

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

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

The motion was carried.

Mr. SELBY. I move to adjourn.

The motion prevailed, and the Convention adjourned.

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### THIRTIETH DAY.

BISMARCK, *Friday, August 2, 1889.*

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

Prayer was offered by the Rev. Mr. KLINE.

#### EXEMPTION LAWS.

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

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

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homestead law, will come here and take up their residence if there is any guarantee that that exemption will never be repealed.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

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

of fixing it so that the exemption should not be changed! Just think of it for a moment—bidding to get men here who propose getting into a fix so that they can get the advantage of that law. That law was framed in the first place to benefit the settlers, but now the most of them have got so that they could get along even if they did not have so much exemption. I believe to-day that if the exemption was cut down it would be a help to the poor man. I believe that; and I also believe that it would help the poor man to get credit where now he cannot get any. Now they have to march up to the common altar and give security.

Mr. STEVENS. I am opposed to this resolution for more reasons than one. First, we have come here to deliberate upon what shall be the Constitution that is to be submitted to the people of this Territory. We have seen fit to provide that each article, in order that it may be properly considered, shall be first introduced; after having been read it shall be referred to a committee; after that committee has reported, and the printed report has been placed on the desks of the members, it must go to the third reading and final passage. This resolution contemplates the passage by a single swoop of one of the provisions of this Constitution without further consideration than a vote upon this resolution, as it directs that that committee shall report, and if this resolution is adopted every man who votes for its adoption is in honor bound to vote for the report that they have directed to be made, so that in fact the vote on this resolution if carried will settle the question as to the exemption laws. I am in favor of passing a Constitution here that will be as free from objection as it is possible to get it. I am in favor of passing a Constitution without weights upon it to go before the people, but every merchant and every business man who has a single cent at stake, will say that a Constitution adopted in such a form as that will prevent the Legislature from reducing the exemption if they see fit, and they would feel it to be against their best interests and the best interests of the State to vote for it. It would be, in my opinion a weight—a millstone, slung about the neck of this Constitution when it went before the business world of North Dakota. Who can this benefit? Can it benefit the farmer? Undoubtedly not. Let us make this Constitution so that every farmer, every business man, every professional man will be cared for under its provisions, and if it does not suit those who see fit to come here,

let them stay away. The interests of the farmers and business men are identical.

The farmers cannot pass a constitutional provision here that will be to their benefit unless it is also to the benefit of the merchant and the manufacturer. The merchant and the manufacturer are as necessary to the interests of the farmer as the farmer is to the merchant, and the merchant without the farmer would be an absolute failure. There is no danger of the business man ever attempting to pass through the Legislature a provision that will be against the interests of the farmer. It is true that combinations are sometimes made which are against the interests of the farmer, but they don't last. If we place this clause in our Constitution we have placed it beyond our control. I say that the passage of that resolution would be a detriment to every farmer in this country, because it would not only be a millstone around the neck of this Constitution when it came to be submitted, but it would also be a provision that they would themselves desire to change. Fifteen hundred dollars and 160 acres of land may, in the present situation of the Territory, be ample and sufficient, and it may be as little as it should be. I am in favor of a liberal exemption, but I cannot say that I am in favor of seventy-five men here saying that they shall forever provide in this Constitution that no power except two-thirds of the people of this State can ever change those exemptions. I say I am opposed to the resolution, and I believe that every farmer who understands his best interests will also be opposed to it. I am opposed to it, and I believe every business man who consults his best interests will be also opposed to it. I am not opposed to the present exemption laws, necessarily, but I am opposed to putting it in the Constitution where it cannot be changed by the will of the people through their Legislature.

The resolution was lost by a vote of 69 to 4.

The Convention then resolved itself into Committee of the Whole for the purpose of considering Files Nos. 121 and 131.

#### PROBATE AND COUNTY COURTS.

Mr. CARLAND. There has been considerable discussion on the question of adopting the minority report of the Judiciary Committee as a substitute for the majority, relating to probate courts. I have prepared what I think will be a measure which can be adopted by those persons who are in favor of county courts,

and those who advocated the other side. My amendment will be a substitute motion as follows:

That the word "probate" where it occurs in section twenty-four and twenty-five of the majority report of the Committee on Judiciary Department be stricken out, and the word "county" inserted, and that at the end of said section twenty-five there shall be added the following proviso: "*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 upon 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.

Mr. MOER. I second the adoption of the substitute.

Mr. PURCELL. I also second the adoption of this substitute, for this reason: As the committee stated last night there was considerable feeling on both sides with reference to the adoption or rejection of the report of the majority. The adoption of the minority report would force on some counties a court that they did not desire to have. The adoption of the majority report would have kept some counties from having a court that they seem to want. This resolution creates a county court by the Constitution, but leaves the jurisdiction of that court to the people of the respective counties. I think it is just and fair, and should receive the sanction of the members of the Convention.

Mr. ROLFE. I would like to have the privilege of seconding the motion of the gentleman from Burleigh.

Mr. CAMP. I would like to ask if there is any means by which a county can get rid of a county court after once it has adopted the plan?

Mr. MILLER. In view of the fact that it is a matter of grave importance, and there has been a difference of opinion in regard to probate and county courts, and as it would seem to be practically settled by this amendment, I should like to have the amendment printed and laid over till to-morrow. We will not be wasting any time by doing this, but will be saving time. Some of us

might feel like making amendments to it now, which we might not make after having thought the matter over. I therefore move that the consideration of the report be deferred till after it has been printed.

The motion was seconded.

Mr. LAUDER. It seems to me that this Convention has had this question under consideration a sufficient length of time, and has discussed it at sufficient length to understand just about what the members want, and it seems to me there is no necessity for this delay. It is now under consideration and can be disposed of, and I am opposed to this deferring action on these matters from day to day.

Mr. MILLER. I made the motion only for the purpose of saving time. If the amendment is discussed now there will be several amendments offered to it. I can see grave objections to its adoption, while in the main I am satisfied with it and satisfied with calling the probate court the county court and under certain circumstances increasing the jurisdiction, but there are other matters there that in my opinion need to be changed. I made my motion for the purpose of saving time. It is an entirely new question that is before us.

The motion of Mr. MILLER was adopted.

Section twenty-six of File No. 121 was then read.

Mr. SELBY. Inasmuch as the proposition for county courts has been postponed and the subject of justice courts becomes a part of the subject matter, I move that this matter be deferred also, to be considered at a subsequent meeting of this committee.

The motion was seconded and adopted.

Mr. SCOTT. I move that sections twenty-seven and twenty-eight be postponed for the present.

The motion was carried.

Mr. POLLOCK. It seems to me that the proposed change with regard to county courts will have an effect on sections twenty-nine and thirty, and I move that the consideration of these sections be postponed.

The motion was seconded and adopted.

#### THE GOVERNOR.

File No. 122 was then considered. Section one was adopted. Section two was then read as follows:

SEC. 2. 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 thirty years and who shall have resided two 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. SCOTT. I move that that the word "two" in line four be stricken out and the word "five" inserted in its place. If there is any reason why any official place in the State should be filled by a man who has had some lengthy residence in the State, there is every reason why that of the Governor should. I don't believe that it should be possible under the Constitution for a man to come into the State and in a period of two years attain to the gubernatorial chair. I believe that five years is short enough and that he cannot in less than that time become acquainted with the wants and desires and necessities of the people.

Mr. ROWE. In the fifth line the question arises whether a Governor should be prohibited from being elected to any other office outside of the State. Not infrequently Governors are sent to higher places, and the question arises whether this provision would prohibit anything of this kind.

The CHAIRMAN. You must put your own construction on that.

Sections three and four were adopted.

The motion of Mr. SCOTT was adopted.

#### THE QUESTION OF PARDONS.

Mr. CAMP. I move as a substitute for section five that File No. 8 be adopted. Section five reads as follows :

"The Governor shall have power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction for all offenses except treason and cases of impeachment, but the Legislature may by law in all cases regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Upon conviction for treason he shall have power to suspend the execution of sentence until the case shall be reported to the Legislature at its next regular session, when the Legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the Legislature at each regular session each case of remission of fine, reprieve, commutation or pardon granted by him, stating the name of the convict, the crime of which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same."

The section I desire to substitute for it reads as follows :

“The Governor, Attorney General, and the Judges of the Supreme Court shall constitute a Board of Pardons, in which shall be vested the sole power to remit fines and forfeitures, grant reprieves, commutations of sentence and pardons. The meetings of said board shall be held at the Capitol, shall be called by the Governor, and not less than ten days’ public notice thereof shall be given. Two-thirds of the members of said board shall be a quorum for the transaction of business. A record of the proceedings of said board shall be kept. No fine or forfeiture shall be remitted, no reprieve, commutation of sentence or pardon granted unless two-thirds of all the members of said board shall vote for such remission, reprieve, commutation or pardon; and the voting shall be by ballot.”

