reason in the name of good government. It is impossible for any man or class of men to become familiar with American institutions and ideas in six months or a year. Now with the proposed amendment of twenty years, it seems to me that no man could have any objection to the amendment as proposed. It will allow every one now in the country and those who come here for the next eight or fifteen years to become voters under our present system. It seems to me that in the interests of good government it is right to begin to restrict the right of suffrage to a limit of time. We have this question before us—shall we allow people to vote who know nothing about the institutions of the country—who come here and in one year start in to exercise the rights of suffrage? The right of suffrage is a right conferred by the government for the public good. It is not a right inborn in any individual. It is simply a question whether it is for the public good or not that this amendment should prevail. Won't the honest answer from every man's heart be that the best interests of good government require that the voters shall have sufficient knowledge of American institutions to cast an intelligent vote when they go to the polls, and does not that require a moderate residence, and is not five years sufficiently short?

The amendment was put to a vote and lost.

Mr. CARLAND. I move to adjourn.

The motion prevailed, and the Convention adjourned.

TWENTY-EIGHTH DAY.

BISMARCK, *Wednesday, July 31, 1889.*

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

Prayer was offered by the Rev. Mr. KLINE.

Mr. NOBLE. File No. 130 is of considerable importance, and the arguments and remarks made yesterday showed that there were a great many questions in it of a judicial nature, and I would move that before the adoption of the report and before it goes to the Committee on Revision and Adjustment, that it be recommitted to the Committee on Judicial Department.

Mr. BEAN. I move the adoption of the report.

The motion was seconded by Mr. COLTON and carried.

Mr. SELBY. I move that we now resolve ourselves into the Committee of the Whole for the purpope of considering the article on the Judicial Department.

The motion was seconded by Mr. LEACH.

Mr. MOER. I amend by making it the report of the Committee on Elective Franchise. It is still before the committee and should be finished.

The amendment of Mr. MOER was carried.

Mr. NOBLE. The minority report of the Committee on the Elective Franchise turns out to be a majority report, and I would suggest that the clause recommended by the minority be read instead of the report of the minority.

Mr. PARSONS of Morton. Is File No. 123 before the house for consideration ? I would like to ask for the minority report. As an act of courtesy the minority report should be before each member as well as the majority report. I would like to state that the majority report was made in good faith, but it would appear that a majority of the committee signed what is called the minority report, and I would move that this section two in the minority report be substituted in the place of section two in the majority report.

Mr. POLLOCK. I think the gentleman from Morton is laboring under a slight misapprehension—at least I judge that from the statement he makes. This question that is touched on in regard to both of these reports was considered in committee, and a clear majority was in favor of the report which was made as the report of this committee—File No. 123. Subesquent to that time and before the matter was reported to the Convention, work was done outside of the committee by which a majority were induced to sign the minority report. It must not be construed that this matter was considered hastily in the committee. The change was made by reason of some work that was done by some of the members of the committee after the adjournment of the committee and before the report was submitted to this Convention. I state this so that there my be no misunderstanding on the part of this Convention. I would like to say further, that I hope this amendment will not prevail for the reason that the question of extending the right of suffrage to women, making that right equal with men, is one that is being considered by the people not only of this Ter-

ritory but by all the people of the United States. It is a question on which considerable advancement may be made by us, and it is a question that can be safely trusted to the Legislature. Our Territorial Legislature has had control of this matter ever since we have had a territorial government. They have not abused that privilege. I understand that several states, notably New York, have had the same power. But the time may come when the Legislature should have the power to submit this matter to a vote of the people, or to extend the franchise without the submission, or to take such action as they may think is right and proper. I am anxious that this amendment should not prevail for these reasons.

Mr. LAUDER. I should like to know where this so-called minority report may be found.

The CHILF CLERK. In the Journal of the 25th.

Mr. MOER. I don't understand that the motion of the gentleman from Morton to substitute the minority report for the majority report settles the matter. He means to make it a part of the majority report, and then the majority report may be adopted or rejected by this body.

Mr. PARSONS of Morton. The gentleman from LaMoure has the correct idea, and I would not choose now to enter into a further discussion as to the merits of the question. It seems right that if a majority of the committee has agreed on anything it should be incorporated in the main report. I repudiate any insinuations that have been made on the floor of this House as to any influence having been brought to bear on any members of the committee. The minority report was drawn up at my desk, and various members of the committee signed it, and I don't know of any member that signed that minority report who has expressed himself as having had influence brought to bear on him. They signed it deliberately, of their own free will and choice, and it seems to me to be poor courtesy to cast any insinuation on any member of the committee who has a right to vote any way he chooses. Any man in this Convention has a right to cast his vote as he chooses and change it when he likes. I don't believe that there has been any wire pulling, nor that any one has used undue influence one way or another. I deny the accusation. The minority report was on my desk and was signed, and if there is any member who has had any undue influence I wish he would stand up and say so. I hope the motion will prevail in justice to the majority of the committee.

It is not a question of the merits of the case, but to substitue one section for another.

Mr. POLLOCK. Putting the question on that ground, I wish to say that I did not and don't now, intend in my remarks to reflect on the gentleman from Morton, but I intend to state that I am credibly informed that one of the gentlemen who signed this minority report stated that he signed it under a misapprehension, and he signified his willingness to remove his name from that report. I think when the argument is based on the fact that seven names appear on that report the gentleman from Morton is laboring under a misapprehension, and he asks to have one clause substituted for another when such substitution should not be made.

Mr. SPALDING. It seems to me that there is a misunderstanding in regard to the action of this committee, and it occurs to me that this Convention is no place to settle it in, and I move as a substitute that when this committee rise it recommends that the respective reports of the Committee on Elective Franchise be re-referred to that committee for such action as they may see fit.

The motion was seconded.

Mr. WELLWOOD. I cannot see where this would help the matter any. I don't see that it makes any difference one way or another. The committee has worked over that thing and talked it over, and it has got to be an old matter with it, and it cannot accomplish any more. It is only wasting time to refer it back to the committee. The Committee of the Whole can act on it now as well as any other time.

Mr. CAMP. The sentiment of the gentleman who has just spoken is precisely mine. The Committee on Elective Franchise is, evidently, very nearly evenly divided on this point, and their report, whether minority or majority, can but little affect the action of this House, simply because they are about evenly divided. It seems to me that this House can fairly take it out of the hands of the committee and act on it, and whether they act on it under the name of majority or minority report is of very little consequence to anybody.

Mr. BARTLETT of Dickey. I cannot see the objection to putting it as it is. If the minority is in the majority, so fix it. I don't see why that is not right. The report that has the most signers should be the majority. I think that is right and what the House ought to do.

Mr. CARLAND. I move as a substitute that section two read as follows:

"The Legislature shall be empowered to make further extensions of suffrage hereafter at its discretion to all citiezns."

And that this section be adopted.

The motion was seconded.

Mr. MOER. I move an amendment to the substitute that after the word——

The CHAIRMAN. The Chair is of the opinion that this amendment is out of order.

Mr. NOBLE. It seems to me that the amendment offered by the gentleman from Burleigh is identical with section two of the majority report. I cannot see how a substitute can be offered.

Mr. CARLAND. I made the motion for this purpose. There are two reports, and this Convention was being agitated by the question as to which is the majority and which the minority, and my motion was to make section two the same as it appears in File No. 123.

Mr. ROLFE. I trust the substitute of the gentleman from Burleigh will not prevail. I believe that it is the right of the majority of the committee to have their section considered first as the actual work of the committee, and I have not yet heard any member whose name appears here as having subscribed to this proposed section, testify or repudiate his signature. The presumption must be that they signed it, and that they signed it with their eyes open, and they intended to have their names there. Until this is proven to be a mistake it is certainly a majority report under whatever name it may be called. It seems to me that such being the case it has a right to be considered here now, and have the prestige which belongs to a majority report.

Mr. SCOTT. I hope the substitute of the gentleman from Burleigh will not preveil. It is rather an anomaly to see a minority report before this Convention as a majority report, and therefore I hope the motion of the gentleman from Morton will prevail.

Mr. TURNER. As a member of that committee I wish to state to this House that at the last session of that committee there was a clear majority of one on the final vote to adopt section two as contained in the report of the committee, and as contained in File No. 123. This File has been submitted to this House as the majority report of this committee. How to account for a minority report with seven names upon it, when no such

minority report was presented before that committee, and when a clear majority of one for the adoption of the other report was recorded, I cannot say. The question was discussed in the committee and a majority of one was in favor of the report. What has been done in getting seven names on this report was done outside of the committee room and independent of any knowledge the committee had. I hope the work done and submitted as File No. 123 will be recognized by this House as the majority report, whatever inducements may have been used to induce members to sign the minority report afterwards.

Mr. LAUDER. It seems to me that we are wasting a good deal of time in discussing a matter that is practically of very little importance. It can make but very little difference in the final result which of these reports is considered the majority or the minority, because in either case it will have no particular binding force on this Convention. It seems to me that the report that is signed by a majority of the committee, as none of them repudiates the signature, should be regarded as the majority report, and it seems to me that the most speedy way out of this difficulty will be to sustain the motion of the gentleman from Morton to have that considered the majority report which is signed by a majority of the members of that committee.

Mr. CARLAND. I am not particular as to which is called the majority report. I made the motion I did for the purpose of getting the matter before the House.

Mr. NOBLE. I made the point of order that a substitute could not be made, for we must first decide which is the majority report, or whether there is a majority report, and then the minority report may be substituted for the majority report.

The CHAIRMAN. The Chair is of the opinion that the substitute is in order.

Mr. BARTLETT of Dickey. I have never known a time that great men did not have the right to change their minds. This man signed the report, and after consideration he thought that he had done wrong, and it is a true sign of greatness to see a man who has done wrong, to change his mind and sign again. That signing or that change made the minority report the majority report, and I can't see any reason why all this argument should follow when the gentleman is here to explain the matter himself.

Mr. FAY. At the meeting of the committee there was a majority in favor of what is called the majority report. Several of

the members of the committee were absent. It was then stated by those opposed to the majority report that a minority report would be made. It was prepared and signed by some of the members that were absent from this meeting. That accounts for the situation. There is no complication about the matter, and it occurred in this way.

Mr. TURNER. There were two members absent, and one was on each side of the question. I hope the motion of the gentleman from Burleigh will prevail. I don't think we do well in commencing the work of the new State to take a step backward. Since 1862 the Legislature of the Territory of Dakota has had the power to grant the suffrage to women, and yet they have been conservative enough not to do it. There is sufficient protection in the veto power of the Governor, and I don't see why a matter of this kind should necessarily be submitted to the people, requiring all the machinery of an election for the purpose of determining it. When the Legislature becomes sufficiently convinced that the people require the law they should be empowered to pass it. I think no Legislature that may be elected as a Legislature of the State of North Dakota, will at any time be willing to extend the franchise beyond a reasonable desire of the majority of the electors who send them here. I think the matter will be safe and better left as it is now in the File as reported, and as it has been during the Territorial government.

