

## FOURTEENTH DAY.

BISMARCK, *Wednesday, July 17, 1889.*

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

Prayer was offered by the Rev. Mr. KLINE.

MR. CAMP. Inasmuch as the Honorable Judge Cooley is with us to-day, and several members of this Convention have known him at Ann Arbor, and a much larger number have been readers and admirers of his books, and all are interested in his special work, I move that the Convention take a recess in order that the members of this Convention may have an opportunity of meeting him. As one of those appointed to confer with Judge Cooley, I would say that he kindly consents to address us at some time when this Convention desires.

Recess was taken.

## JUDGE COOLEY'S ADDRESS.

After the recess President FANCHER said. GENTLEMEN OF THE CONVENTION: It affords me much pleasure to introduce to you a gentleman who by reputation at least, is well known to all of you—Judge Thomas M. Cooley of Michigan, Chairman of the Interstate Commerce Commission.

Judge Cooley said:

MR. PRESIDENT AND GENTLEMEN OF THE CONVENTION: We have heard in the east that sometimes when a man gets lost on the boundless prairies of the west, he is liable to be called on to stand and deliver, but I think that when that happens, as a general thing, they are more careful in the selection of the victims than you have been to-day, to make sure that he has something to deliver. I am glad to meet you here. I am glad to look out on a body of representative men of the new settled State of North Dakota. I always feel, in the presence of such a Convention, the dignity of the great work in which you are engaged—the making of a Commonwealth; the marking out of the landmarks that are to be the guiding landmarks of that Commonwealth probably for all time. There rise up before me, at such times, the names of men of old, of whom we have heard—the builders of Grecian and Roman states—the Solons

and Lycurguses, who made themselves a name for all time, because to them was committed a similar work. And yet, after all, the work, in its magnitude and in its intricacy in those prominent states was nothing in comparison to the work you have here to-day, for the building of the laws of the Commonwealth that was founded two thousand years ago was simple as compared with your work. As civilization has advanced—as the wants of mankind have increased, as the methods of transacting business have multiplied; as men have invented new ways, not only whereby they may transact business, but circumvent others, the intricacy of Constitution-building has gone on in proportion—perhaps even more than in proportion—and it becomes necessary to do many things now that were not important then, that would even have been irrelevant. Gentlemen, the men who created the Constitution of the United States—that charter of government which has no parallel in the history of mankind—would find many new problems with which to deal to-day, if they were called on to create a Constitution for North Dakota.

Well, the Anglo-Saxon is a natural constitution-builder. He is born to the business. In many of the articles which have been read before us to-day, there are a great many things of vital importance, in respect to which there would not arise among you here to-day a single word of controversy, because in your very blood from your ancestors you have come to take correct opinions in regard to such things. There is no one here to-day who proposes to dispense with the executive, or who proposes that the executive and legislative powers shall be united, or that there shall be no judiciary, or that any one of these shall be dependent on the other. In regard to these things we have instinctively determined; we put them aside as matters that no longer are subjects of controversy. But there are other matters that are in controversy. The vital things; the most important things—the great land-marks are decided instantly—settled before the Convention meets, but there are a thousand matters of detail that it becomes necessary to deal with. In respect to a great many, it will be found that they are matters which come now almost for the first time before a deliberative body like this.

I take up your proposed Article on Corporations. Even there you find many things on the subject, upon which I would hardly anticipate there would be any controversy. You all agree that you shall no longer grant charters as special favors. Corporations have the right to corporate powers only under proper restrictions. But as to what corporations may be empowered to do—as to the restrictions that shall be put on them, as to what shall constitute a forfeiture of the corporate power—these things are problems that are altogether new, and which a Hamilton and a Jefferson would have been as unable to grapple with—even more unable than are any of the members of this Convention, for they had not the experience which showed the necessity for imposing these restraints. But, gentlemen, it is entirely out of the question that I should undertake to be your advisor in regard to these matters. My present duties call me aside from all labors of this kind, but if I were to drop a single word of advice—although I scarcely feel that it is within my province to do that—it would be simply this: In your Constitution-making remember that times change, that men change, that new things are invented, new devices, new schemes, new plans, new uses of corporate power. And that thing is going to go on hereafter for all time, and if that period should ever come which we

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speak of as the millenium, I still expect that the same thing will continue to go on there, and even in the millenium people will be studying ways whereby, by means of corporate power, they can circumvent their neighbors. Don't, in your constitution-making, legislate too much. In your Constitution you are tying the hands of the people. Don't do that to any such extent as to prevent the Legislature hereafter from meeting all evils that may be within the reach of proper legislation. Leave something for them. Take care to put proper restrictions upon them, but at the same time leave what properly belongs to the field of legislation, to the Legislature of the future. You have got to trust somebody in the future and it is right and proper that each department of government should be trusted to perform its legitimate function. [Applause.]

The Convention resolved itself into Committee of the Whole with Mr. CARLAND in the Chair.

File No. 64 was under discussion as a report of the Committee on Judiciary.

COMPACT WITH THE UNITED STATES.