Mr. CAMP. The question of pardons is one that has perplexed and puzzled the legislators of many states, and all those who are interested in the general subject of government. Upon the Governor, if the pardoning power is placed in his hands, immense pressure, is frequently brought to bear. We all recollect vividly the scenes connected with the last days of the Chicago anarchists—what a tremendous pressure was brought to bear on the Governor of the State of Illinois to pardon those men. My proposition is somewhat similar to the system in vogue in the State of Pennsylvania, which you will find set out in File No. 106, page 31. In that State there is a Board of Pardons and the Governor is only allowed to pardon on the recommendation of that board, whose sessions are public and proceedings are in writing. Practically the only change I make is that the votes of the board shall be by ballot, so that no friend of the criminal nor any other person shall know how those men possessing the pardoning power have voted. It seems to me that such a board, composed of more than one individual, can handle this matter of pardons with much greater safety to the State, and do their work in such a manner, that the laws will be respected more than one man can. Under the present system of pardons a great many men are pardoned from various motives who ought never to be let out of the prison to which they have been consigned. That is so, and it must remain so as long as the pardoning power is left in the hands of one man.

Mr. ROWE. I desire to speak in favor of the report of the committee, and I hope the amendment of the gentleman from Stutsman will not pass. The committee, when they had this under consideration, were unanimous in expressing the opinion that the pardoning power should rest with the Governor. The Governor who is elected to the highest office in the gift of the State, is sup-

posed to be a man of ability and integrity, and when we place this responsibility on one man he realizes the situation, and acts with more judicious care than if it rested on a Board of Pardons who were allowed by their ballot to shirk the responsibility. As the gentleman called our attention to Illinois, I would call your attention to the fact that that grand old man, Richard Oglesby, rose to the occasion and refused to exercise the pardoning power in the cases referred to. I again say that where you place on the one man the responsibility, he will use it with more judicious care than if it was put on a Pardoning Board who can by a secret ballot shirk their responsibility.

Mr. JOHNSON. I concur with the remarks of the gentleman from Dickey, and am firmly of the opinion that in cases of this kind we are more likely to get just decisions when the people have some method of fixing the responsibility where it belongs. I consider the worst feature of File No. 8 is that which allows this responsibility to be so that it will be utterly impossible for people to fix it. It would be vicious enough if it were left in such a manner that one member could shift it on to another. The people and the parties would be confused, and there would be no distinct and conspicuous figure on whom to fix the responsibility. If you have a governor who exercises this power who is required to give his reasons and report every case to the coming Legislature, then the people know who is responsible.

Mr. FLEMINGTON. I would move that in place of section five there be substituted sections eleven, twelve and thirteen of File No. 106.

These sections were read as follows.

SEC. 11. The Governor shall have power to remit fines and forfeitures, and to grant commutations of sentence, and pardons, except in cases of treason and impeachment; but no fine and no forfeiture shall be remitted, no pardon shall be granted, and no sentence commuted, except upon the recommendation in writing of a Board of Pardons composed of the Lieutenant Governor, Secretary of State and Attorney General, or of any two of the members of said board, after full hearing, upon due public notice, and in open session; and such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the Secretary of State. The General Assembly shall by law prescribe the sessions of said Board of Pardons and the manner in which application shall be made, and regulate the proceedings thereon; the written proceedings and decisions of said board and all papers used at any hearing shall be filed in the office of the Secretary of State; the Board of Pardons may grant commutations of pardons, either absolutely or upon such conditions as said board may deem proper.



SEC. 12. The Governor shall have power to grant respites or reprieves for any time not exceeding ninety days, in all cases, except treason or conviction on impeachment, but such respite or reprieve shall not (in any case) extend beyond the end of the next session of the board of pardons.

SEC. 13. The Governor may, upon conviction of treason, suspend the execution of sentence and report the same to the General Assembly at its next session, when the General Assembly may either pardon or commute the sentence, or grant a further reprieve.

Mr. ROWE. I would say that except the arrangement for a board of pardons, section five of the original report covers all the ground of these three sections.

The motion of Mr. FLEMINGTON was lost.

The section was adopted as reported by the committee.

Sections six, seven, eight, nine, ten and eleven were adopted.

#### OTHER STATE OFFICIALS.

Section twelve was read as follows:

“There shall be chosen by the qualified electors of the State at the time and places of choosing members of the Legislature, a Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of School and Public Lands, Commissioner of Insurance, three Commissioners of Railroads, Attorney General and Commissioner of Agriculture and Statistics, who shall have attained the age of twenty-five years, and shall have the qualifications of State electors. They shall severally hold their offices at the seat of government for the term of two years, and until their successors are elected and duly qualified, but no person shall be eligible to the office of Treasurer for more than two consecutive terms.”

Mr. PARSONS of Morton. I would amend section twelve by substituting the word “labor” for “statistics” in the sixth line.

Mr. ROWE. I second the motion.

Mr. PARSONS of Morton. The Chairman of the committee has kindly seconded this motion. The only reason for asking is this, that at our national seat of government we have a Commissioner of Agriculture and one of Labor. The commissioner of statistics is an indefinite term. The commissioner himself is a statistician, by reason of his office of Commissioner of Labor, and he has complained publicly of his inability to get information from the State, and it was designed that this particular commissioner should be the one we should communicate with, and it would be no difficulty to substitute the word “labor” for “statistics.”

The motion of Mr. PARSONS was adopted.

Mr. BEAN. I don't know whether I am right or not, but in line four it provides for a Commissioner of Public Lands. In the

report of the Committee on School and Public Lands, File No. 130, section four, line four they have provided for a Board of University and School Land Commissioners. It is my opinion that this commissioner spoken of here will find his duties conflict with the duties of this board which we have already agreed to. I move to strike out the words "of school lands" in this line.

Mr. ROBERTSON. I would like to ask if the gentleman would have any objection to striking out the word "commissioner" also? I move that the words "commissioner of school and public lands" be stricken out entirely.

Mr. BEAN. The reason I did not include all these words is that I was not certain but that we needed a Commissioner of Public Lands. These other commissioners only act on school lands. There may be other public lands donated to the State, or over which the State will have control, that this board will not have under its cognizance. That is why I did not insert the other words in my motion.

Mr. ROBERTSON. I think it would be satisfactory if the gentleman would examine section twelve, File No. 130. He would see that all other lands except school lands are relegated to the Legislature entirely. It is taken out of the limitations and provisions of the whole article—placed entirely in the hands of the Legislature. So I don't see any need, and don't think any other member can see any need, of commissioners of public lands. The Legislature can make any arrangement they may see fit.

Mr. O'BRIEN. I would suggest that we had better let this matter go to the Revision Committee, and if there is any conflict they will discover it and report it. We have not the time to investigate it here.

The motion of Mr. O'BRIEN was seconded and adopted.

Mr. LOWELL. I move that after the words "Attorney General," in line five, section twelve, we insert the words "Inspector of Steam Boilers."

The motion was lost.

Section fourteen was read as follows:

"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 School and Public Lands, 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 Statistics 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 said offices shall recover into the State Treasury."

Mr. ALLIN. I move that the figures "2,500" be substituted for "3,000," in line two, and instead of "1,000" in line three insert the words, "twice the salary of a State Senator."

Mr. WALLACE moved that a provision be inserted in the section providing that the Lieutenant Governor receive the same pay as the Governor when he is acting as Governor.

Mr. O'BRIEN. I move that the salary of the Governor be made \$5,000 a year instead of \$3,000.

Mr. MOER. I move that the section read "until otherwise provided by law the Governor shall receive \$2,000 per year."

Mr. BARTLETT of Dickey. We don't want a Governor whose time is not worth \$3,000 a year. When a common drummer from Chicago can earn, after one or two years' practice, that much, surely a man who fills the office of Governor should have \$3,000 a year.

The motion of Mr. MOER was lost.

Mr. WALLACE. The gentlemen are trying to be a little facetious. I am in favor of giving the Governor \$3,000 a year.

The amendment of Mr. O'BRIEN was lost.

The amendment of Mr. ALLIN was lost.

Mr. WALLACE. As I understand it the question is now on the amendment that the Lieutenant Governor receive double the pay of a State Senator. If he is acting Governor he should receive the same pay as the Governor. In several state constitutions that is exactly the provision they have. The Lieutenant Governor has just about as light a job as anybody, and I don't know why he should be paid \$1,000 for presiding over the Senate. But, of course, when he performs the duties of the Governor he should receive the same pay.

Mr. MOER. I would like to ask the gentleman from Steele if we should pay the Governor his salary during the time the Lieutenant Governor is acting as Governor?