Mr. CARLAND. I understand the question before the House to be whether or not this committee will adopt section two of File No. 123 and recommend its adoption as section two of this article. That is the question before the House. That motion has been seconded and it is open for discussion. It is not necessary for any delegate who advocates this motion to champion in any degree the right of women to the suffrage. It is sufficient for the delegate to be satisfied that he is doing right to citizens of North Dakota, whether male or female. By glancing at section one of File No. 123, it will be seen that this committee has adopted a provision making civilized persons of Indian descent voters in North Dakota. They have by section one in the first sub-division allowed the negro to vote. They have allowed every description of animate male humanity to vote in North Dakota. What is asked in section two? It is asked that the Legislature shall be empowered to make further extension of suffrage hereafter in its discretion to all citizens of mature age and sound mind, not con-

victed of crime, without regard to sex, but shall not restrict suffrage without a vote of the people. Of course the intention of that section is to empower the Legislature at some time to grant the right of suffrage to females. Now I understand that we have assembled here for the purpose of forming a Constitution for the citizens of North Dakota. The citizens of North Dakota include the female portion, as well as the male. If you are come here for that purpose of making a Constitution for one-half of the people of North Dakota, or perhaps for a minority, then you ought to declare it in your preamble, and not say "In the name of Almighty God" you are making it for the people of North Dakota. There is another view of this section, and it is this: It has been guaranteed by the Constitution of the United States and it has been the fundamental principle in all bills of rights that I have ever studied since bills of rights were demanded—by the Parliament of Great Britain or formulated in the states of this Union—that the citizens have a right to petition for the redress of grievances. Now what do you do if you adopt a section which will prohibit the Legislature forever from extending the right of suffrage to females? You practically deny the right of one-half of the citizens of North Dakota to petition for the righting of grievances. You deny to them something you have advocated, and that has been advocated by this government during the last century, and for a long time in the country from whom we have our existence. Another view of this case: The minority report, as we call it, says the Legislature shall at some future time submit this question to a vote of the people. Now I call on any person who has any knowledge of the use and effect of the word "shall" in that minority report to state whether or not that has any more than a moral influence on the Legislature. There is no human power that can ever compel them to submit it to a vote of the people. This section says they may have the power. Your section says they shall have the power. I claim that so far as the actual enforcement of the provision is concerned the one is not any more binding than the other. It seems to me that this section two is a very reasonable provision. It is just; it is right that the question of this kind that depends on the varying policy of state governments as to whom they will admit to the right of suffrage, should be left to the law-making power, and there is no right, no justice in saying in this Constitution that the Legislature of North Dakota shall

never extend the suffrage to any but male persons. What is this for? What is the reason? If I should vote against this proposition in the face of the knowledge of the world in regard to the ability, the integrity, the morality of the citizens of North Dakota who compose the female sex, and at the same time my constituents see that on the day previous I had voted to let the civilized Indian, and the negro, and every ignorant class known vote, and I had debarred the women—and not only that, but had voted to prevent the Legislature of North Dakota from ever extending the suffrage to them, I would go out of this hall with my head cast down as a man who was not a friend of justice, or a friend of right, or a friend of fair dealing between man and man.

This of course is not a new question. It is a question that has been discussed pro and con for a long time by all people, and whether I am or not an advocate of woman suffrage—I say it does not depend on that or enter into the solution of the question whether this section shall be passed or not. A man's advocacy of this section can be defended and rest solely on the question whether he is an advocate of justice and fair dealing to one-half of the population and citizens of North Dakota that you are making this Constitution for. This minority report, as it is called, kindly says the Legislature shall submit this question to a vote of the people. Who are the people? Who are you in your generosity to submit the question to, whether or not women shall vote? Why to yourselves, and call yourselves the people. I say in justice and fairness no person ought to advocate the submission of a question to himself when he is the most interested party. It violates every principle which obtains in judicial dealings—a man should not be a judge in his own case. We do not ask to have this matter submitted, but we ask that in the future if such a thing should be decided to be right and a matter of good public policy, that the Legislature should grant this privilege. Now you have got to trust the Legislature in a good many things, and they ought to be trusted in this. I am in favor of leaving it to them for their decision. I am satisfied that whatever they do in the matter will be right. It is bound to be right in theory if not in practice, or else our form of government is a sham and should be abolished. With these remarks I hope the section will be adopted.

Mr. PARSONS of Morton. I was not aware that the question of woman suffrage was before the House, and was not expecting that the question would come before the House. The question as

it seems to me is simply a question whether the matter of extending the right of suffrage shall be left to the Legislature or left in the hands of the people. We have had quite a number of remarks on this question, and on the question of woman suffrage. I would not say a word were I sure the motion before the House would be lost, but it seems very strange that we have existed as people for over 100 years and the gentleman from Burleigh, who has had the honor of being one of the judges of the district of this Territory, asks—who are the people? I would like to ask the gentleman who were the people in 1776, when the glorious Declaration of Independence was signed, and who were the people that voted to establish this government? Let me ask him who were the people in the civil war when our country was torn in twain? Who were the people who fought then to maintain our system of government? It seems to be a strange question for a gentleman of his enlightenment to propound on this floor. I don't wish to discuss the question of woman suffrage here. I would, however, make one reference to the matter, and I hope you will pardon me for it. I have been so fortunate in life as to be a married man, and so fortunate as to have these relations pleasant and agreeable. I have the honor of having the presence of my wife here to-day and I have too much deference to the institution which I believe was established by God Himself and above a civil contract—too much deference to that institution, to ever favor the proposition of woman suffrage and she is with me in this position. So far we will let that subject drop and proceed to the question before us. Shall it be left to the Legislature or the people? I am an American. The question seems to be, and always has been granted, that the sovereignty of this government rests in the hands of the people, therefore I am opposed to ever leaving the Legislature the unqualified power of extending the right of suffrage. The people—a term that embraces every one who casts a vote—have carried this government on through the past years to the present day. If we have made mistakes—if we have become helpless in misery and corruption, let us pull out and let the other side of the house run it for awhile. But if there is any honor left in us—if there is any responsibility, and we deem ourselves men, let us still as Americans have enough confidence in the sovereignty of the people to submit a question of so much importance to the people instead of the Legislature. It is a known fact that legislatures are susceptible to influences, and

since I have been here as a delegate, were my feelings in that respect not governed by a higher motive than simply a desire to please the fairer portion of my audience, I should have been carried away entirely in favor of woman suffrage. I am aware that the same influence has been brought to bear on every Legislature here, and it is a question that we should not decide in the heat of argument, but we should leave it to the people. No more serious question ever agitated the American mind than the question of franchise. It affects our whole government, and there are arguments pro and con.

It seems to me to be foolish to put a measure of this importance into the hands of the Legislature with power to extend the suffrage without limit, but without the power to restrict it. It seems strange that such a proposition should be agitated, or advocated here. I am proud that a majority of the committee have signed this report. If the motion of the gentleman from Burleigh carries, what does it defeat ? It defeats the section which provides, as our sister state has provided, for the submission of this question to a vote of the people a year from now. We cannot compel the Legislature to submit it, but in all probability the Legislature would not disregard the wants of the people as expressed in the Constitution, and the provision is that it shall be submitted to a vote of the people a year from now at the general election. You may take this Convention, and you will find men in it who are opposed to woman suffrage, who are in favor of this submission to the people. You know that one of the principal arguments that these people use for woman suffrage is that it will help in controlling the liquor traffic. That is one of the arguments used. Let that issue come up by itself. There is one class in favor of the liquor traffic and one class against it. It seems strange to me that anyone advocating a reform—a radical change in our government should ask that the matter be left entirely in the hands of the Legislature. It seems most preposterous that such a proposition should be made here, and all I ask is that the methods which have been adopted since we were a government be adopted now—and that such an important matter as this be left for the people to decide. I wish to see no radical changes made without the consent of the people, and when we say "people" I refer again to my answer to the gentleman from Burleigh on this question. We are legal voters to-day, and it is a question whether we shall extend the franchise or not, and every man will be held free from

any imputation when he decides this question for himself at the polls. I hope the motion of the gentleman will not prevail, but that section two of the minority report will be inserted in the article. I say this as an American who hopes to see our institutions perpetuated in the same glorious manner as we have beheld them perpetuated for a hundred years.

Mr. LAUDER. The question before the House as I understand it is not whether the right of suffrage shall be extended to women, but the question is as to the manner in which it shall be extended if at all. The gentleman from Burleigh takes the position that the question should be left to the Legislature. In what I say I shall not express my opinion or make any argument for or against the right of suffrage for women, but I cannot agree with the gentlemen from Burleigh that the Legislature is the proper tribunal to decide this question. It is before the people. It has been discussed. It may be said to be one of the leading questions before this Territory the same as the liquor question is. In regard to all these questions, and which may be said to be leading questions, it seems to me they should be submitted to the people, and let the people finally pass on them, and then when they have been passed by the people they will be settled. Whereas, if by chance, or if by some combination, an act of the Legislature were passed granting suffrage to women, it would not be settled, for the people would say that was not the issue before the people when the Legislature was elected—our legislators did not express the sentiments of the people, and the next Legislature, if the other party have the majority, would reverse the acts of the former one, and it would go on in that way just as Legislation on the whisky matter has gone on in Dakota and other States, where it has not been definitely settled by the people.

The gentleman says that in referring this matter to a vote of the people we refer it to ourselves in our magnanimity. The women will have no voice in it. If the Legislature decides this question, to whom is it then referred? Any law, whether it be constitutional or whether it be the act of the Legislature, must go as the voluntary act of the male population of this State, and there is no way in which you can get around it, unless it is provided here that on this question the women shall vote themselves. But before this is done it must be by a constitutional provision to be adopted by the male voters. The question, anyhow you put it, is to be settled by the male voters of the state. The gentleman

asks—has it come to this that the right of petition shall be denied —that the women cannot petition the Legislature? I say it has not come to that, and the position we take on the question does not bring us to that at all. The women may go before the Legislature with a petition—they may petition the Legislature to submit this question to a vote of the people, and the right of petition is not changed. The gentleman says that perhaps the Legislature will not submit the question. That is true. But are not they just as liable to, and far more so, to submit the question than they are themselves to grant the right to vote? If they may be relied on to grant the right to vote, may they not be relied on to submit the question to a vote of the people? These arguments are ingenius—they are not fair. I am in favor of having this question submitted to a vote of the people. If they want the franchise extended to women, let it be so extended. I would let the women vote on this question as well as the men. Let the women themselves say on this final vote when the question is submitted whether the suffrage shall be extended.

Mr. MOER. The proposed substitute is, I presume, the original report of what was supposed to be the majority of the committee. We then have the minority report which provides that this question shall be submitted to a vote of the people a year from now at the next general election. I am not in favor of section two as proposed by the gentleman from Burleigh, neither am I in favor of what is now called the majority report, for the reason that it forces a vote at a time next fall when there has been no demand for it on the part of the people. We have been here for a long time, and there has not been a petition placed on our desks or read to us, asking for this thing, from any source that I know of. There have been one or two parties here in the interests of the cause and that is all. There is no general demand on the part of the women of the State for the right to vote, nor should that question as to woman suffrage be discussed here, as it is not before the House properly. The question now before us is this—shall we empower the Legislature to extend the right of suffrage without having it ratified by the people who are now the voters ? It seems to me decidedly that we should not. It is a proposed change in our system of government that we know little or nothing about. It may be good; it may not be. If the Legislature extends this suffrage they can never restrict it, and the query in my mind when the gentleman from Burleigh was speaking was

why the question to extend or restrict should not be left to a vote of the people. It seems to me in this matter that it would be a much better thing to leave it to the Legislature in the future—one year, two years or ten years, when the people ask that the right of suffrage be extended to women, so that at that time the Legislature should pass such a law and submit it to the voters for ratification or rejection. There is no question of more weighty importance to the people of this State that will come before us than this—no question that will come before the Legislature that will be of more importance than this question of doubling the vote of the country. Why do the advocates of woman suffrage object to having this question submitted to a vote of the people? Why do they want the Legislature to have the power to extend the suffrage, unless they fear the voters at the polls will reject it? In Dakota Territory we had the suffrage extended to women, so far as the Legislature was concerned, and yet we know that not one member in fifteen was elected on the question of woman suffrage, nor did it enter into the canvass, nor did the people ratify that action in any sense. I am against the motion of the gentleman from Burleigh; I am also against the minority report for the reason that it would force a vote in a year when there is no demand for it. I believe in leaving the matter to the Legislature to legislate upon at any time when there is a demand, but they must submit their work to the people to ratify it before it becomes a law of the State.