Mr. JOHNSON said: MR. CHAIRMAN, AND GENTLEMEN OF THE COMMITTEE OF THE WHOLE. As the Chairman of the committee that reported this File—Compact with the United States—is in the Chair, it may be proper for me as for any other member of this committee to open the discussion on this article, from the fact that I drew the original article and submitted it to the Convention, for which this is a substitute. If members will turn to the Enabling Act, copies of which in pamphlet form have been laid on their desks, on page two we read: “And said conventions shall provide by ordinances irrevocable,” etc. If they read on they will find that the provisions of this article are matters in which we have no discretion. They are just and reasonable provisions that are laid down by the Enabling Act as absolutely essential to our admission into the Union. The only choice we have is as to the form of the article—the words, language, punctuation and matters of that kind. As to the reason why a substitute was drawn by the committee, I think I can say without taking any great amount of credit to myself, that in the shuffle of the bills the Clerk separated them, and the first two pages of my article went to the Committee on Corporations, and when the mutilated article came before the committee they had no means of knowing where the other two pages were. The new article is, I think, word for word like the article introduced by me, until you get to near page three of the pamphlet, namely, where it speaks of the debts and liabilities of said territories. The article as worded in the substitute is more happily and concisely expressed than in the original. In section

four of the original the following occurs: "There shall be established and maintained a system of public schools in this state which shall be open to all the children of this state and free from sectarian control." That is omitted in the article reported from the Judiciary Committee for the reason that the general statement that the school system should be maintained would be insignificant when compared with the fuller article on free public schools which we expect to have reported from the Committee on Education. It is absolutely necessary in order that this Constitution should be approved by the President of the United States, that such a system will be provided for in our Constitution, but it is hoped the Committee on Education will provide such an article in a series of sections. With this explanation I thank you for your attention.

Mr. MILLER. I move that we adopt the report of the committee which has just been read.

Carried.

#### THE STENOGRAPHER.

The report of the Committee on Reporting and Publication, as to the pay of the Stenographer was read as follows:

We have had under consideration the following resolutions:

*Resolved*, That the compensation of the official stenographer of this Convention for reporting the debates and proceedings in full, be, and the same is hereby, fixed at \$8 per diem during the session thereof. Said Official Stenographer shall also furnish to the Convention, a transcribed, fairly written and legible printer's copy of said debates and proceedings, for which he shall receive an additional compensation of 10 cents per folio; the compensation hereby provided, including the cost of all stationery and other material used by said Stenographer in making said stenographic report and transcribing the same. And said Official Stenographer is hereby made responsible for the proper execution of said work.

*Resolved*, That no petitions, letters, memorials or remonstrances, responses from any of the departments or other sources to resolutions of inquiry by the Convention, shall be included in said reporting or transcribed printer's copy, unless by special order of the Convention; nor shall discussions on questions of order or adjournment be included therein.

We recommend their adoption with the amendment that the pay of the Stenographer be fixed at \$10 per day and 15 cents per folio for transcribing.

Mr. MILLER. I move that the report be amended to read \$10 a day, and 10 cents per folio for transcribing. I do this in the belief that the compensation fixed at that rate is a very liberal

compensation, and anything in excess of that would be extravagant on the part of this body.

Seconded by Mr. LAUDER.

Mr. BARTLETT of Dickey. I would like to know how much the Stenographer now makes per day. I think the members of this Convention don't know what he makes per day now. I want to pay liberally, but I don't want to be extravagant.

Mr. PARSONS of Morton. Mr. CHAIRMAN: As one of the members of the committee I took the trouble to speak to two stenographers, one of whom is a resident of this city, and the other is from Sioux Falls, with the members of the South Dakota Commission. I have two certificates from these gentlemen—that from Mr. La Wall states that he receives \$10 a day and 15 cents per folio for transcribing his notes as court reporter in this district. Mr. Goodner states that as stenographer for the South Dakota Convention he receives \$10 a day and 25 cents per hundred words for transcribing his notes. It is a rare time that a person possessing the necessary talent for this work, is called on to use it straight through. In the South Dakota Convention they have two stenographers, but our Stenographer is doing all the work, thus saving the pay of one man. I don't think that there is any man in this Convention that will earn his money any better than the Stenographer. If we want an expert man we must expect to pay the price that such experts usually get.

Mr. BARTLETT of Dickey. There are a great many strange things in this life, but I won't admit but that \$10 a day is enough for any man. We want to pay liberally for the work we have done, but we don't want to pay an exorbitant price. I am informed that the gentleman is now making \$18 a day. Where is the man in this hall that is making that amount? I say that that is liberal pay.

Mr. BLEWETT. The Stenographer will not get his pay till the Legislature meets, and that is one reason why the committee put the price at the figure they did.

Mr. WALLACE. I would concur in the remarks of the gentleman from Dickey. Some of the gentlemen here want us to draw the inference that because some one else does something therefore we must follow them. I believe in fair compensation for the work to be done by the Stenographer. It seems to me that the figures named by the gentleman from Cass are very liberal, and I don't see that anyone else is making that money, and I don't see why we

should be extravagant in paying our employes. This money does not come out of the United States but out of the State.

Mr. STEVENS. It seems to me that a good many members as well as myself would be governed in this matter somewhat by how much the Stenographer makes per day. I don't think anyone questions that he should be paid \$10 a day, and I think there is some mistake on the part of those who think he is able to transcribe the records of this Convention as he goes along. Our Stenographer is here, is one of the officers of this Convention, and I think it is only fair and right that he should explain how much he is making. I would suggest that Mr. Tuttle be requested to state for our information what he is making.

On invitation from the President the Stenographer stated:

If \$10 per day is what I am to be paid, then it is \$10 a day that I am making. So far I have not been able to transcribe any of my report, for the reason that I have received no instructions as to what is wanted. I see no reason why I should be paid less for this work than the figure that is usually paid to stenographers for similar work.

Mr. POLLOCK. As I understand it this matter has been before the proper committee, and their report is unanimous, as I understand it. They have looked into the matter as thoroughly as we can. It seems to me that their report is one that should be accepted. There seems to be a regular rule as to the pay of expert stenographic work, and I don't think that this Convention should change it. I think that we should accept the report of this committee.

The report of the committee was amended to read \$10 a day, and 10 cents per folio for transcribing the report, and so adopted.

Mr. STEVENS. I move to adjourn.

The motion prevailed, and the Convention adjourned.