Mr. NOBLE. I would like to ask whether the mileage of the Senator would be considered in as part of his salary?

The amendment of Mr. WALLACE was lost.

Mr. O'BRIEN. I move to amend by making the salary of the Lieutenant Governor \$500 instead of \$1,000. The reason I do this is this—to give the Governor of the State \$3,000 a year for

two years' services is one thing, but in the same section you give the Lieutenant Governor one-third of that for ninety days' services. I think that is entirely too much. We should decrease the salary of the Lieutenant Governor or increase that of the Governor. For that reason I offered the amendment to make the salary of the Governor \$4,000. To be consistent I offer the amendment cutting down the salary of the Lieutenant Governor to \$500.

Mr. McHUGH. We might go on this way all the afternoon. Every member might get up and offer an amendment, cutting down one salary and raising another, therefore I move as a substitute motion that we report this report of the committee back to the Convention with the recommendation that it do pass.

The motion was declared to be out of order.

The amendment of Mr. O'BRIEN was lost.

The section was then adopted as reported by the committee.

#### LEGISLATIVE REPRESENTATION.

File No. 129 was then brought up for consideration.

Mr. NOBLE. I move that the minority report of the Legislative Committee be substituted for the majority report.

Section eleven was then read as follows:

"At its first session after the adoption of this Constitution the Legislative Assembly shall apportion the State as nearly as possible into representative districts composed of compact and contiguous territory according to the population, giving, however, one Representative to each organized county."

Mr. SCOTT. I move that section eleven be stricken out and the following substituted therefor:

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

Mr. NOBLE. I move that section eleven of File No. 129 be substituted for the report of the majority of the Legislative Committee as read. The original report of the Legislative Committee provided for what is known as single county representation. The supplementary report of the Committee of the Legislative Department provides that the Representatives shall be elected at large from the senatorial districts. This election of the Representatives from the senatorial districts at large is what I object to. The principle established here of making a senatorial district and making it also a district from which there shall be two or three Representatives elected, is entirely contrary to the principle on

which this government is run, and if that principle is to be established here, then I am decidedly in favor of one house. The principle of making a Senate and a House of Representatives which shall be elected at the same time and by the same people is going back to the principle of one house. While the original report of the committee is preferable to the supplemental report I would still prefer to have the original report amended so that Representatives shall be elected one from each district regardless of senatorial districts, and the House of Representatives should be entirely separate and distinct, and independent from the Senate; otherwise I believe that the principle of two houses is done away with, and the reason for it is done away with. I hope that section eleven, the amendment, will be substituted for the supplementary report as advocated by the gentleman from Barnes.

Mr. PARSONS of Morton. It seems that in keeping with section eight we should adopt the motion now before the House—section eleven of File No. 129. The supplementary report, reports an extra section for section eight, and as we have not seen fit to reconsider the prior action of the House, it would be the height of folly to adopt it in another part of the report, and I hope the amendment for the adoption of section eleven will prevail.

Mr. WILLIAMS. The majority of the Legislative Committee have reported adversely to section eleven. The majority favor the election of members of the lower house from the senatorial districts at large.

Mr. PARSONS of Morton. It is the principle that I am opposed to. I believe the people's will can best be carried out by dividing these representative districts irrespective of any senatorial district, and when there is a body of people of sufficient number and votes to elect a member of this House, they should have the privilege of doing so.

Mr. SCOTT. As the section originally stood it was reported without the knowledge of the majority of the Legislative Committee. That section gave to each organized county, no matter what the population was, one Representative. Section eleven was recommended after re-consideration by the committee to be stricken out, and the original idea was to add a clause to the end of section eight, which however had been adopted by the Committee of the Whole prior to the meeting of the committee, so if the Convention sustains the majority of the committee the amendment will be adopted that I have read. The only question before the Con-

vention is this—shall the State be divided into senatorial districts and the representatives be elected at large from those districts, or into senatorial and representative districts, and then shall each district be re-divided for the purpose of electing two or three, (as the case may be,) members of the House? The majority of the committee were not favorable to this re-division of the districts. In the first place they are all the same people. You may divide the senatorial districts into two or three parts and elect a Senator at large, or you may not divide it. It is the same people who elect the senator anyway. The same voters elect him, but there is this difference—you are only entitled to vote for one Representative if you sub-divide it into districts, and in the other way you are entitled to vote for as many men as there are Representatives to be elected. It is a great deal of work for the Apportionment Committee to sub-divide each senatorial district into sub-divisions, and apportion to each the proper portion, so that each Representative may be elected as may be on the basis of population. Again, after it is re-divided into representative districts, they must hold their caucuses and conventions in one representative district and then they must do the same thing in the other districts, and after that they must all get together and nominate a Senator, and after all it is the same people that do it. What difference will it make in the constitution of the House? The Senators are elected for four years. Only one Senator is elected at a time and that is done so that all the elections won't be together—so that there would be some difference between the Senate and the House, but the mere sub-division does not change the voters in any way, and for that reason we thought the State should be apportioned into senatorial districts only.

Mr. ROLFE. I wish to divide the substitute of the gentleman from Bottineau. I think I was one of the majority of the Legislative Committee which made the report that appears here, but at the time I voted in favor of the report as it stands. I did so because the situation in that committee was such that unless we dropped our discussion entirely on the three measures that were at issue there, we would be unable to agree on a section covering the point. The committee was composed of thirteen members. There were three propositions before that committee and I yielded the measure I supported, which included one Representative from each organized county, and voted with the majority in order that we might agree on something to get before this Convention.

When I came here I was strongly in favor, and am yet, of a Senator from each organized county, for the reason that it is analogous to the system of the United States Senate, which we all uphold, and believe in, I presume. But no such proposition as that would carry; therefore, if we obtained anything that was similar to that proposition it must come in this way—that each organized county would have at least one Representative. As has been said by the gentleman from Bottineau, if we cannot have the one system or the other, I would like to see the one house system prevail, which we have already sat down upon hard. If neither House is to be a check on the other, there is no occasion for two houses. If the senatorial district is created, and the Representatives are to be elected at large in that district, then the Senator and the three Representatives have interests that are exactly identical, and any measure proposed in the House will be supported in the Senate, and any measure proposed in the Senate will be strongly supported by the three Representatives in the House. Therefore neither house will be a check on the other, and if we are to incorporate in our organic law any provision by which the interests of one house will not be identical with the interests of the other house, it must be done in the way suggested by the gentleman from Bottineau.

Mr. MOER. I have only a word to say and it is this—that I believe every organized county in the State should have a Representative in the Legislature. Every organized county, whether it is large or small in population, is compelled to bear its burden of taxation, and is therefore entitled to some sort of representation. In my district, we have suffered somewhat under a similar clause as that proposed by the majority of the committee, offered by the gentleman from Barnes. A senatorial district composed of three counties simply means that if one of the counties is large in population and the others small—it ordinarily means the large county takes all the representation there is to be had by the district. That is what it has meant to us in connection with Barnes and Ransom counties from the time of the first history of our county. It is what it would mean in the future if we were attached to those counties. I believe that every county is entitled to representation. I am not afraid of my own county now. From some of the plans submitted, LaMoure, McIntosh and Logan have been placed together. If that was to be the basis, and the Representatives are to be elected at large, and three men in La-

Moure county worked together, Logan and McIntosh would be left out in the cold. I don't believe in placing it in the power of LaMoure county or any other county to cut out a smaller county. I think every organized county should have its Representative.

Mr. PARSONS of Morton. I would say that if this supplementary report is adopted, Morton county would profit by it, but we have suffered for the last six or eight years under this very system of three Representatives from a district, and there has been more political chicanery, more trading backward and forward, and the will of the people in each locality has been more disregarded, than I have liked to see. It is a system by which the politicians can ride rough-shod over the will of the people. I hope the amendment of the gentleman from Bottineau will prevail, and if it prevails, section eleven stands as it came from the committee originally.

Mr. STEVENS. It is an old saying that bad pennies always return, and chickens come home to roost. Some of the gentlemen who did what they could to sit down on the one house plan, now see that they have made a mistake, and desire to adopt it in another form. At an election held down in my county there was an old gentleman very much interested on one side, and that side was very badly beaten. A gentleman said to him: "Well, Uncle Jim, what are you going to do? You are down." The reply came—"I will tell you. There ain't any man that can get on the other side any quicker than I can." That is the way with me. I have concluded that I was wrong in my one house theory, and I want two houses. But if this Convention concludes to have two houses, it is preposterous to have those two houses divided up in such a way as to give some little county with sixty votes a Representative, when there are seven or eight hundred or a thousand votes just across the county line that would have no greater representation. The district is made for the Senator, and the Representatives should be elected from the same district as a whole, because if divided it only allows that much more jobbery in the election of the Senator. They should be elected, if they are elected at all, from the same district. If the districts are to be the same, then everybody should be elected from the same district. A city might be divided up in such a way as to let the country have no representation and practically no vote. I am decidedly in favor, though I signed the minority report, to be consistent with the one house theory, of engrafting nothing in this report that would be



inflicting an injustice on the people of every district from which a Senator is to be elected.