Mr. ROLFE. Do I understand that the Chair ruled out of order the amendment offered by the gentleman from LaMoure? If so, and the section of the gentleman from Burleigh is adopted we will still have an opportunity to amend it.

The CHAIRMAN. The chair so understands it.

Mr. SCOTT. Before voting on this I want to understand it. I understand that the amendment of the gentleman from LaMoure is out of order, and the substitute is this—that we adopt section two of File No. 123, and recommend its adoption. If we do that, then as I understand it, it cannot be amended unless some person can be found who will move to reconsider it.

The CHAIRMAN. The Chair understood that it was simply a substitute section to the majority report, and then the section would be read and discussed.

Mr. SCOTT. Under the ruling of the Chair it prohibits any amendments at this time. If we adopt this section it must be

exactly as it stands. For that reason I move that the motion of the gentleman from Burleigh be laid on the table.

The CHAIR ruled that that could not be done.

Mr. SCOTT. I move that further consideration of this question be indefinitely postponed.

The motion was seconded and lost.

Mr. BEAN. The substitute motion is the section of the gentleman from Burleigh. I understand that to be the case.

The CHAIRMAN. That is so.

The substitute of Mr. CARLAND was then put and carried by a vote of 39 to 24.

Mr. PARSONS of Morton. I give notice that there will be an amendment offered to the Convention to-morrow on this section.

Sections three, four, five, six and seven were adopted.

Mr. SELBY moved to strike out section eight, which reads as follows:

SEC. 8. Any woman having the qualifications enumerated in section one of this article as to age, residence and citizenship, and including those now qualified by the laws of the Territory, may vote at any election held solely for school purposes, and may hold any office in the State, except as otherwise provided in this Constitution.

Mr. JOHNSON. I move to amend section eight by adding after the word "school" in the fourth line the words "or municipal."

The motion was seconded by Mr. COLTON.

The amendment was lost.

Mr. CARLAND. I move that the words commencing in the fourth line after the word "purposes" be stricken out. I think the Constitution should speak for itself.

The amendment of Mr. CARLAND was carried, and the section was adopted as amended.

Mr. PARSONS of Morton. I move that when the committee rise they report recommending the adoption of the Australian bill at the end of this article, instructing the Legislature to pass it with such modifications as they may see fit.

Mr. MILLER. I move that when the committee rise they report recommending that the bill do not pass. It is simply in regard to the method of conducting elections—purely a matter for the Legislature.

Mr. PARSONS of Morton. I don't wish to occupy the time of the Convention at this time. I would like to say that we don't

deny that this is pure legislation, but this bill has passed the Legislature of the Territory of Dakota, and was purloined or stolen away in some manner. We desire to go on record as in favor of it, and I hope that the motion of the gentleman from Cass will not prevail, and that the bill may be incorporated in the Schedule. I believe that a majority of the people in North Dakota want it, and I should like to have the Convention bear the odium of defeating it.

The motion of Mr. MILLER was adopted.

THE REGISTRATION QUESTION.

Mr. COLTON. I move that section three of File No. 105 be added as section ten of File No. 123. It reads as follows:

"All electors must be registered ninety days before the day of election, and certified copies prepared by the Clerk or Auditor of each township, municipality or county for each polling place therein, and all lists must be certified to as being true according to the certified list of the court of examiners."

Mr. MILLER. I object to this amendment being added to this article for the same reason that I objected to the Australian bill. It has reference solely to the method of conducting elections and is a matter that should be relegated to the Legislature. If we seek to put in all the provisions for conducting elections, we shall have a very long Constitution. At its first session the Legislature must make provisions for conducting elections. If they deem it a wise thing they will undoubtedly provide for registration.

Mr. COLTON. I would say that where anything is for the good of the public I don't see that there is any great danger of being afraid of a little legislation. I notice there are some parties on this floor who are terribly afraid of a little legislation, and they seem to be very much against it. This registration provision is certainly what we need to secure an honest ballot, and if we want an honest government we must start at the foundation and have an honest vote. There is no way to secure this as well as to have the voter register. Then we know who are voters and who are not.

Mr. TURNER. I don't think this House can construe section three of File No. 105 as being legislation. I don't believe that that section makes any provision with respect to any method or manner of conducting elections. It merely requires the registration of voters ninety days before election, in such a way and man-

ner as may be provided by the Legislature. It so provides that every person who shall be a candidate for office will have the right by examining the files or records to know whether there are men on those lists who are not entitled to vote. The individuals who are candidates will have the right to examine those records and ascertain if parties who have a right to vote are on that record when the Board of Examiners meet, or not, and if their names are not there they can take steps to have them put on. It is not legislation, but it is placing in our Constitution a safeguard around the question of who shall vote at elections to be held in this state. It simply provides that individuals shall be ninety days in the precinct and shall have registered. The persons who have not registered will not have the right to vote. I think it is a question quite within the province of this Constitution we are framing as much as anything that is embraced in File No. 123.

Mr. BARTLETT of Griggs. I am opposed to section three, first because it makes the registration ninety days before election. I don't know why we should require them to be registered so long. In all the States that I know anything about where registration laws are in force the voters can reister up to within a few days of election, but to require them to register ninety days ahead seems to me to be unreasonable and unjust. I am also opposed to it because I don't dnow the meaning of the last line which provides that the lists shall be certified to by a "court of examiners." I don't know where we have provided for any such court and I think it would be almost impossible in this section to know where these polling lists could be found.

Mr. BARTLETT of Dickey. I am opposed to the whole clause for this reason—it would open the door to fraud. I suppose everyone is aware of the fact that many of us have to go seven or eight miles to vote in the different townships. Frequently there is only one voting precinct to each township. The people who vote there are simply working people, and none of them would want to be put to the trouble of going a long distance to register. It would result in some of the candidates scratching around and getting their friends to go and register and carry the election and leave the balance of the voters out in the cold. There is not one farmer in a hundred that would know anything about this, and then it would take half an hour to get it into their heads. We all know that the people don't want anything like this. They don't want to go seven or eight miles to register, and they are not going to do it.

They would be left out, and simply a few tricksters that wanted to get into office would go and get their friends to register, and five or six men would vote in a township. I should think that anybody could see that.

Mr. TURNER. I should explain something with respect to the question of registration. This section was made short that it might not occupy the position of legislation, and that the entire matter, almost, might be left to the Legislature. I am acquainted with the working of the registration law, and it provides that all persons who are assessed—who are on the assessment roll—shall be placed on the registration roll by the clerk of the township or by the county auditor, as the case may be. On the other hand parties who are not assessed, and who pay no taxes, may have their names placed on the lists of electors. Then it further follows that when the day comes for the board of examiners to pass on the roll, after which no names can be added, every individual has a right at that time to have his name placed on the roll, or to appear before the board and give evidence why his name or the name of any other person should be placed there or otherwise. If an individual desires to have his name placed there who is not a proper elector, and he is not entitled to vote for any reason, his name is left off. I am satisfied that this section would be one of the greatest safeguards of the ballot that we can have. It will show who are properly entitled to vote and who are not, and will do more to purify our elections than any other one thing.

Mr. WALLACE. I move as an amendment that the following be added as a section to File No. 123: "The Legislature shall pass a law providing for the registration of all legal voters."

The amendment was seconded.

Mr. BARTLETT of Dickey. I agree with you that it is necessary that your voters should be fit to elect the officers we need, but it does seem to me that this registration business would not be practicable. You who have run elections know that very frequently you have got to hire a team to bring the voters out to the polls. You have got to drag them out. You have got to almost snake them to the polls. It makes us feel sad to realize this, but you know it is a fact. There is a certain class of men who will go and vote, but if we had such a law as this a few tricksters would get a few to register and it would be the running in of a few men, and after it was all over and the tricksters were elected the voters who did not register would be very sorry that they did not turn out and attend to it.

Mr. WALLACE. I think that in actual experience the fears of the gentleman are unfounded. I think he has no reason to fear anything of the sort. A registration law has always been looked on with great favor wherever I have lived. As to the farming population understanding the necessity of getting registered, I think the gentleman speaks for a very small number. His remarks don't apply generally. I am opposed to the section that has been offered, because it seems to me to be indefinite, and I don't fully understand it, but I am in favor of providing that the Legislature shall pass some law providing for the registration of all voters.

Mr. MATHEWS. I am in favor of a registration law, and am in favor of this section introduced by the gentleman from Ward. I lived under a registration law, and every voter had to go and see that he was registered. Another party could not go and do it for him, and he had till the Saturday before election, which came on Tuesday, but Saturday was the last day. I am in favor of the registration law, but I think two or three days before election is enough.

Mr. COLTON. I would say this about the Legislature passing a law: The Legislature has passed several such laws, but for some reason they have always left a clause at the last end which killed the whole thing—that if they did not register they had got to swear their votes in. These voters that won't register we are trying to weed out—they have a capacity to swear to almost everything. The gentleman talks about dragging people to the polls. I admit that that is done. I have known them to drag people 300 miles to the polls, and we don't want this dragging business to go on any longer. They have got to be in the precinct ninety days, anyhow, according to the section we have adopted, and if they register that length of time before the election, we know that they are there. But if they register a few days before election—I tell you their consciences are made of rubber. They can say they have been there ninety days when they have not been there ninety hours. If we have this section go through as it has been introduced, I will defy you to have any illegal votes cast. They can't get their illegal votes in, and that is what we want. I don't care if it defeats me at the next election. I want to see fair votes and nothing else.

Mr. HARRIS. I agree with the gentleman from Ward when he says that if we adopt this section we would have a fair election

next time, if we could have an election. But our authorities who call elections don't call them ninety days before the voting is done. We cannot provide for registration until the election is called. In our municipalities they call elections twenty or thirty days before election, and registration can't be provided for until after the election is called. This refers to all elections, and I don't see how we could have any special elections. How could registration take place ninety days before a special election if the election is called only twenty days beforehand? A registration law may be good in our towns, but it is more of a question whether it is on our prairies. We have men in this county who have to travel fifteen miles to vote. Compel these men to leave their business and travel on a certain day to register and they would consider it a hardship, and they would not go and they would not be able to vote. They don't care enough for the question as to who wants office to put themselves to all this trouble. I am in favor of a registration law for our cities and towns. But for the country I am not, and especially a registration law which compels a man to register ninety days before the election. It would be impracticable and inoperative, and we could not hold an election under the law.

