in favor of amending Rule 18 by saying that "this shall apply in Committee of the Whole" will so signify by saying aye; contrary no. The noes seem to have it; the noes have it; the motion is lost. All those in favor of amending Rule 19 will say aye; contrary minded no. The noes seem to have it, the noes have it, the motion is lost.

Mr. RINER. I move we now take a recess until 2 o'clock.

Mr. PRESIDENT. It is moved that we do now take a recess until 2 o'clock. Are you ready for the question? All in favor of the motion will say aye; contrary no. The ayes have it, the motion to take a recess prevails.

AFTERNOON SESSION.

Mr. PRESIDENT. The convention will come to order.

There being no questions pending I will return to the order of introduction of petitions, memorials, etc. Any petitions, memorials, resolutions or propositions? Reports of standing committees? Reports of special committees? There is nothing on the general file, gentlemen, owing to the fact that the printing committee have not seen fit to return to this convention what was ordered printed last Saturday. It seems to me that the business of the convention should not be delayed in that way. If any member of the printing committee is here I would like to hear from him.

Mr. CASEBEER. The chairman of the committee is not here, nor the next member on the list, but I will say that I took the matter to be printed Saturday at 9 o'clock, and it was promised that it would be here at an early hour this morning. Mr. Slack has not returned the files, and I know of no reason.

Mr. PRESIDENT. You have heard the report of the printing committee, what is your pleasure?

Mr. MORGAN. Is there no proposition from a committee in possession of the convention that could properly be taken up and acted upon without printing, something about which there would be no great difference of opinion?

Mr. PRESIDENT. Everything returned this morning was referred to the printing committee, and is now in their hands, and the only return that has been made at all is the one relative to the legislative apportionment, and that cannot come up before the report of the legislative committee. It seems to me that it would be a good thing to send somebody to the Sun office and see whether we will have anything this afternoon.

Mr. CAMPBELL. I move we take a recess for half an hour and someone be directed to go to the Sun office and see if there is anything to be done this afternoon.

Mr. ORGAN. Second the motion.

Mr. PRESIDENT. It is moved and seconded that the sergeant at arms be sent to the Sun office to find out what material, if any, this convention can have to work on this afternoon. Are you ready for the question? All in favor of the motion will so signify by saying aye; contrary no. The ayes have it, the motion prevails. The sergeant-at-arms is so directed.

The question is now that we take a recess of thirty minutes. Are you ready for the question? All in favor of the motion will say aye; contrary no. The ayes have it; the convention stands in recess until 2:45.

Recess.

Mr. PRESIDENT. The convention will come to order. The sergeant-at-arms has returned and says nothing will be ready before 4 o'clock and perhaps not then.

Mr. RINER. I move we adjourn until 9 o'clock tomorrow morning.

Mr. REED. Second the motion.

Mr. IRVINE. I move to amend by making it 10.

Mr. HAY. I have a proposition which I would like to offer, concerning the salaries of public officers.

Mr. PRESIDENT. If there is no objection the file will be referred to the committee on salaries. Is there objection? The chair hears none, it is so referred.

Mr. RINER. I now renew my motion to adjourn until 9 o'clock tomorrow morning.

Mr. IRVINE. I moved an amendment making it 10.

Mr. PRESIDENT. It is moved that we adjourn until 9 o'clock. Mr. Irvine moves to amend by making it 10. Are you ready for the question? Those in favor of the amendment making it 10 will say aye; contrary minded no; the noes seem to have it. The question is now on the original motion that we adjourn until 9 o'clock. All in favor of the motion will say aye; contrary no; the ayes have it; the motion to adjourn prevails.

FOURTEENTH DAY.

MORNING SESSION.

Tuesday, September 17th.

Convention assembled at 9 o'clock.

President Brown in the chair.