Mr. LAUDER. I am not one of those who believe that political questions should to any extent be brought before this Convention, but I want to say just a word to my republican friends who are members of this Convention. This measure you will see is introduced by a prominent democrat. While the democrats are not saying a word in the discussion, you will find when they come to vote, every democrat will vote for the proposition introduced by the gentleman from Bottineau. There won't be many noes from that side of the house. While I would not drag in a political question here, neither would I depart from the rule usually adopted, for the benefit of the other side.

Mr. JOHNSON. I take some pride in following my chief who led us so gallantly in the one house contest, and in being with him consistent. We do not believe in checks on legislation. We believe there are too many checks now, and have been during the past year. We have had too many. But further than that, and further than the political objections offered by the gentleman from Richland—and it is well known I am a partisan as strong as anybody—more than that, overshadowing that, I oppose the motion of the gentleman from Bottineau on the simple grounds of justice. Read the last line of the section. It reads like this: "Giving one Representative to each organized county." There are counties in this State that only cast forty-four votes. In my county we cast 1,035. We do not ask or expect more than one Representative. Is there anything fair—any justice—in a system that would give forty-four men in Billings county the same representation as the 1,035 voters of Nelson county? That is the substance of the substitute which the gentleman advocates. We are assembled here under the Omnibus Bill or Enabling Act. The first section of that bill reads as follows: (It has a thought in it which is inspiring).—"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana and Washington as hereinafter provided." Mark the words—it says "the inhabitants" of that part of the area shall constitute the states. That is the true, the historic, the constitutional and poetic theory of the state. What

constitutes a state? Not area. It is men—high-minded men—men whom their duties know. Our theory is that representation in this new State which we are creating here shall be based as laid down in the very first section, on men and not surface. It is not on geographical exposure merely, but on men. In the name of justice, why is not a man in the Red River Valley as good as a man in the Bad Lands? You would not have it so if the proposition of the gentleman from Bottineau prevails—you would make forty-four men in the Bad Lands as good as 1,035 in Nelson county. We are here to make laws for people, and not valleys, and rivers and inanimate objects. It is a fact that for the present and for many years to come the Red River Valley is and will be the center of our civilization, will have the population, so that we don't ask any more than those people who live in the cow counties, but we do hold that a man should be counted a man wherever he lives, and to people who live in those counties we ask that the people who live in the eastern counties shall at least stand an equal show with the men who live in the far western part of the State.

Mr. PURCELL. If the principle advanced by the gentleman from Nelson is good, why is it that we have divided or have empowered the Legislature to divide this Territory into senatorial districts? Why not instead of that have all our senators elected at large—the same as the Governor and the Secretary of State and other officers? Why do we fix districts from which they are to be elected, and which they are supposed to represent? If his theory is good, then why do we do it like this? If his theory is bad, and the theory is a good one to fix districts, then why not carry that theory a little further and fix the districts which the members of the lower house also shall represent? As the gentleman read from the Omnibus Bill, something was said about the Congress of the United States. The Congress is composed of Senators and Representatives from their specific districts in the respective states. That is an example that we can well follow in fixing our Constitution here to-day. We can well follow the principles of the Constitution of the United States, and say that the district shall be represented by a Senator, and that these districts shall be sub-divided so that certain portions shall furnish certain members, and by doing that we preclude any jobs. There is nothing in the way of having this enacted. It is in vogue in almost all the states in the Union. The objections that have been advanced by the gentleman from Barnes will not lie, for it is no

more difficult to hold an election for Senator or Representative than to hold an election for a member of the board of county commissioners. In each organized township of the counties there is an election precinct established. When they meet at that election they select their town officers, and they can just as well at that time vote for their Representative and Senator. It should be no great burden to the Legislative Committee, or to the Legislature to get together and apportion these districts. They come here to perform just such acts, if they are required to do that by this Constitution. It seems to me that the reasons urged by the gentleman from LaMoure are good ones. If this is allowed to prevail and these senatorial districts are not sub-divided, you will see in nearly every senatorial district the same fight as in counties where county seats are in question. It will be a question of the majority eating up the minority. When you say that the senatorial districts shall be divided into representative districts, then you deal fair and square with the country as against the city, and that is all we ask of this Constitution.

Mr. HARRIS. I am opposed to the report of the majority of the committee, first because the principle is wrong. I want to see the senatorial and the representative districts divorced as widely as possible from each other. It is all very well to say that we don't want any more checks on Legislation. I say that we want the check of one house against another, and what the gentleman from Richland and the gentleman from LaMoure have said in regard to the larger counties eating up the smaller ones is true, and we all know it. You put three or four small counties into a district and then provide that the Representatives shall be elected at large in that district, and you get a Senator and Representatives all from the larger counties, and the smaller ones are not represented at all. It is all very well to say that the smaller counties are represented by the men from the larger. If a man from one of the larger counties finds himself in the Legislature, and his interests and the interests of his county conflict with the interests of the smaller counties that he represents, his own interests get his vote every time. The smaller counties cannot be represented if they are attached to the larger counties. The gentleman from Nelson is poetic over the fact that we are not here to make an apportionment whereby acres, merely, will be represented. He raises a man of straw in order that he may in a poetical and rhetorical manner knock him over. No man has stood on this floor and

asked that acres be represented, but we do ask that out in this western part of the State, where at the best, out of a House and Senate to be composed of more than a hundred members we shall have not more than fifteen members—we do ask that the smaller counties of the western two-thirds of this State shall be allowed some representation, although it may seem to be against exact square justice to the counties in the Red River valley.

The gentleman has mentioned Billings county that last fall only cast forty-four votes. I want to say that Billings county has over 200 voters, and she has over \$500,000 worth of assessable property. I want to say that although Billings county has only 200 votes, Hettinger county, lying beside her, unorganized, had 271 voters last spring, and has more than 300 voters now. They are just as honest, just as intelligent and grand American citizens as there are to be found in the State of North Dakota. They are composed of the New England colony that came from Maine, New Hampshire and Vermont. They are not allowed to vote because their counties are not organized. They believe that it is for the best interests of the county that they should remain unorganized until they get a larger population. Those people should have a representation in that section of country through the organized county that lies next to them, so that they may be properly represented in the Legislature, and we are only asking that the counties having the larger population may give these smaller counties some representation in the Legislature. We find the same thing true in the north. We find Church, Sheridan and a number of counties adjoining the counties on the Manitoba railroad having a large population, but they are not organized. We ask that these smaller counties have representation. Nelson has only one Representative, it is said. We are not asking that you give each organized county a Senator. We are asking that every organized county in this State shall have at least one Representative. It is true that the Committee on County and Township Organization placed a report before this House which was referred to that committee, providing that no county shall be organized with a population of less than 1,000. This would prevent the small counties in future from being organized until they have sufficient population to give them a Representative. All we ask is that you divorce these districts, and follow out the principle to which the Government of the United States and the government of every state is pledged.

Mr. PARSONS of Morton. I would like to read from page two of the Enabling Act. It says:

“The Constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.”

There is no more pleasing reference in that Enabling Act than the one just read, that our Constitution shall not be repugnant to the Declaration of Independence. What was it that produced the Declaration of Independence? Briefly, it was taxation without representation. You say these counties have representation. You may take it in any portion of the State to-day, and the outside small counties have simply the choice between one or two men in the large counties. Political conventions have been held, and they have had the glorious privilege of voting on the choice of delegates from the larger counties. Now please look at it—what class of men inhabit the large counties? You will find there the centers of business, professional men, business men and commercial interests, centered in the large counties. Under this system the tendency and the practice of it will be to give us that class of men in the Legislature in preference to farmers. Go to the outside counties and you will find a rare case of a professional man. I can point you out counties that have perhaps only one or two professional men. There are two counties that I know of and I doubt if there is a professional man in either one. This old principle which the majority seek to give us is a perpetuation of the principle that we have had under the old territorial form of government, and we have seen the iniquity of it. I am not in favor of disfranchising the outside counties and allowing the centers of population to control the Legislature in the future. I speak in behalf of everyone who wishes that the laboring people of this country shall be represented in the Legislature, and ask that they vote for the amendment of the gentleman from Bottineau. I hope that none will be caught by such arguments as have been sought to be advanced here to the effect that this amendment has been introduced by a democrat. It was first introduced as a majority report of this committee, and now it is proposed to strike it out, and if this is done we must feel that it is done in the interests of the professional and commercial classes and against the farming and laboring classes.