Mr. PARSONS of Morton. There is nothing whatever in the article as reported from the committee to prevent the Legislature from enacting a registration law. There is nothing in this article suggested by the gentleman from Bottineau to prevent the registration of every voter or name which appears on the assessor's roll. The ninety days business would have nothing to do with the special elections. If your name once went on the register roll you would not have to bother with it unless you changed your place of residence, and if you did this you could go to the county seat and have your name changed to your new precinct the same way as you would go to the postoffice and get the postmaster to forward your mail to some other point. It is supposed under this proposed provision that we will always keep a full register roll of parties in the county who are entitled to vote, and this list will go with the ballot boxes. When a person obtains a residence and becomes an elector he should see to it that his name gets on the register. When a man's name once gets there it will stay unless he changes his residence.

Mr. APPLETON. I quite agree with the views of the gentleman from Burleigh. I think the registry system is good in cities

or in thickly populated counties, but not in this country. I have had experience in the east—in cities and in the country. We have a statute in our territorial law at present that provides that any county that wants to adopt the registry system can do so. Pembina county adopted that system years ago, before I came to the Territory, but we found that it did not work well for the simple fact that the people would not get out to register. New settlers were coming in all the time, and one-third the people were never on the registry lists. On the day of election they would go to the polls, and would say—"If I have to swear my vote in I won't vote." I am opposed to the system, for we found it to be a nuisance.

Mr. TURNER. I think the remarks made by the gentleman from Morton county are very pertinent. I voted for nearly twenty years under the registry system, and I never was at the registry court, nor did I ever register my name in my life. The fact is that the Legislature can provide that all men who are on the assessment roll shall be placed on the register, and my name was always on the register and I never had to look after it. But in cases where farmers' sons had not any property they had to register and sometimes unless they were looked after their names would not be on the register. No man not on the assessment roll, and who did not pay poll tax would be on the registry list without he took some pains to get it there. These lists would be printed, and in the county in which I lived one would be hung up in every school house in every township for public use, and every elector could go to the school house and examine the lists and see if there were names there of people who were not entitled to vote, and if there were, there would be plenty of time and opportunity for him to appear before the board of examiners and give evidence and have the name of the unqualified elector struck off. I think the Legislature should be allowed to make a law under the guidance of that section.

The amendment of Mr. WALLACE was lost.

The motion of Mr. COLTON was lost.

THE SUPREME COURT.

Files Nos. 121 and 131 were then considered together, being the majority and the minority reports of the Committee on the Judicial Department.

Sections one, two and three were passed, and section four was read as follows:

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

Mr. PURCELL. I offer as a substitute for that section the following:

"At least three terms of the Supreme Court shall be held each year, one at the seat of government, one at Grand Forks in the County of Grand Forks and one at Fargo in the County of Cass, until otherwise provided by law."

Mr. JOHNSON. I move to amend by striking out the words "seat of government" and inserting the word "Bismarck."

The amendment was accepted by Mr. PURCELL.

Mr. WALLACE. I hope the motion will not prevail. I think that when we have a Supreme Court travelling around the State as is proposed we had better change the title to that of a travelling court.

Mr. STEVENS. I hope the amendment to the amendment will not prevail for this reason—if at any time the seat of government should be changed there would be no session held at the seat of government, unless it was removed to Grand Forks or Fargo, and I believe that one session at least should be held at the seat of government. While it is very nice for Bismarck, I have not declared yet that I am for Bismarck for seat of government, and this is not the place to do so.

The CHAIRMAN. The amendment to the amendment was accepted.

Mr. STEVENS. Then I move an amendment to the effect that the word "Bismarck" be stricken out and the words "seat of government" be substituted.

Mr. PURCELL. In view of the point made I would ask the gentleman from Nelson to withdraw his amendment as I think the substitute covers the point—"until otherwise provided by law," so in case the Capital is changed the Legislature might make provision that a term of the court should be held at Bismarck.

Mr. JOHNSON withdrew his amendment.

Mr. STEVENS. I desire to say this in justification of my action: When this question was voted on by the committee I voted in favor of three terms of court to be held at the seat of government. I am now going to vote for this amendment as introduced by the gentleman from Richland, and for this reason: In my county we have a bar association of twelve members, and that bar association has met and asked me as the sense of that association that I vote for this resolution, and I am going to do it.

Mr. O'BRIEN. When this matter was before the Committee on Judiciary Department it was taken as the unanimous sense of the committee that the section should stand as reported—that at least three terms of court should be held at the seat of government. I believe that the Supreme Court should not be a migratory court. I believe that a fixed place for the holding of all its sessions should be determined upon by the Constitution. It does not matter to me where the seat of government shall be finally fixed, but wherever it is fixed there I believe the Supreme Court should meet. It may turn out that in time the seat of government will be fixed at a point which will be available from all points by rail. When the court is fixed at the seat of government we will then have a State Library. The first Legislature which meets will probably provide for a State Library. Now that library will be of great assistance to the members of the bar practicing before the Supreme Court, and it will also be of great advantage to the members of the Legislature and the other officers residing there. When the members of the Supreme Court are compelled to go to Fargo or Grand Forks they have got to inflict themselves on the people of those localities for the use of the library which they are entitled to, and which they would have as a matter of right at the seat of government. I most certainly am in favor of having the Supreme Court at one point, and I say let it be fixed at the seat of government, wherever that may be.

Mr. PURCELL. My reason for offering this substitute to the fourth section of this article is this—as is well known the majority of the business for the Supreme Court of this Territory comes from the Red River valley, and the counties on the eastern part of the territory, and the probabilities are that for a number of years the counties on the eastern part of this State will furnish a majority of the business for the Supreme Court. It is likewise supposed that the Supreme Judges of this new State will be called from different districts—from the east, from the southeast and perhaps from this location. If these judges reside in their districts or live in the eastern part of the State, it will be a matter of no great difficulty for a judge who lives on this side of the territory to take the train and go to Fargo. On the other hand if the Supreme Court is located at the seat of government, and the seat of government is located at the City of Bismarck, it necessitates the travel of every attorney to the City of Bismarck. It seems to me that it is easy for the Supreme Court

to travel to the City of Fargo or the City of Grand Forks and there meet the men who furnish the business to the court—easier than it would be for all of them—judges and attorneys, to go to Bismarck. There is nothing in the statement that such a court would be migratory. The Supreme Court of the Territory of Dakota holds one term in Bismarck, one at Yankton and one in the Black Hills. The judges of that court are compelled to travel in many instances 2,500 miles to reach the Supreme Court, but it has been proven that the business of the different localities is brought before that session of the court which sits in those localities. When the Supreme Court of the State meets in Grand Forks the business of the country adjacent to that city will be disposed of there. When the court meets at Fargo the business immediately surrounding that city will be brought before it. It seems to me that in justice to the attorneys as we are now located, one term of the court should be held at each of the three points in the new State named.

Mr. MOER. In the matter spoken of by the gentleman from Richland, that the business will be transacted in each district, I don't see how it will be possible to do that except by consent of the attorneys. Heretofore when the court has sat at Yankton, business which arose in the Bismarck district, or any point along the line of the Northern Pacific railroad, was heard at Yankton. It seems to me that the court should have an abiding place, and not be compelled to go to Fargo and ask the charity of that city for rooms, or make the State furnish rooms in Fargo and Grand Forks as well as Bismarck. Litigants themselves do not go to the Supreme Court. There is no occasion for a litigant to go—nobody but the attorneys, and it seems to me that they can move around just as well as the court. The question of Supreme Court mileage, and the expenses incident thereto would be quite a considerable sum if you have this migratory court, and it strikes me that it is just as easy for the attorneys to go to the court as for the court to travel over the State.

The substitute of Mr. PURCELL was lost, and the section as reported by the committee was adopted.

Mr. BENNETT. I desire to offer a substitute for section four as follows:

"At least three terms of the Supreme Court shall be held each year at the seat of government until otherwise provided by law."

The substitute was seconded and lost.

THE SUPREME COURT JUDGES.

Section eight was then read as follows :

The Judges of the Supreme Court shall immediately after the first election under this Constitution, be classified by lot so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years from the first Monday in December, A. D. 1889. The lot shall be drawn by the judges who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the Secretary of the Territory and filed in his office, unless the Secretary of State of North Dakota shall have entered upon the duties of his office, in which event said certification shall be filed therein. The judge having the shortest term to serve, not holding his office by election or appointment to fill a vacancy, shall be the Chief Justice and shall preside at all terms of the Supreme Court, and in case of his absence the judge having in like manner, the next shortest term to serve shall preside in his stead.

Mr. CARLAND. The orginal draft provided that the judges should be elected at special elections. It was changed by the committee so that they are now elected at general elections. In that change from special to general elections, a change in section eight would necessarily follow so far as the term of the Judges is concerned, in order to have the election of their successors occur at the general election. It will be seen that in line three of section eight the first judge holds his office for the term of two years. He is elected this fall. That would make his term of office expire on the odd year, and his successor could not be elected at a general election, because there would be no general election on the odd year. It has got to be fixed in this section either that his term be one year or three, and the man who is mentioned in line three for four years has got to hold for three or five, and the other man who is down for six years has got to hold for five or seven years. To obviate any difficulty I would move to amend section eight so that the word "two" where it occurs in line three be stricken out and the word "three" inserted, and the word "four" be stricken out and "five" inserted, and the word "six" be stricken out where it occurs in the fourth line and "seven" be inserted in its place.

Mr. JOHNSON. Would it not be well to strike out the figures "1889" and insert in lieu thereof "1890" in the fifth line?

Mr. CARLAND. That would leave the Territorial Judges to serve till 1890.

Mr. JOHNSON. If you do this, as soon as practicable after the election the judges would meet and decide that one should

hold for two years from 1890, which would be equivalent to three years from 1889, and one would hold for four years which would be equivalent to saying five years from 1889. My object in this suggestion was to render unnecessary more than one change in the wording of the section.

Mr. ROLFE. It seems to me that the point would be all right which limits absolutely the term to six years.

Mr. STEVENS. If I am not mistaken it was the understanding of the committee that this matter should be remedied by the Chairman before the report was made. It was agreed that the terms as specified should be the ones to be adopted, but should not affect the first judges to be elected under it, and that matter would be attended to by the Committee on Schedule, providing the terms for the first judges, and this matter would go before that committee to be arranged.

Mr. SCOTT. Is there a motion before the House?

The CHAIRMAN. The motion is to strike out the words "two," "four" and "six," and insert in their places the words "three," "five" and "seven."

Mr. SCOTT. I would amend the motion by moving to strike out the words "two," "four" aud "six," and inserting in their places the words "one," "three" and "five."

Seconded by Mr. STEVENS, and lost.

Mr. SCOTT. If the motion of the gentleman from Burleigh is carried, we will find that we have a section providing that the judges shall not be elected for longer than six years, and yet we will go and elect one for seven years. It does not seem to me to be good policy when we are experimenting and electing our first judges to elect one man for a longer term than any of his successors can ever be elected for.

Mr. CARLAND. It must be obvious to every delegate present that when the officers are elected this fall they must be elected for one or three years if it is decided that we shall have biennial elections. The report provides that the judges shall be elected at the general elections. You cannot do this unless you elect these judges one or three years, three or five years and five or seven years. You must make some such an arrangement as this, because your first election will occur on an odd year, and this provision in section eight was made so that the judges would not be elected at intervals of six years apart, but one would be elected at each general election. That was the intention of the section. In order

to have the election of judges fall at the time of the general elections you have got to provide that they will be elected for three, five and seven years.

Mr. SCOTT. You don't have to provide that way at all. You might provide for one, three and five years

The amendment of Mr. CARLAND was carried.

APPOINT OR ELECT.

Section nine was then read as follows:

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

Mr. JOHNSON. I move to amend by inserting after the word "Clerk" in the first line, the words: "Of the Supreme Court, elected by the people, whose term of office shall be four years."

The motion was seconded by Mr. BEAN.

Mr. JOHNSON. As I understand the rule of courtesy in this committee and in others, it was not necessary to introduce a minority report on every little matter that members of the committee may advocate. The Committee on the Judicial Department was far from harmonious on these several articles, and on this point particularly. If I remember rightly the committee was evenly divided—seven and seven, one being absent. I wish to repeat the protest which I made in the committee against this method of appointing officers. We here provide for one of the most important, pleasant, fat places in the government. The article as reported and read is un-American, un-republican, un-democratic. It is monarchial. I don't believe in appointing these officers for life, which this means we shall have done. He is to hold his office during good behavior. I believe in appointing or electing officers for certain specified terms. The clerk is not appointed according to the section, absolutely for life, but the phraseology is just what is implied here. During good behavior—the pleasure of the king or the judges. I am not in favor of appointing or electing any of our State officers for life, or during good behavior or the pleasure of the government or the Supreme Court Judges. Another thing—I am in favor of electing our State officers instead of appointing them. I am well aware that I subject

myself to the same rebuke that I received in the committee, but duty impels me, and I will make the statements here that I made there. One reason why I am in favor of having this officer elected is that a very large and representative body of our fellow-citizens met at Fargo a week before we met here, and passed resolutions on this question. I refer to the Farmers' Alliance. They said—elect as many and appoint as few of our public officers as possible. Now it is true that that society has no right to come here and dictate that you shall do so and so, but I say this—that every society and every individual, whether a voter or not, in North Dakota has a right in a respectful manner to express views and opinions on this subject. Now when the representatives of the farmers of North Dakota have met immediately on the eve of the meeting of this Convention, and have said earnestly and respectfully what they want, they are at least entitled to a respectful hearing. I don't argue for this on that account merely, but I take the position I do on the deeper principles of right—on the deeper principles of American policy—of the American genius. I say it is the policy and in accordance with the tradition of the American people to elect their officers and not have them appointed.

A hundred years ago when the machinery of our government was first put in operation, the men who made constitutions were afraid to trust the people to elect the President of the United States. They prepared the machinery of the electoral college—men who were supposed to meet and discuss the question as to who should be President, and it was supposed that with their greater attainments and enlightenment they could use better judgment in the election of a President. We have done away with that now, all except as a matter of form. As a matter of fact it amounts to the same now as if the people had voted for the President direct. If we had a Constitution of the United States to make now, all but a very small minority would be willing to trust the people to vote directly on the question of President. I say this without any fear of contradiction, that it is the rule in the northern states for the people to elect the Clerk of the Supreme Court. It is provided so in the Constitutions of Minnesota, New York, Ohio, California, Illinois, Indiana, Michigan, Iowa and last but not least in the WILLIAMS Constitution. We have abundant precedents for electing this officer by the vote of the people; on the other side of Mason & Dixon's line we have precedents the other way. But it seems to me that we should follow

the precedents of the people who live in the same parallels of latitude with us and the states from which our people have come. I do not say that the rule is uniform, for there are a few exceptions but on principle you will never go far wrong if in voting for articles here you follow the advice of Abraham Lincoln as given on the battle field of Gettysburg when he said—"Government of the people, for the people and by the people shall not perish from the earth." I believe in that principle of government of the people and by the people here in North Dakota, and not by favoritism or by appointment by the judges or the Governor. I believe there is a demand that Railroad Commissioners and the Clerk of the Supreme Court shall be elected by the people. I appeal to you to trust the people in this matter.

Mr. MOER. In the Judiciary Committee, as the gentleman has stated, it was a close question whether the committee would report in favor of the appointing of the Clerk of the Supreme Court or electing him. I think only a majority of one was for the appointing. It seems to me that the members of the Supreme Court would be better qualified to judge of the kind of a man that was needed for this place than the people. The Clerk is not brought into contact in any way, shape or manner with the people of the state. The attorneys and the Judges of the Supreme Court are about all the people that have any business with that official. Now the gentleman from Nelson quotes the different constitutions that provide for the election of the Clerk. I have a constitution in my hand which I am sure surpasses all constitutions ever made, because the gentleman from Nelson has introduced here numerous sections from it, the Constitution of South Dakota, the very essence of wisdom, in the estimation of a great many gentlemen, and it provides that its Clerk of the Supreme Court shall be appointed by the judges. It seems that it is not wise for the people to elect every officer that is to have a place under our Constitution or our laws, for the reason that in such an office as this it needs a man who shall have certain qualifications for the office, and certainly the judges of the court would know more as to the man's qualifications than the people would. I am willing as far as I am concerned, as a voter, to forego a vote at the general elections on the question of the clerkship to the Supreme Court, for what I believe to be the good of the public and the good of the service.

Mr. STEVENS. I have always, at all times and under all cir-

cumstances, been in favor of leaving to the people all questions that affect them directly, and while it is true that the people as a whole do not appear before the Supreme Court, it is also true that the Supreme Court and their Clerk in all their work affect the people. The gentleman says that this appointment should be made by the judges because they are better qualified to judge of the qualifications of the clerk than the people, or in other words, the creature is greater than the creator. The people create the Supreme Court—they elect them, and then you say that they are better qualified because the people have elected them, to say who shall be Clerk. Why not say that the Supreme Court after serving their term out should pick from the attorneys who have practiced before them, the men who shall be their successors on the Supreme Bench? The rule is as good in the one case as in the other. The fact is that in a republican form of government it is not only the tendency to-day, but has been from its establishment, that all questions that affect the people should as near as possible be settled by the people, and the whole people are affected by every public officer in the Territory. I was amazed at the gentleman's proposition, that he was always in favor of leaving everything to the people, after just voting that the people should be deprived of the right to decide this question. I think that every officer should be elected by the people, who is to hold a public office.

Mr. PURCELL. The gentleman from Nelson states, as I understood him, that this is one of the fat offices in the new state. This bill does not make it so unless the Legislature sees fit to create a salary or emoluments to make it fat. Under the territorial government of this Territory, the Supreme Court selected their own Clerk. In conversation with that Clerk I was informed that all the fees received by him from every source whatever in the performance of his duties as clerk of the court, did not amount to $400 per annum. That same clerk is the chief deputy of the United States Marshal, and working for him at a salary of $100 a month. Unless the gentleman from Nelson proposes to ask the next Legislature to make this office a fat office, under the existing laws it is not worth the occupancy. The fact is that under the territorial regime there have never been more than two or three applicants for this office. The fees which come to the Clerk are not sufficient to justify any man to become a candidate for the position. And, Mr. PRESIDENT, it is fair to presume that the liti-

gation which has taken place in the past in the court of the territory will be some criterion of the amount and character of the business of the future. Unless the business materially increases, or by operation of laws passed by the Legislature, it will not be worth a man's time to become a candidate for the place. The duties consist of receiving and filing papers and are simply ministerial. The decisions of the judges are handed down to the Clerk and filed; transcripts are sent to the different clerks, and those duties simply occupy his time during the sitting of the court. There are only three terms provided by this bill. These will not last more than three or four months at the outside. This office will take but a part of his time. He will have from five to seven months at his leisure. I do not mean to say, or would any man state, that the Legislature intends to make the emoluments or salary of this office sufficient to allow a man to live in idleness five or seven months out of the twelve. The work of the Clerk never commences till the work of the court is nearly done.

Mr. JOHNSON. The question last touched on by the gentleman from Richland does not enter into the matter of the amendment. I propose to leave the article just as it is, so far as the emoluments are concerned. They shall be prescribed by law, so that cuts no figure in this amendment. No matter whether the pay is large or small—it is the principal I am after. But the gentleman has well stated and spoken by authority, as he has himself been on the Supreme Bench of this Territory.

Mr. PURCELL. I understood that there was a rule prescribed by this Convention that there should be no personal remarks indulged in by members.

Mr. JOHNSON. I was mistaken—the gentleman from Burleigh was the gentleman who was on the Supreme Bench, but the domes of the two genleman are so much alike. My understanding of the rule as to personalities was to the effect that a complimentary reference to a man was not out of the way. I did not know that it was offensive for a man to be referred to as having been on the Supreme Bench of this Territory. The gentleman states that the duties of this officer are simply ministerial. That is the very reason why I have singled out the Clerk and left the Reporter to be appointed. Their duties are different. The duties of the Clerk are such that any fair man of average ability could pick it up. It does not require peculiar sagacity and long training on the bench to pick out a man to act as clerk. The article says as left by my

amendment that his duties shall be prescribed by law and the rules of the Supreme Court. There is nothing to be left to his discretion. With the reporter it is entirely different. My rule does not strike at the reporter. Their work is very different. The relations of the reporter to the judges is quasi-confidential. He takes the decisions of the Supreme Court, he will prepare the syllabus, giving the gist of the opinion. That requires special ability to see that the judges may be properly reported. The judges should be left to pick their own reporter, as he is to them what a private secretary is to a business man.

The amendment of Mr. JOHNSON was lost by a vote of 32 to 27.

Mr. PARSONS of Morton. I desire to have it recorded that I vote for this amendment, simply from principle.

A MATTER OF ELIGIBILITY.

Section ten was then read as follows:

No person shall be eligible to the office of Judge of the Supreme Court unless he be learned in law, be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this State or Territory of Dakota five years next preceding his election.

Mr. PURCELL. I move that the section be amended by striking out the word "five" in the fourth line, and inserting in its place the word "three."

Mr. BARTLETT of Griggs. I am opposed to this amendment. In the committee I believe that I favored three years, but a motion was made to increase it to five years and that was carried. I, as one member, objected to the increase, but it was almost unanimously carried and agreed to, that five years was the proper number and that we did not want any carpet baggers in our Supreme Court. Since it has been reported as five there has been a gentleman here, who I understand is a candidate for the Supreme Court Bench, and he has not been in the Territory five years. To that man I have no objection, and I should like to have the pleasure of voting for him for the Supreme Bench, but I do object to this Constitution being made to suit any one man. If five years was right, then it is right now, but some members of the Judiciary committee who were for five years are now supporting this amendment. I am opposed to making a Constitution for the purpose of letting in anybody. We are here for the purpose of making a Constitution for the State, and not let any one man in to some place. If three years is right, then it should be three years, but the reason

that the three-year plan is now sought to be adopted does not commend itself to me. I think it takes a good deal of gall for a man to come here and say we must change the Constitution, because if we don't we won't permit him to be a candidate for the Supreme Bench. I would like to vote for him for Judge, but I am opposed to changing this committee report for the sake of giving me that privilege.