Mr. LAUDER. We have had a good many quotations from the

Omnibus Bill and the Constitution of the United States and the Declaration of Independence, but I was particularly struck with that portion read by the gentleman from Morton county. It is elementary, and perhaps we can all agree on it—that all men are created equal. That is just what we claim. To refute every word he has said I intend to quote his own words—that men are created equal. That is, a man out in the Bad Lands is not created equal to two or three men out in the Red River Valley. All that we ask is that the principle laid down by the Declaration of Independence shall be adhered to in the formation of this Constitution. The objections that are raised here and the argument made by the gentleman from Burleigh and the gentleman from Morton, when you look at the thing as it exists, you will find that it has no force in it, whatever. It is a great cry—the large counties will swallow up the little ones. The gentleman speaks of his own county, Morton, and tells us how many of these small counties will be swallowed up in the insatiable maw of Morton county. I would remind him that under the report of the Committee on Apportionment and Representation as it seems to be almost unanimously agreed on, Morton county will go in with one other county only, Oliver, and the two counties will have one Senator and two Representatives. You won't have the exquisite pleasure of swallowing up anybody. These arguments are made on the theory that there will be twenty-four Senators or members of the Council. In all probability there will be thirty Senators from North Dakota, and it will be a small county that will not be a senatorial district of itself, and the matter of swallowing up counties will not cut any figure. It is simply a firebrand thrown out here. I simply appeal, and I have a right to appeal, in view of what has been said, to the gentlemen who reside in the thickly populated counties of the Red River Valley. I warn you that this is a scheme by which this great and almost uninhabitable country west of the Missouri river is to be cut up into counties just as soon as they have 250 voters, and they will be brought in here, and it will destroy the very principle of representation on which our government is founded, representation in proportion to population. We do not want to disfranchise anyone, but this is a combination between these men who want to get an unjust representation from the counties west of the Missouri river, and the democrats who hope to be able to carve out a district in some county that they

can carry when they could not carry the senatorial district altogether.

Mr. MOER. The gentleman from Richland says the people who advocate this measure are appealing to the smaller counties from selfish motives, and then he appeals to the large ones on the same theory. I cannot understand why any county—Richland or any other county—why they should object to it from any standpoint. Does it affect Richland?

Mr. LAUDER. I object to it because I object to having forty or sixty voters in Logan county have the same voice in the administration of the government of this State, as five or six or seven hundred will have in Richland county.

Mr. MOER. The gentleman is wrong entirely in regard to Logan county. They do not have any representation as a matter of fact. As a matter of fact Logan county is entitled to her proportion of representation; so is McIntosh; so is LaMoure under the district system. I have no fault to find with some of the sentiments advocated by the gentleman from Richland, but I don't believe that the entire position he takes up is right or just, and I want to say that I am going into no scheme with the democrats, for I am as good a republican as is the gentleman from Richland. Why should not McIntosh county have representation? Why should not Logan county have representation? Take the district as proposed. There are in these districts some 1,282 votes—McIntosh, LaMoure and Logan. LaMoure had 831 votes at the last election. Why should we permit LaMoure to take all the representation in that district? There are 351 other votes which should at least entitle them to one Representative. LaMoure pays taxes on \$2,000,000 and McIntosh on \$470,000, and at the same time he would say—give us a system that would give McIntosh no representation. The same thing is true all over the Territory where small counties are attached to large ones. What is the reason that Cass and Barnes and other large counties are against this? The reason is that they want the cities to control the country. That's all the reason there is in it. There cannot be any other reason advanced that has any argument in it at all than that the cities wish to control the country, in the same way that the larger counties wish to control the smaller counties and take all the representation. I am not surprised that the gentleman from Ransom has abandoned his one house theory. But he is not consistent, for he now advocates another form of one house; he advocates now a

system that selects from the same district, men to the Senate and the House—elects them at large, thus making practically one house, but called two houses. This is practically a one house system. The gentleman says the howl is here to give the small counties representation. That was the cause of the United States Senate being established. It was established so that every State might have representation. They paid taxes, and therefore they claimed representation equal with the rest of the states in the Senate. Why should not every organized county be represented? So far, I have not heard one word of argument other than that it is a democratic measure, which I deny, and simply from the self interest of the larger counties—Cass and Richland and such counties. If the northwestern part of the State is to be divided *ad infinitum*, then let Cass split herself into seventeen different pieces. There is not a thing in that. A county in the west has as much right to representation on the floor of the Legislature as any county in the east.

Mr. BELL. It seems strange to me that they should be willing that we should pay money into the Treasury of the State, and let the counties that lie on the Missouri slope pay it out. It is very strange, indeed, that these gentlemen—I know a few of them by seeing how they were elected last spring—that they don't deal out the same generosity to the different townships around that elected them. If you follow this system out, then in the county government you must follow it too, and give each organized town the same representation as another. It is said that this would be no advantage to the west over other sections, but I notice that the main advocates of the scheme are all from the west and the thinly populated counties. They are afraid, apparently, that the people in the eastern part of this new State are going to control it. If they do, they have a right to control it. They are going to supply a big part of the funds to run it, and I think we should have the right to say how these funds are to be disbursed. Do you think it is fair that Walsh county should only have one representative to every 750 votes, when Billings county has one representative with forty-four votes? Does it take 750 men in Walsh county to be as good as forty-four in the Bad Lands? You must certainly think that a man who has come out here and set himself up on bare hills and barren rocks has a great amount of judgment above him who has settled down in the fertile portions of the eastern counties in this State. I think the only fair way of



having representation is representation according to population, for when you get representation by population you get it according as each one contributes to the public funds.

Mr. SCOTT. I want to call the attention of the Convention to the fact that the gentleman from Morton says this proposition does not affect him. He is looking after the interests of the smaller counties. The gentleman says that as a matter of fact Morton county can swallow the other fellows all up and get two or three times more than it is entitled to. The gentleman from Richland says that it does not affect him because he is one of the large counties that will not have any small counties attached to it. The gentleman from Burleigh says it does not affect him, but they all have sympathy with the smaller counties. It is astonishing to see so much magnanimity displayed by the gentlemen who advocate this system. I don't know why they should advocate it. They say that they have the same interests that the gentlemen in the eastern counties have—the same interests that we have in Barnes county—that it will entitle them to the same representation that it will us, but they pour out their souls to the poor men in the Bad Lands and Logan county.

Mr. HARRIS. The gentleman from Richland grows eloquent and appeals to the Red River Valley counties to stand by this minority report, because he is afraid there is a scheme between the democrats and a few republicans to capture the Legislature by the cow counties. As though it were possible when the district east of the James River Valley will have a population amounting to four-fifths of the whole population of the State, for the counties west of that to do the capturing. It does not seem to me that the Red River Valley counties were in any danger of being crowded out of the way, and as to what the gentleman from Barnes has said, he must remember that we are representing these outside counties on this floor. While it will not affect Burleigh it does affect McLean that has not less than 400 voters, although at the last election it only showed 360; it does affect McLean, and I represent McLean on this floor and I say that it should have a Representative in the Legislature. We are here to represent small counties that surround us and if we represent them right we can only ask that they be given representation, and the gentlemen of the Red River need not be afraid of the power slipping away from them.

The amendment of Mr. NOBLE was then voted upon and lost.

Mr. NOBLE. I wish to offer another amendment. It is this—that all of section eleven of the original report be adopted, down to the word “population” in the fourth line, and adding that “only one Representative shall be elected from each representative district.”

The amendment was seconded by Mr. CAMP and lost.

Mr. NOBLE. I move to adopt section eleven to the fourth line and add afterwards the words: “And only one Representative shall be elected from each district, provided every county having over two hundred voters shall have at least one Representative.”

The motion was lost.

Mr. NOBLE. I move that section eleven be re-committed to the committee.

Mr. SCOTT. The committee has made its report, and the report is in the hands of the Clerk, and it is before this body for adoption or rejection. They recommend that a certain section be inserted as section eleven. The question is now before us to adopt the committee’s report or reject it. It has been fully discussed both by the committee and this Convention.

Mr. STEVENS. As I understand this question the amendment introduced by the gentleman from Barnes, or the substitute, has never been before any committee, and no committee has had anything to do with it. This is an original proposition offered by the gentleman from Barnes to be incorporated as section eleven. You cannot re-refer it unless it has been once referred.

The motion to recommit was lost.

Mr. NOBLE. I don’t believe that we want to establish this principle. I wish to offer as an amendment the amendment that I have sent to the Clerk’s desk. The main objection to the adoption of this principle of giving each county a Representative seems to be from the older counties of the Red River Valley, and they imagine that they will be over-ridden, and that the new counties will have more power in the General Assembly than the old ones. This seems to be the main objection. The principle of representation, such as we wish to see established here, cannot be disputed by any man on the floor of this Convention. The idea that it is a democratic scheme can be seen to be absurd on its face. My objection to the proposed scheme is that the older counties will have entire control of the Senate—absolute control if they have the Senate apportioned according to population. There will

be five or six counties that will have one Representative, and a slightly larger portion of representation than they should have. But let us consider a few objections to this principle that have been voiced in this Convention before to-day. There has hardly been a time that men have not stood up and pleaded against the tyranny of the old Legislatures of this Territory. Counties have been cut in two, and all this has been done simply because a county was not represented in the Legislature under the territorial era. Under the old principle of legislation—under the principle that an attempt is being made to establish in this Constitution, counties will be unrepresented in the Legislature. Their lines can be changed and the people in these counties, in the future as in the past, will always necessarily have to go down into their pockets to send men to watch to see that the county lines are not changed. The idea of the older counties standing up here and being afraid of giving a county a fair representation in the Legislature—representation that may be a little larger than they are entitled to at present—but which they will at least be entitled to in a year or two. The older counties of the State will have to control the Senate absolutely, and why? They can stand up here and object to giving us fair representation in the popular house—the house that will be composed of all classes and factions of the people of the State. How they can object is more than I can understand. We hear the idea expressed that possibly this is a democratic scheme. We have heard stories here of counties that have been robbed—of their lines having been changed—instances have been given and reasons advanced and methods proposed for remedying the evils that exist, but no theory has been advanced yet before this Convention to remedy the trouble, and the plan to adopt that I can think of, that will be effectual, will be to elect a democratic Legislature.

The amendment of Mr. NOBLE was lost.

Mr. ROLFE. I would like to have the Clerk read the original report of the committee that we have to vote on.

Mr. SCOTT. The resolution which I moved was a resolution which was favored by a majority of the committee, but it is not in the form of a report, for it had been formerly appended to section eight, and that section had been considered by the Committee of the Whole. It is not in the form of the report of a committee, but it is a resolution to be adopted as a substitute for section eleven.

Mr. PARSONS of Morton. Is this report of Mr. SCOTT's the report of the committee?

Mr. BARTLETT of Griggs. It is the matter before the House.

Mr. FLEMINGTON. I believe that a little time taken on this matter may be of advantage to the Convention and to the future State of North Dakota. With that idea in mind I move that the consideration of this resolution be postponed until to-morrow by this committee.

Mr. APPLETON. I hope this resolution will not prevail, for if it does we shall have to go over this whole business again to-morrow. I believe that every gentleman here has been talking about this section for the last two weeks, and every man has made up his mind just what he is going to do when it comes time to vote. I hope that the motion for postponement will not prevail.

The motion to postpone was lost.

Mr. ROLFE. I move to add to the section the words: "Any organized county having 200 voters shall be entitled to at least one representative." I offer this because it is in exact line with the action in the meeting of the Apportionment Committee this morning, on which basis the first house will be made up, provided it is adopted by this Convention.

The amendment of Mr. ROLFE was lost.

The matter was then postponed till the next day.

### EVENING SESSION.

File No. 129 was brought up for discussion; section twenty-one was read as follows:

#### PAY FOR THE LEGISLATURE.

"Each member of the Legislative Assembly shall receive as a compensation for his services for each regular session \$300, and 10 cents for every mile of necessary travel in going to and returning from the place of meeting of the Legislative Assembly on the most usual route, and \$5 per day for extra sessions and 10 cents for every mile of necessary travel in going to and returning from the place of meeting of the Legislative Assembly, on the most usual route."

Mr. JOHNSON. I move to strike out "\$300" and insert \$500."

The motion was seconded by Mr. BARTLETT of Griggs.

Mr. WALLACE. I move to amend by making it \$400.

Mr. BARTLETT of Griggs. I hope the motion will not prevail. I think \$300 is enough, and you will find plenty of just as useful men as are to be found, applying for the place.

Mr. JOHNSON. Just one word in explanation. You may perhaps say it is demagoguery, but I don't agree with you in that. One reason why I make this motion is because the Farmers' Alliance at their meeting in Fargo had this matter under discussion. There was a large attendance, and they put a plank in their platform demanding \$500 a session for members. The reason is that the poor man should have just the same opportunity to attend the Legislature as the rich man. I undertake to say from experience that a man cannot pay the necessary expenses of attending a meeting of the Legislature for \$300. I have tried it. A married man like myself, or many of you, should have pay so that we could support our families at home or take our wives with us. I pay \$4 a day for myself and wife at the hotel. Where am I to get money to buy gum, hair-pins, whiskey and tobacco, and all the things we have to pay for? It is not right that we should come here and pay a large amount more than we get for our services. I abandoned politics in Iowa because I could not live and stay in the Senate of that state for \$550, and I made up my mind I would withdraw from it. I never expect to attend the Dakota Legislature, but I want to pay the men who do represent us a reasonable amount so that they can pay their expenses. I don't calculate that they shall make any money out of it. The Farmers Alliance have made this demand, and they are entitled to consideration.

Mr. SCOTT. I don't believe that we as a Convention are here as the mouthpiece of any society no matter what it is. We are not here to represent any particular sect or society, but society at large, and what we do we are supposed to do for the best interests of the State at large. The argument of the gentleman from Nelson would seem to imply that the Legislature should be composed exclusively, or be made up mainly, of farmers. That may be true, and yet I think the farmer can live just as cheaply as an attorney or any other man. We receive \$4 a day here, and I don't believe the State is called upon to pay anything for tobacco we smoke, or cigars we use or whiskey we drink. It is not supposed to furnish us with these things. If we wish for these luxuries we should pay for them. Any economical and prudent man can live very well on \$4 a day. We can spend just as much more as we choose. If we like to go to the Sheridan House that is a matter of our own selection, but a man can live respectably, and decently, and fairly and get good board for \$6 a week. We figured that \$300 would be \$5 a day. That is a dollar more than we are now

getting and I don't see why any ordinary, average man cannot get along with \$5 a day. The expense of each Legislative Assembly on the State will be at least \$50,000, and the first session will cost over that. As the membership of the House and Senate is increased the cost will increase. It used to be that the members of the Legislature got \$8 a day, and then it was put down to \$4. Now we have increased it to \$5 and it seems that no reasonable man can ask for any more. If a farmer comes to the Legislature, the session is held at a season when there is not much to do and he can live on \$5 a day and at the same time save more than he could make at home unless he is extravagant in his modes of living.

Mr. BARTLETT of Dickey. I believe that a man has a right to pay all for his board that he has a mind to. I have paid out a good deal of money in my time for the grand flourish of the thing, but I have got over that. Any man can live right here and get good board in the city of Bismarck for a dollar a day if he has a mind to. If he wishes to go to the Sheridan and pay out more money, all right, but I feel that the tax payers of this State should not be made to pay him more than \$5 a day, at the present, at least. I believe that my constituents would bear me out in this position. When election times come the men who will want to come to the Legislature will stick out like bristles on a pig's back. They are just now waiting, and can hardly wait for us to adjourn before they will bestir themselves.

Mr. WALLACE. The gentleman from Barnes says that if this section is adopted it will amount to \$5 a day. But the session is limited to ninety days. That will make it but little more than \$3 a day. To-day we voted to pay one man \$2,000 for ninety days' work. I say that \$400 is not too much. Because of the fact that a large number of men will be here the figure must be low at which they are each paid per day, but there is no sense in putting it too low. The gentleman from Barnes says that because the Farmers Alliance has indicated a desire that the pay of the members should be \$500 is no reason why we should pay any attention to their wishes. I think it is a good deal of a reason, but I am willing to compromise on \$400. I think an organization made up of farmers, who comprise seven-eighths of the people of this Territory, have a right to say something in this matter, though some gentlemen seem to think they have not. You are willing to go to any extravagance when it happens to go in a certain direction, but when it comes in other directions it is different. Any man who is

capable of serving as a member of the Legislature should be paid at least \$400 for the session.

Mr. O'BRIEN. I move that the figures "\$300" be stricken out, and "\$5 a day" inserted.

Mr. JOHNSON. May I ask that the gentleman will withdraw his motion a moment so that a vote may be had on my motion.

Mr. O'BRIEN. Certainly.

The amendment of Mr. JOHNSON was then voted upon and lost.

Mr. O'BRIEN then renewed his motion.