Mr. LAUDER. I was about to rise and second this motion. I presume that when this question was under discussion in the committee I voted to have it as it now stands. I presume that the gentleman from Griggs has reference to me in his remarks as one of those who supported the five year clause and now am in favor of three years. I do not desire to say, or to be understood as saying, or meaning that the person or persons who prepared the phraseology of this article did not to their best ability and as they understood it, prepare it in accordance with the report or wishes of a majority of the committee. I think they did, but I want to assure this committee and every one of them, that I never intended to vote for the article as it now stands. My impression is that a number of other members of the committee, who are classed as belonging to the majority, and in favor of this article as it now stands, did not understand it that way, and I appeal to every member of the committee that the question was discussed at large as to whether or not the limitation provided here should applly to the first judges or whether it should be general and apply to all. My understanding was that it should not apply to the first judges. My understanding was, and I supposed that it was the sense of the majority of the committee, that a five-year limit was too long in providing for the election of our first judges, but after that, after our State became older, after members of the bar had been here longer, it would be well to make the limitation five years, and I think myself that so far as the first election is concerned, I don't care whether it lets one man in or twenty, and renders them eligible as candidates, I don't think that should prevent us from doing what is right in the premises. The gentleman says that we should not change this Constitution to let any man in. That is true, neither should we refrain from changing it if it ought to be changed, because the change will let someone in.

Mr. MOER. I would like to ask every member of the Judiciary Committee if there would have been a suggestion of a change if there had not been a gentleman here who desired the change

for his own benefit, and not for the good of the State. It seems to me that the point made by the gentleman from Griggs is a good one. We decided that the time should be five years. The point has never been suggested or raised by anyone that the time was too long, till a certain gentleman who comes here, asks that it be changed because he wants to be a candidate for the place. It seems to me that that is a very small reason to give for changing this committee's report. If five years is too long that is another matter, but it is strange that this did not occur to somebody here before this gentleman appeared. I have not a thing against the gentleman whom I believe this change is being made for, but it seems to me that five years is none too long, and if it is none too long for the second election it is none too long for the first. We want men on the Supreme Bench who have lived here, and it seems to me that five years is little enough time.

Mr. CARLAND. As to what occurred in the committee room, I have some recollection. This report was drafted by myself as a sub-committee, and I had in this line two years instead of five. The records show that Mr. SPALDING of Fargo, made a motion to increase it to five, and a vote was taken, and there was a large majority in favor of five. That is the way the vote stood in the committee. I was in favor of two years.

Mr. PURCELL. The purpose I had in moving this amendment was not to comply with the wishes of any one gentleman, but we all know from experience that there are many men among us who have come recently, who have considerable ability. For members of the Legislature a certain term of residence is required, and for other officers. What we desire on the Supreme Bench is as much ability as possible. It seems to me that there can be no objection to the passage of this amendment when we all know that two or three years' experience or knowledge of any man will enable us to judge of his qualifications for any position. There were many who thought that by enacting the five-year clause we were excluding men from aspiring to the Supreme Bench—men whom the Supreme Court records show have appeared before that court as often as those who have been here longer. The standing of our bar has been improved in this Territory during the past four or five years more than it has ever been before. There are men of experience, men of ability, wide knowledge, coming to the Territory every day. When they have been here two or three years, in my judgment they have fixed their residence and are entitled to

occupy a position on the Supreme Bench if the people want them there. If there could be an objection to this why not raise an objection to a man voting until he has been here five years. It won't take any of us long to become acquainted with the qualifications of any man for this position.

The amendment of Mr. PURCELL was put to a vote with the result that it was adopted by a vote of 30 to 19.

Mr. ROLFE. In view of the vote just taken, and in view of a vote taken by this Convention before, I move that all after the word "states" in the third line of this section be stricken out.

The motion was seconded by Mr. SELBY.

Mr. ROLFE. If we are so careless of the use of what we consider to be vital—namely, the right of suffrage, why should we not be fully as careless in regard to the qualifications which we impose on our candidates for the Supreme Bench. A carpet bagger can in our suffrage article, have a right to vote—a practical carpet bagger, then why not a Judge of the Supreme Court ? I don't see the necessity of making any distinction in the one case over the other. If we let down the bars in the one direction, why not in the other ? If there is no merit in imposing a limitation in the matter of the Supreme Court, there is none in the other case. If there is no merit in the one case there is none in the other.

The amendment of Mr. ROLFE was lost.

Mr. BENNETT. I offer an amendment as follows : After the words "Territory of Dakota" insert the words—"And is a qualified elector therein."

Mr. PARSONS of Morton. It is a quarter to six, and I would move that we take a recess till 7:30 p. m.

A member suggested that there were no facilities for lighting the hall.

The CHAIRMAN. I desire to state that there are large lamps and a sufficient number to light the hall properly.

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

The motion was carried.

Mr. STEVENS. I move that this Convention adjourn to meet at 10 o'clock to-morrow morning.

The motion was lost.

Mr. BEAN. I move to take a recess untill 8 o'clock p. m.

The motion prevailed and the Convention took a recess until 8 o'clock p. m.

EVENING SESSION.

The Convention assembled at 8 o'clock p. m.

COMMITTEE OF THE WHOLE.

Mr. BENNETT. I move that in section ten of File No. 121, all after the word "Dakota" be stricken out, and the words "and qualified elector therein" be substituted.

Mr. PURCELL. It seems to me that no man should be eligible until after he has been three years in the Territory.

Mr. O'BREN. As I understand it, before we took a recess this matter came up, and was passed upon, and we left here with the idea that section ten had been carried. Does it come up as a motion to reconsider that vote? It seems to me that it is not proper to take up that section any more than any of the preceding sections.

The CHAIRMAN. There seems to be a difference of opinion as to whether or not we have adopted that section.

Mr. O'BRIEN. The question was asked the Chair before the adjournment if that section was adopted, and he replied that it was. That is my recollection.

Mr. PARSONS of Morton. I don't see why there should be any necessity for a motion. None of this is passed by motion—not one of these sections, and if there is no objection it was passed. I made a break here for a recess, and I did that when the motion of the gentleman from Grand Forks was before the House.

Mr. NOBLE. The question was asked before the recess whether section ten had been adopted. It was ruled by the Chair that it was adopted by the Committee of the Whole. The motion of the gentleman from Grand Forks had been put to the House and lost by myself as Chairman of the committee at that time.

Mr. MILLER. That is exactly as I understand it. I voted on the motion.

Mr. BENNETT. I understood that the motion to change from five to three years carried. Now I renew my amendment of that section by striking out the words after "Dakota" and inserting the words "and qualified elector therein." My reason is that a man who is a qualified elector in the State should be eligible to hold any position in the State.

Mr. MOER. My recollection is that the gentleman from Benson introduced as an amendment that all be stricken out after the words "United States." Then the gentleman from Grand Forks moved to inset the words that he names, and the motion was seconded but never voted upon.

Mr. STEVENS. I move that we proceed to consider section ten.

A vote was then taken on the amendment of Mr. BENNETT and it was decided to indefinitely postpone the same.

Section fifteen was then read as follows:

> The judges of the Supreme and District Courts shall receive such compensation for their services as may be prescribed by law, which compensation shall not be increased or diminished during the term for which a judge shall have been elected.

Mr. STEVENS. I have no objection to the section with this exception, there should be some provision by which the first Legislature may fix the salary of the judges. I believe it has been held by the Supreme Court of this Territory that where the county commissioners set the salary of a county officer the incoming commissioners could not do it. I believe that the salary of the judges will be fixed by the Schedule that is adopted by this Convention, and the Legislature when it convenes this winter should have the privilege of fixing the salary of these judges, and the Constitution should not be fixed so that they cannot.

Mr. CARLAND. This section does not prohibit the Legislature from prescribing what the salaries shall be. The Judges of the Supreme Court and the District Court shall receive "such compensation as may be provided by law." That is what the section says. A provision of that kind has always been construed as not prohibiting the fixing of the salaries, but it prohibits increasing or decreasing the salary when once fixed, during the term of the officer. If it is so provided in the Schedule of this Constitution what the salary shall be, then it will come within the meaning of the expression "as may be prescribed by law," for it will be as much law in the Schedule as if it were an act of the Legislature. The amendment would be, if any were put in, that this section shall not be construed as prohibiting the first Legislature fixing the salaries of the judges.

Mr. STEVENS. If it is fixed by the Schedule it will be as much fixed by law as if fixed by the Legislature. I would ask the gentleman from Burleigh, who was, if I mistake not, a member of

the Supreme Bench at the time the decision was made—if it is not true that that Court held at Yankton that the county commissioners could not change salaries that had been fixed by the preceding board?

Mr. CARLAND. I was not a member of the Supreme Bench at that time, but that case was decided in this way—the county commissioners had fixed the salary, and the Court held that it could not be changed after the officer had entered on his duties. It depends on whether the Schedule fixes the salary as absolute or whether it provides "or as otherwise provided by law." If the Schedule fixes the salary for all time, the Legislature cannot change it.

Mr. STEVENS moved an amendment to come at the end of section fifteen as follows:

"Provided the salaries of the first judges elected under this Constitution may be fixed by the first Legislature of the State of North Dakota."

The amendment was lost.

ADDITIONAL SECTIONS.

Mr. WILLIAMS then introduced four sections which he moved be numbered sections seventeen, eighteen, nineteen and twenty. They read as follows:

SEC. 17. When a judgement or decree is reversed or affirmed by the Supreme Court, every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefor shall be conscisely stated in writing, signed by the judge concurring, filed in the office of the Clerk of the Supreme Court and preserved with a record of the case. Any judge dissenting therefrom may give the reasons of his dissent in writing over his signature.

SEC. 18. The Supreme Court shall have power to make rules for the government of said Court and the other Courts of the State, rules of practice and rules for admission to the bar of the Courts of the State.

SEC. 19. It shall be the duty of the Court to prepare a syllabus of the points adjudicated in each case which shall be concurred in by a majority of the judges thereof, and it shall be prefixed to the published report of the case.

SEC. 20. The Judges of the Supreme Court shall give their opinion upon important questions of law and upon solemn occasions, when required by the Governor, the Senate or the House of Representatives; and all such opinions shall be published in connection with the reported decisions of said court.

Mr. PURCELL. The last section introduced by the gentleman from Burleigh which requires the Judges of the Supreme Court to give their opinion, would conflict with No. 12, which reads :

"No duty shall be imposed by law upon the Supreme Court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided."

To give their opinions to a State officer would not be a judicial function.

Mr. CARLAND. I move that this amendment be taken up section by section the same as the report.

The motion was seconded and carried.

Mr. LAUDER. I think that section twenty introduced by the gentleman from Burleigh is unnecessary. The article provides for a Reporter who will do just what is required of the judges. If that prevails, then the other section which provides for a Reporter should be amended. There is no reason for both of them to stand.

Mr. WILLIAMS. I don't see that the two sections will conflict. The section that I have introduced requires that the court shall make the syllabus. This provision exists in some other constitutions which require that the judges shall make the syllabus and show what particular points they have decided.

Mr. MOER. I would ask what was the idea in taking the work away from the Reporter ?

Mr. WILLIAMS. It would then be more accurate and more satisfactory.

The section was adopted.

Section nineteen was then taken up, which reads as follows :

The Supreme Court shall have power to make rules for the government of said court and the other courts of the State, rules of practice and rules for admission to the bar of the courts of the State.

Mr. PURCELL. I move that the words "other courts of the State" be stricken out.

The motion was seconded by Mr. PARSONS of Morton.

Mr. CARLAND. I move as a substitute motion that the whole section be stricken out for the reason that the Supreme Court possesses the power to do what the section says they may do. It is a waste of time to adopt such a resolution, and it is mere legislation anyway.