Mr. SCOTT. I am not in favor of this amendment for this reason. There is no necessity after the first session of the Legislature—there is no necessity for any Legislature sitting for more than sixty days, and that period is too long rather than too short. If the pay is put at \$5 there is a disposition, as we have all seen, in the past, to lengthen out the sessions as much as possible, and the sessions will be very liable to run to the extreme limit that we have made here. I think that the shorter the sessions we have the better, providing all the necessary public business is disposed of, and it can be disposed of readily in sixty days. That would be just exactly \$5 a day. If they desire to lengthen out the time longer than that, it would incur a large expense upon the State.

Mr. BEAN. There is just one reason why I am in favor of having this placed at \$5 a day instead of \$300 for the session. It is the same reason that has been working to a more or less extent here. I have heard it expressed by nearly every man in the Convention, that in case we run our sessions over a certain day, we would be working for nothing. In that way a man who is using this as a summer vacation—who has plenty of money to spend, does not care, but the poor man here, in case he is not to be reimbursed, would be willing to sacrifice certain important points which should not be sacrificed, for the sake of getting home. In case they are paid \$5 a day, the rich man cannot get the pinch over the poor man in that way. They are getting their \$5 anyhow, and if they have a bill to support there will be no pinch or gag law and they can act perfectly free. If the figure is put at \$300 the work will have to be crowded to get it down to sixty days, and as we allow ninety days the man who uses this as a political lever will say: "We will prolong this after we have passed the period that these men are getting \$5 a day; when they see every day that they are working for nothing, they will give in."

Mr. BARTLETT of Griggs. I oppose the amendment for

almost the very reason that the gentleman from Nelson is in favor of it. I believe there is no more important section of the legislative article than this one we are considering. I believe that if we want a Legislature that will do its duty and do it well, and then go home, we want to pay them by the session, and not limit them as to time. Pay them \$300 or \$400 or \$500, but don't limit them as to time so that on the last days of the session there will be a rush. I believe that forty or fifty days is just as good as sixty or ninety, and if we put the pay at \$300 or \$400 a session or whatever you agree on, then they will do their work and go home. Michigan's Legislature has just adjourned—it has been in session six or eight months on pay per diem, and there are many farmers and lawyers that are likely to be members in the Legislature who would be glad to stay here all summer at \$5 a day, and I say that a per diem law for a Legislature is a pernicious one.

Mr. O'BRIEN. The theory would be all right of the gentleman if we did not have some limit to the sessions. In section thirty-two the sessions are limited to ninety days. I don't believe there is any man who is going to our Legislature for the purpose of making \$5 a day. I believe the State should pay any man who will come here to the Legislature, a reasonable compensation, and I believe that \$5 a day is a reasonable amount. The gentleman from Barnes in defense of this section as it now stands stated that they based the amount of pay of the Legislators on \$5 a day. That is just exactly the basis I take. I am not asking that they shall receive any more than that, and it seems to me that it is no more than right that a man shall get that sum, and I don't think they will prolong the sessions for the purpose of getting \$5 a day. I know there are none of us here who would care to stay here much longer for \$4 a day, and I would not go to the Legislature and have the sessions continue indefinitely for any such sum. I could not afford it.

Mr. BARTLETT of Dickey. The gentleman who last spoke says he does not believe that there is a gentleman here who would prolong the time. We will admit that, but we are talking about the future Legislatures. These gentlemen will not get there. I don't expect to, I am sure. I think it should satisfy any intelligent man that during these terrible times, during the drouth and misfortunes of Dakota this year, we ought not to pay more than \$300 for the term. As the gentleman said, sixty days undoubtedly would be all the time it would be necessary to spend, and I am



satisfied it would be liberal pay. I am satisfied if it was \$5 a day for an indefinite period, that there would be a large number of the members who would strike out to have a good time and stay here as long as they could.

The amendment of Mr. O'BRIEN was carried.

Mr. SCOTT. I wish to offer an amendment to strike out the word "ninety" and insert the word "sixty," and add "but the first session of the Legislative Assembly may continue for a period of 120 days."

Mr. PARSONS of Morton. I desire to have a division of the question.

Mr. SCOTT. I don't see how the question can be divided, for it is all one amendment to strike out "ninety" and insert "sixty," and add those words to the section which I have read. I don't believe that sixty or ninety days is enough for the first session.

Mr. PRESIDENT. The Chair is of the opinion that the question is subject to division.

The amendment was divided, the first part put to a vote and adopted.

Mr. APPLETON. I desire to make it read "ninety" days instead of "120."

Mr. MILLER. Possibly it does not occur to the gentleman that the first session will convene in the fall, and if he makes it ninety days the fore part of the session will be taken up with matters that are not legislation, and probably there may be some adjournments. I think that ninety days would be too short for the session,

Mr. FAY. I hope the motion of the gentleman from Pembina will not prevail. During the first session of the Legislature all our laws or nearly all of them will have to be made to conform to the Constitution. It will be a very important session, and the Legislature should remain in session long enough, without being hurried, to do this work thoroughly and carefully. I think the first session should be long enough to give the Legislature ample time to do this work.

Mr. ROLFE. I hope this amendment will not prevail for the reason stated by the gentleman from Cass, and also for the further reason that the first Legislature has one job that will necessarily take a great deal of time, and no ways or means can be devised by which that job can be accomplished in a shorter time. It is the enactment of a new code entirely, or the adoption of the code

we now have in existence, now called the Compiled Laws. As every lawyer knows, and probably every member knows, that is a large volume and contains a great mass of laws which we must adopt as a whole, which the Legislature must adopt as a whole, or re-enact a new code, covering principally all the matter contained in that code. I don't see how that first Legislature can enact the incidental legislation, elect two United States Senators and also enact that code or adopt the one we now have in use, within ninety days. It seems to me that 120 days is short enough, and I doubt very much if they can well accomplish the work that will be before them in that time. I am opposed to the amendment of the gentleman from Pembina, and in favor of the one of the gentleman from Barnes.

The amendment of Mr. APPLETON was lost.

The amendment of Mr. SCOTT making the maximum time of the first session of the Legislature 120 days was then adopted.

Mr. PARSONS of Morton. I desire to move that the following be adopted to take the place of section forty:

"Every bill passed by either House shall be signed in duplicate and one copy shall be forthwith deposited with the Secretary of State."

The motion was seconded.

Mr. PARSONS of Morton. I introduce this, so that when a bill shall pass from one House to the other, and some one steals it, there will be another copy in existence. There have been bills involving thousands of dollars to the taxpayers that have been stolen in every state in the course of transmission from one house to another. In Minnesota that trick has been carried out, and it has also been carried out in this Legislature, but by this simple plan it will do away with the whole business, and nobody can then steal a copy and thereby perhaps wrong the people of a law that they want, and at the same time ruin the character of some member of a committee who will be charged with the theft.

Mr. MILLER. If bills are stolen I think the motion a very immoral one, because it will force the boys to steal two bills instead of one. It will double the crime.

Mr. JOHNSON. I have to suggest another reason in favor of the resolution. It occurred to me when we were discussing the article on the executive, but I said nothing then though I am glad that I now have an opportunity. We passed a section providing that in case the Governor failed to sign a bill, and neglected to return it within fifteen days it should become a law anyhow. Sup-

pose he received a bill, destroyed it, utterly failed to sign or return, unless we had a copy of it we should have no way of putting that on the statute book.

Mr. BARTLETT of Griggs. I hope this motion will prevail. It is not a matter that should be turned off with a joke, for it is well known that it occurs in nearly every Legislature in the country. Whether this will remedy it or not I cannot say, but it is an attempt in the right direction. Certainly it is not very cumbersome or very troublesome. The fact that the evil exists warrants us in the attempt to put a stop to it.

Mr. STEVENS. Is it your intention that when either branch of the Legislature passes a bill, it shall have two copies made of it.

Mr. PARSONS of Morton. The proposition is that when any measure has passed one house, one copy shall be sent to the other house and one to the Secretary's office.

Mr. STEVENS. As I understand it at least thirty per cent.,— fifty per cent., of all bills—you might say seventy-five per cent., that pass one house are either killed in the other house or amended, so that they come back for final action, and the gentleman has forgotten to provide for extra vault room for the Secretary to keep the bills in, as a vault the size of this room will not hold the accumulations of ten years.

The motion was lost.

The sections were adopted up to section forty-six. Concerning it Mr. POLLOCK said: I think lines twenty-one and twenty-two should be struck out, as the matter is covered by lines thirty-four and thirty-five. I would strike out that part which reads as follows: "The sale or mortgage of real estate belonging to minors and others under disability." I think this is covered by the following: "Affecting estates of deceased persons, minors or others under disabilities."

Mr. MILLER. I suppose this will be attended to by the Committee on Revision and Adjustment.

Mr. JOHNSON. As I understand it these paragraphs are not identical. Lines twenty-one and twenty-two refer to the sale or mortgage of real estate, and thirty-four and thirty-five affect the estates of deceased persons. The personal property of deceased persons goes direct to the administrator, and he can sell all that, no matter how much there is, but the real estate goes direct to the heirs, and the administrator has nothing to do with it unless it is

shown that it is necessary to sell the property to pay the debts. That is clear enough to my mind.

Mr. CAMP. I would like to have the chairman of the committee inform us as to what is the meaning of line forty-five—the “impairing” of liens. What is meant by it?

Mr. POLLOCK. If there is no doubt that lines twenty-one and twenty-two, thirty-four and thirty-five do not cover the same ground I am not desirous of having any of them stricken out. But it does not seem to me that the point made by the gentleman from Nelson is a good one, and I still think that the sub-sections cover the same ground.

Mr. FAY. The first sub-section would not prevent the leasing, but the last would.

Mr. POLLOCK put his objection in the form of an amendment, striking out lines thirty-four and thirty-five, and the amendment was lost.

Mr. SCOTT. I should understand that the word “impair” meant destroy—to take away any part of its force, or validity or change would be to impair the lien. The word is spelled wrong and doubtless will be corrected.

Mr. CARLAND. I move that there be added to section forty-six the following:

“Nor shall the Legislature indirectly enact such special or local law by the partial repeal of the general law; but laws repealing local or special acts may be passed.”

The motion was seconded and carried.

#### MINORITY REPRESENTATION.

Mr. PURCELL. I desire to move that the following shall become section forty-nine of this article: “Each elector may cast as many votes for members of the House of Representatives as there are members to be elected in his district, or may cast the whole number of votes for one candidate, or divide his votes among the candidates as he may see fit.” I desire to say that this is what is called minority representation. I don’t present it for the purpose of having it incorporated in the Constitution, but for the purpose of having it submitted to a vote of the people, and have them say whether or not we can have a minority representation. In the Sioux Falls Constitution they have submitted this question to a vote of the people, and it will be voted upon at the same time the Constitution is voted upon. This proposition

is something new in the new Northwest, but it is an old theory in the State of Illinois, and in conversation with men who have resided there I am informed that it is a very good measure. It is in vogue in a smaller way in many legislative bodies in the different states and in many cities. We have an illustration here in a small way. The President of this Convention has seen fit to accord in the democratic members of this body a representation on the committees equal to their proportion of the whole number of members, and he has also seen fit to divide up the chairmanships in proportion to their numbers. In many of the large cities of the country, especially in Pennsylvania, they have this privilege, and all with one voice declare it to be a very good measure. There are many localities where the majority is very small—sometimes less than ten, and frequently less than 100, and in these localities the majority of less than 100 make the laws and enact them, and have all the say about them, and the minority have nothing to say. Of course we believe this to be right in a sense—it is one of the principles of our government. Minority representation does not intend to interfere with that, but it simply gives the majority their majority, and gives to the minority a representation in the legislative halls of this new State. It does not give them representation in the Senate, but simply in the lower house, where their views can be expressed, their wishes made known, and where they can have a vote in the legislation that takes place. It seems to me that this is a fair proposition. We simply ask to have it submitted to a vote of the people and let the people say whether or not we shall have minority representation.

Mr. STEVENS. I lived under this system, and I think it is no more than fair that it should have a good, honest, fair, candid consideration. We have not time to go into this to-night, and I therefore move that this amendment be referred to the Committee on Elective Franchise, so that we may consider it better.

The motion was seconded.

Mr. NOBLE. I wish to suggest that this clause has already been referred to that committee, and I think that committee referred it back, and it was then referred to the Committee on Legislative Department. At all events the committee did not do very much with the question, and I don't think it will do very much good to refer it to that committee again.

Mr. SCOTT. I move as an amendment that the matter be laid

over till to-morrow. I don't think there is any reason for referring it back to that committee.

Mr. LAUDER. This is a matter that has been discussed a good deal—perhaps not in Convention or Committee of the Whole, but outside and I think every delegate has considered the matter, and made up his mind how he is going to vote. It seems to me that it can be disposed of just as well now as to be laid over till to-morrow.

The amendment to postpone was withdrawn, and Mr. PURCELL's motion was put to a vote and lost by 24 to 40.

#### THE OATH.

Mr. NOMLAND. I desire to say that the Farmers Alliance favored the insertion in the Constitution of the oath for the members of the Legislature to take, that is in the Sioux Falls Constitution. It will be found in Long's Legislative Handbook, on page six. In that oath it states that the members shall take an oath that they will not take any passes on the railroads. There has been some talk here about the matter. It has been said that the members of the Legislature should not have \$500 per session—it is too much, has been said. The idea of the farmers, as I understand it, in asking that the legislators should have this much, was that they should have no passes on the railroads. I don't say this because I have not got a pass, or because I am an extreme moralist, but at the same time if the farmers—and they are taxpayers, because the producers are taxpayers—if they say to the members of the Legislature, "We will give you good pay, but you must have no passes," I am in favor of accepting the position. I move that the section of the Sioux Falls Constitution providing for the oath be inserted as a part of this article.

The motion was seconded by Mr. PARSONS of Morton.

The section was then read from the Sioux Falls Constitution as follows.

"Members of the Legislature and the officers thereof before they enter upon their official duties, shall take or subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of North Dakota, and will faithfully discharge the duties of (Senator, Representative or officer) according to the best of my abilities, and that I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill said office, and have not accepted, nor will I accept or receive, directly or indirectly, any money, pass or any other valuable thing, from any corporation, company

or person, for any vote or influence I may give, or withhold on any bill or resolution, or appropriation or for any other official act.”

Mr. STEVENS. As I read it, this matter is already covered. There has been a section already passed here which provides that no member of the Legislature shall take a bribe either in money or thing of value for his vote or influence on any subject. Under the section we have adopted, and under the section that has just been read, you may take as many passes as you can get and as the railroads will give you, so long as you don't take them for your vote or influence. If it is not taken for a vote or influence there is no violation of the section in the Sioux Falls Constitution.

The motion of Mr. NOMLAND was lost.

Mr. FAY. There is another matter that is already coming up at the sessions of the Legislature. That is in regard to postage, newspapers and stationery. In many constitutions it is provided that a certain sum shall be allowed the members in lieu of all perquisites. This sum is paid them and they can use it for stationery, papers or whatever they may desire. I would move that in lieu of all perquisites, newspapers, postage, stationery, etc., the sum of \$50 be given to each member of the Legislature.

The motion was seconded.

Mr. LAUDER. I move that the figures “\$50” be stricken out and the figures “\$15” be inserted. We have fixed the compensation of the members of the Legislature, and this idea of granting another \$50 under the name of perquisites is so obviously an attempt to get more pay from the State, that it seems to me it should not be discussed. There is not a member of this Convention for whom \$15 will not buy all the pens, and ink, and paper and postage stamps that he needs. Five dollars would do it. If you want to give the members of the Legislature \$50 additional to their salary, do so, but call it by its right name.

Mr. FAY. I introduced this resolution for the purpose of getting it before the Convention. In Illinois for a great many years they have allowed the members \$5 a day and \$50, and while the gentleman may think this is too much, yet in many older states and with just as wise men as we have got, they have seen fit to insert that amount, and they pay it right along.

Mr. PURCELL. I move that when the committee rise it reports this resolution back, with recommendation that it do not pass.

The amendment of Mr. PURCELL was adopted.

The committee then rose.

Mr. BEAN. I move to adjourn.

The motion prevailed, and the Convention adjourned.

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### THIRTY - FIRST DAY.

BISMARCK, *Saturday, August 3, 1889.*

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

Prayer was offered by the Rev. Mr. KLINE.

Mr. PURCELL. I move that the Convention now resolve itself into a Committee of the Whole for the purpose of considering File No. 137.

The motion was carried.

Mr. CARLAND. In view of the question asked yesterday I would move to amend the File by adding at the end the following words:

“In case the voters of any county decide to increase the jurisdiction of the county courts, then such jurisdiction as thus increased shall remain until otherwise provided by law.”

I move this for the purpose of enabling the Legislature to abolish the jurisdiction, if after trial the people of any county desire to abolish it.

The File as amended by Mr. CARLAND'S motion was adopted.

#### JUSTICE COURT JURISDICTION.

Mr. SCOTT. I desire to amend section twenty-six of File No. 121 so as to read as follows in line five:

“The justices of the peace herein provided for shall have concurrent jurisdiction with the district court in all civil actions, where the amount in controversy exclusive of costs does not exceed \$100.”

The section now reads as follows:

SEC. 26. The Legislature shall provide by law for the election of justices of the peace in each organized county within the State, but the number of said