Mr. WILLIAMS. It is true partially what the gentlemen says, but the latter part of the section is not within the power of the Supreme Court unless we put it in here. The latter part provides that they may make rules for admission to the bar of the State. I think this is a good idea. If it is left to the Supreme Court

it will have a tendency to elevate the bar. I think the proposition is a good one.

Mr. CARLAND'S substitute to strike out the whole section was carried.

Section twenty (now nineteen) was then considered.

Mr. PURCELL. That section will conflict with section twelve which we have already adopted. I move that the section be stricken out.

The motion was seconded.

Mr. WILLIAMS. I hope the motion will not prevail. I don't think it will conflict with the section which the gentleman refers to. It is a provision which I found in many constitutions and I think it should be put in here. I think it would have a tendency to save the people frequently large amounts of money. The people don't as a rule elect constitutional lawyers to the Legislature. The majority of every Legislative Assembly will be farmers, mechanics and laboring men with a small minority of lawyers. Frequently the people determine on a particular measure, and they send men to the Legislature here to carry out the wishes of the people. They are met by a small minority who tell them that the proposed measure would be unconstitutional, and they say this so many times till the farmers think that the minority is right. The Legislature—or the majority of it—is obliged to recede from its position, but if a member had an opportunity to offer a resolution calling on the highest tribunal in the State for their opinion on the construction of that bill, he would be perfectly independent, and equal to the best lawyer in the body. This resolution would place all the men in the Legislature on an equality, and I think, Mr. CHAIRMAN, you could put no better provision in our Constitution than this. It is a protection to the farmer, the laborer and the men unlearned in the law.

Mr. LAUDER. I hope this amendment will not prevail. The gentleman from Burleigh has evidently forgotten that in all human probability we will have in this State an officer designated as the Attorney General, whose peculiar business it will be to advise the State officers and the Legislature when called upon. Now no one knows better than the gentleman from Burleigh that when a question is presented to the court as these questions would if this amendment prevails, the Supreme Court would be flooded with these questions. Judges of the Supreme Court are simply men; they don't know all the law there is, and it is very unsafe

for any court or any person to pronounce the law on any proposition unless it has been argued before that court on both sides, and all the authorities presented. If the court should give an opinion, for example, in an *ex parte* case without having the law presented, argued, discussed, and that same question should be brought before the Supreme Court, it might put them in a very awkward position. They would not be free to decide that case as they then understood it, after the matter had been properly and exhaustively presented to them. They might be obliged to recede from their position they had taken up, and it is unfair to the court to place them in any such position. We elect an officer and pay him a salary to do the same work that the gentleman from Burleigh would have the Judges of the Supreme Court do. If this amendment prevails we have no need of an Attorney General, or very little, and we might almost abolish the office. But the Attorney General is the officer to advise the civil officers, and when questions come before the Supreme Court, that court is then untrammeled. The gentleman says that this provision is found in many constitutions. I grant it may be found in a very few, and I think I can safely say that there is not a state in the Union where that provision prevails but not only the Supreme Court but every other person who has an intimate knowledge of the workings of that provision would wish it were not there.

Mr. LOHNES. I don't agree with the gentleman from Richland. Take in Massachusetts—the Supreme Court there have always given their opinions to the Governor and the Legislature, although lately they refused to do so. Then follows the State of Maine. They made a legislative enactment to get a provision of this sort into their Constitution, and it saves a great deal of expense to the State. No one can object to this but the lawyers, because it will prevent their bringing suits in so many cases.

Mr. PARSONS of Morton. I think that there is a mistake on the part of some of the gentlemen. If you notice the section reads:

> The Judges of the Supreme Court shall give their opinion upon important questions of law and upon solemn occasions, when required by the Governor, the Senate or the House of Representatives; and all such opinions shall be published in connection with the reported decisions of said Court.

The entire language of the section seems to be one of solemnity, and it does not carry the idea that any little question that may arise will justify a person in running off to the Supreme Court

and demand a decision, but it must be demanded by the Senate or the House or the Governor, and an important case at that. Here is the Attorney General—a man to whom every officer in the State goes. He is busy. It very frequently happens that the Attorney General is in with the administration, his eyesight may be colored, prejudiced, and occasionally in rare cases it would be desirable that the Governor or the Legislature could go to the Judges of the Supreme Court. The understanding is that it should be used in rare cases, but I believe that the people should have the privilege of going to the highest tribunal without first passing a law and bringing that law before them. They should be able to go to them and find out if the law is constitutional, and give the judges time to look it up. This amendment does not pre-suppose that the judges will decide in five minutes. It seems to me to be a wise provision for the benefit of the members of the Legislature who have not the advantage of a thorough legal education.

Mr. CARLAND. In 1885 the State of Colorado amended her Constitution so as to put a provision of this kind in it, and I am sorry I have not the Reporter here, but there has just been issued in the Pacific Reporter, a series of publications published in St. Paul, a statement, and counted up about seventy-five acts of the Legislature of the State of Colorado that had been presented to the Court the last winter, and in some of them the Supreme Court showed the absolute uselessness of any such provision. They say—"You ask us to pass on these laws without any argument, on our own research." Sometimes they refused to do it and in some cases where they thought it was a clear proposition they answered it. It is an injustice that a man's rights may be determined in advance at an *ex parte* hearing, and the argument that they will not be asked except on solemn occasions for their opinions has nothing to it, for the Legislature is the judge as to whether it is a solemn occasion or not. The value of the Supreme Court as I understand it, depends on two things—first the ability of the judge or judges that compose the Court, and second the ability with which the case is argued. The opinion of the judge is not worth more than that of any other lawyer of like standing and ability. His opinion as a judge after he has heard the case argued on both sides, and had a chance to examine it is what gives force to the opinion. I sincerely hope that no such provision will be engrafted into the Constitution requiring the Supreme Court to perform anything but judicial duties. Section twelve was drawn to prevent this

thing, for no man desires to have his rights decided in advance by an *ex parte* opinion of the Supreme Court, however learned and respectable, without argument.

Mr. STEVENS. In furtherance of the argument I would state that a number of states have within a few years passed laws providing that a case shall not be determined by the court except it is in shape where one of the parties can appeal it. This amendment would practically cut off the right of appeal. It allows the Supreme Court to pass on a question and settle it, and cut off your right to carry it to the Supreme Court of the United States where it might have been reversed.

Mr. WILLIAMS. The point I desire to make is that we desire to have no unconstitutional laws go on our statute books. The farmers will meet in a convention—a convention representing thousands of farmers—and agree on a measure which they desire to have become a law. They have able lawyers draft the law, they send it to the Legislature, and a small minority says it is unconstitutional. They ask the opinion of the Attorney General—that is the opinion of one individual. It is no satisfaction at all, and they are forced to recede from their position rather than pass a law which they are led to believe was unconstitutional, because a few lawyers may tell them it is so. I can see no harm—where there is an important measure affecting the whole people of the Territory, for instance affecting the taxation of railroads, corporations—a law that affects the whole people—I can see no reason why the Legislative Assembly should not know in advance as to whether it is constitutional before they pass it and place it in on the statute books. To wait two or three years to find out that the law is unconstitutional is not wise. I tell you the Supreme Court has power enough. I think we should reserve some power to the people, and this is one way to reserve it. If this amendment is adopted the Legislative Assembly will have power to find out in advance whether an important measure will be constitutional if it is placed on the statute books, and not be compelled to wait after passing it, and then let three men sit up and say it is unconstitutional, notwithstanding a body of 125 or 150 men have said it was constitutional. The Supreme Court has power to say it is unconstitutional simply because this Constitution gives them this power. Why should not they say this in advance? So far as I am concerned I believe that when a measure passes both houses—passes the judicial branch, they come about

as near getting what is constitutional as the Supreme Court. I believe, Mr. CHAIRMAN, that it should go into our Constitution.

The motion to strike out the section was lost.

Mr. PARSONS of Morton. I move that we adopt this section nineteen.

The section was adopted by a vote of 33 to 25.

Mr. BARTLETT of Griggs. It seems to me that it is a necessity for us to reconsider section twelve, therefore I move that section twelve be reconsidered.

Mr. CARLAND. As neither one of these sections has been adopted by the Convention yet, I don't see the necessity of reconsidering number twelve.

Mr. FLEMINGTON. We have a Committee on Revision and Adjustment which will examine into this matter and if there is a conflict between the two sections they will probably report it back to the House on the final adoption of the Constitution. I don't think we should consider this section at this time.

DISTRICT COURT JURISDICTION.

Section seventeen was then read as follows :

The District Court shall have original jurisdiction, except as otherwise provided in this Constitution, of all causes both at law and in equity, and such appelate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of *habeas corpus*, *mandamus*, *quo warranto*, *certiorari*, injunction and other original and remedial writs, with authority to hear and determine the same.

Mr. BARTLETT of Griggs. I offer an amendment. After the word "jurisdiction" in the first line insert "each within its territorial limits," the object being to limit the jurisdiction of the District Court to its district.

The amendment was seconded.

Mr. BARTLETT of Griggs. I desire to say in support of this motion that I believe that no District Court Judge or District Court should have jurisdiction outside the limits of the territory of the court, unless in the absence or inability of the District Judge. That should be provided for, but if we have it as in the past so that an attorney can sit in Fargo and sue a man in any part of this Territory, then we want but one district, and let them sit in Fargo all the time. Last fall there were over forty accounts brought by one attorney in Fargo—brought against parties living in Griggs county. There is but little encouragement for attor-

neys or courts to exist in these outlying counties if the work is to be done in this way. They will say that this can be prevented by the Legislature. But we can do it here, and it seems to me that here is the place to do it. We have had an example of a mortgage being foreclosed in Cass county when the land was in Dickey or some other county outside of the district, and the Supreme Court has held that that was proper. If it is, then we want a provision here which shall say that it is not proper, and that a man can be sued only in his own bailiwick.

Mr. PURCELL. The statement that the gentleman makes with reference to a man sitting in Fargo and suing a man in Griggs county is in conflict with our statute. The gentleman well knows, or should know, that no man can be required to go outside of his county in answer to a summons, but if he is sued outside his county and the venue is laid outside, he can give notice of a change of venue and the court will grant it on his showing that it is brought in a county other than the one in which he lives. That objection of the gentleman goes for nothing, for our law provides and says that every man is entitled to have the trial in his own county.

Mr. BARTLETT of Griggs. I was not ignorant of the provision on our statute books, but we should not compel a man to go to the expense of asking for a change of venue. Why were the men of whom I have spoken sued in Fargo? Simply because the plaintiff wanted the defendants to compromise the suits. There were sixty of them, and they went to the attorneys and found that the attorneys would charge them from $5 to $10 apiece to get the change. This was a small matter—some of the notes were only for $5 or $10 each, and a compromise was effected. It was cheaper for the defendants in these cases to compromise than to go to the expense of getting a change of venue. No man should be compelled or obliged to pay an attorney $1 or 1 cent in order to have the right or privilege of being sued in his own county.

Mr. PURCELL. There are various cases where it is better to bring suits in a county outside of the district. Then if the defendant desires to have the case tried in his own county, he can make a motion to the judge and the request will be granted. Our present law provides for it, and we might just as well make a provision that these suits shall not be brought as to attempt to limit this power.

Mr. LAUDER. I agree with the gentleman from Griggs

county. I have had a little experience like my friend on this point. I have seen more than twenty-five persons residing in Richland county sued in Yankton, on notes averaging from $5 to $25—none of them larger. These men had the right to be sued and make their defense in their own county. What was the result? It would cost as much to hire an attorney to get a change of venue for these cases as it would to pay the debt in the first instance, and because of that, defendants are compelled and do pay unjust claims rather than incur the expense of fighting them in the courts. There were twenty-five cases brought for the insurance company down there in Yankton, and there was not a single one but had a defense, and not one of them felt that it would be to his financial interest to employ a lawyer to get a change and fight the case.

Mr. PURCELL. It seems to me that our statute contains a provision that suits brought on insurance notes shall be brought in the district in which the maker of the note resides. I don't know of any such suits as the gentleman speaks of. Even if they were pending and if they had a defense to make to the collection of those notes or the success of those suits, they would have to employ an attorney. I don't know of any attorney who will charge any more for asking for a change of venue if he is employed in the case. If he goes to the attorney and tells him that he wants the case tried in his own county, he will not charge any more for writing out the notice for a change of venue. He is not required to go to Yankton or to Fargo. There is nothing in it so far as I can see that should prohibit the passing of this section, for every objection that they have stated here is covered by the statute. So far as insurance cases are concerned, they must be brought in the county where the maker of the note resides. If it were otherwise it would cost no more to have the attorney ask for a change of venue than if he did not have it to do.

Mr. LAUDER. I am not ignorant of the existence of the statute referred to. I simply stated the case of these insurance notes as an illustration. There are a good many other notes, and I think that the statute requiring action on insurance notes to be brought in the county in which the defendant resides, is the only statute of that character. I know not what the gentleman's practice may be, but I know as for myself that I ordinarily do not prepare a notice or a demand on the opposite attorney, and he refusing that, give him notice that I will appear before the court

and ask for an order, and go myself to the court or employ some one else to go for me—I don't do this for nothing. Neither do I believe that my friend from Richland does it for nothing. I don't believe that it is the practice for lawyers to do all this for nothing, and every dollar a person pays out for this kind of thing is a dollar that he should not be compelled to pay out.

Mr. SELBY. It strikes me that we have somewhat left the line on which the section belongs. It is not a question of changing a place of trial from one county to another, but a question of districts. It is a question whether in the district of Fargo, a resident of that district shall be dragged into the District Court at Grand Forks. The simple idea of changing the venue from one county to another is not contemplated by the amendment or the section. Griggs county would stand in the district of Jamestown. The proposition is that a man shall not be taken from Griggs county into Fargo, which is out of his district. The Legislature can provide the methods as to changing the place of trial from one county to another if it is necessary. Under the statute as we have it, if an individual or resident of Griggs county happens to be in Fargo and a summons is served on him there, they try him there, and not in the county where he lives, unless he has witnesses or can give some other reason for a change of venue. If he is served in the county where he lives he is tried there. It seems to me that the amendment would be proper—that is, providing that every man residing within a district shall, if he is a defendant, be tried in that district and not drawn off somewhere else. He should not be taken to Bismarck or Fargo or Grank Forks, but should be tried in his own district.

Mr. STEVENS. In conversation with Judge Levisee in company with the gentleman from Griggs, he told us about a gentleman who had a suit brought against him in Fargo some hundred miles from where he lived, and because of that he lost his land.

The amendment of Mr. BARTLETT was put to a vote and carried.

Mr. MOER. I would like to inquire whether the amendment has placed the section so that the judges have no power to execute writs of *habaes corpus* or remedial writs outside their own districts. Do they want it so that a man cannot procure a writ from another judge because of the illness of one judge or for any other cause? It seems to me that we are going a little too fast.

COUNTY COURTS.

Mr. PURCELL moved the adoption of section twenty-four of the majority report which reads as follows:

"There shall be established in each county a Probate Court, which shall be a Court of Record, open at all times and holden by one judge, elected by the electors of the county, and whose term of office shall be two years.

Mr. MOER. I move the adoption of section twenty-four as reported by the minority committee as follows:

There shall be elected in each organized county a county judge, who shall be judge of the county court of said county, whose term of office shall be two years until otherwise provided by law.

Mr. ROLFE. I am in favor of section twenty-four in the minority report for various reasons. Section twenty-four of the majority report relates to probate courts. I undertake to say that it will be difficult for any member of the majority of the Judiciary Committee to defend the general system of probate courts as it is now administered in this Territory, and as it is administered in many other states which have no provision for county courts. I don't believe that any member of that committee, or any member of this Convention relishes the prospect of having the probate court as it is now constituted and administered pass on the questions that may arise on his death in the administration of his estate, be it large or small. I take it that the aim and object of most of us is to accumulate some small modicum of this world's goods to enjoy in the present, and to leave to our posterity and our family, and that the administration upon our estates should be in the hands of such an incompetent court as the probate court of this territory and in other states, is a shame to our judiciary system. As at present administered the officer who sits in adjudication upon some of the most intricate questions that arise in the practice of law, is not only unlearned in the law, but in common practice ignorant of the law. I don't know of any cases which can arise which will bring to the notice of the presiding judge of the district court any more complicated, or intricate, or important, or vital questions than those that arise before the generally incompetent men who sit as presiding judges over our probate courts, and I repeat the statement, that the system of probate courts as we now have it, and as we seem to like it, is a disgrace, not only to our judicial system but to the people who seem to hug it to their bosom. I believe that we honestly think this—every one of us.

I charge no judge of the probate court who now sits in adjudication on probate matters with intentionally sitting there to frustrate law, justice and equity, but from his previous training and from the nature of the case, and from the fact that any one is permitted to occupy that position, the result is inevitable that more injustice prevails in the administration of estates in the probate court than any matters of any other court, save that of the justice of the peace. The majority report proposes to continue this system. It is mysterious to me upon what ground they can defend the continuation of this system. There may be judges of probate in this Convention, and I wish to cast no reflection on them personally by attacking the system. I take it that there is a disposition on the part of this Convention to continue this outrage on justice and equity. We are supposed to be here undertaking to form a judicial system which shall not only be convenient for the lawyers, which shall not only provide a lucrative income for the lawyers, but I believe that we are more bound to arrange it so that the system which we establish shall result in substantial justice to litigants, to all widows and orphans, to all persons under guardianship—those persons who are least able to protect themselves—those persons whose interests we should protect first, last and all the time. We know that the system of probate courts now established, and which the majority report seeks to have enforced will never do this. It cannot from the very facts of the qualities of the man who will inevitably preside over these probate courts. The minority report proposes to substitute for the probate court judge a man learned in the law—a man who from his education, his tastes, his line of occupation and his preferences is fitted to pass on the intricate questions that arise in the probate courts. They propose to lift this court of probate from that of the most poorly conducted court under our system into that of a respectable court in which all litigants—in which all widows and orphans, in which all persons under guardianship may be assured of that their estates, both little and great, shall not be squandered—shall not be improperly passed upon.

I undertake to say that any lawyer, any average lawyer, is far superior in a position of this kind to the average citizen for the purpose for which we proprose to employ him. We are met with the assertion that if this system of county courts is adopted it will result in the elevation to the county bench of lawyers who

are not fitted to act in a judicial capacity, and the objection is true in some few cases, considering the state of affairs that prevail at present. But we should remember that we are not making a Constitution for to-day simply, nor for tomorrow, but for all time, and if we do not now institute proper reform in the matter of probate courts and practice, we cannot do it at all. It is for this reason that I am specially in favor of the minority report. But there are other reasons that appeal with nearly as much force to me, and I think must to the vast majority of the members of this Convention in favor of the county court system. I undertake to say that it is a cheap system of litigation. It would save money to the litigants, and as it looks to me it would be nearly if not quite self-supporting now, and eventually so in all the counties. It would save the salaries that we now pay to the judges of probate, and if the fees that would be paid by litigants in civil cases tried before this county judge are turned into the county treasury, they will nearly now, and eventually quite, make the court self-supporting. I take it also that the county court as contemplated by this minority report might be considered a court of the common people. In talking with some of the lawyers in regard to it, those who were opposed to the system might raise the objection that it would reduce their fees, and they say that under the county court system they will not be able to charge the same fees as in the district court. Why? Then they say that these courts will lower the dignity of the practice of law. They say that the county court would degenerate into a court on the same plane as the justice court, and the lawyers practicing therein would become a lot of pettifoggers. If this is an objection at all, it is an objection which should result in the establishment of county courts. I am a practicing lawyer myself, but I do not fear that the establishment of county courts would result in the reduction of lawyers fees, but if it did, then it might be considered a favorable step in the behalf of the common people.

There is another reason why I favor county courts. If given jurisdiction in criminal cases to any considerable extent, it would do away with a vast amount of expense, delay, and trouble in passing upon certain offenses which might be considered by comparison, petty. I cannot illustrate this better than by citing a case of injustice which arose in my own country. A man was arrested on the charge of obtaining $10 under false pretences. Under our code this offense was a felony—a case that could not be tried

except on a presentment or indictment found by a grand jury. The defendant had no defense. He would have been glad to have entered a plea of guilty at once and receive sentence, but under our law this was impossible. He must wait until the District Court met in the county, the grand jury be summoned and the case take its course. Thirteen months elapsed, and this defendant was immured in a six by six steel cell waiting the action of the grand jury. The question of expense to the county in such a case is insignificant in comparison to the injustice to that defendant, criminal though he was. The majority report would simply result in reducing the time—the period of such injustices. The majority report provides, if I am not mistaken, that the District Court shall hold at least two terms a year in each organized county. In any case then, provided the grand jury were summoned, a defendant could not be immured for a longer time than six months before his case would come before a grand jury. Nevertheless, if a defendant were willing and anxious to be tried immediately, he should have the privilege of a trial, have his case determined and settled. Let his innocence be established or his guilt, and let him then receive the punishment. If the county court were clothed with the authority to try these cases, which we might consider petty by comparison, county courts could at once determine such a case, and the counties be relieved of great expense, and defendants in criminal cases be accorded the rights which under the Constitution they possess of having their cases tried and settled without undue delay.

Mr. BARTLETT of Dickey. I did not expect to speak on this subject, and I don't speak as a lawyer, but as a farmer and with experience in this line of business. I will go into court as a client—my case is simple, but I have employed a lawyer. Suit is brought, court convenes after several months and the other side want a continuance. It is granted—always. The next time court comes around they furnish a witness that swears there is some other important witness and they have got out a subpœna for him, and due diligence has been used to find him, and they want to put it off for another term. It is put over, and in eight or ten months more court convenes again. Every time this is done your lawyer gets $10 to agree to have it put over. Court convenes again, and there comes along another witness who swears that they expect to prove by a certain witness certain things, and it runs right along, and the result is that it will frequently run

along this way when you have a good, first-class case, and you are two, or three or four years collecting it. I have one individual case that stayed in the court in Dickey county for three years right along, and I was pushing it all the time, and the result was that when I got that thing through, after lots of trouble, I paid my lawyer $125 in cash, whereas there was only about $700 pending. If there had been a county court there the matter would have been settled and adjudicated upon, probably in one month. I hope that the farmers here and the men who are liable to be led into just such performances as I have described, will put their seal on the question to-night, so that they cannot be imposed upon any longer. Suppose a man goes off with some stock that he has given a chattel mortgage upon. You send and get that stock back again by an officer, and before court convenes it is very common for that stock to be absorbed—its value—through the expense of keeping it. If we had a court there with jurisdiction it would be speedily settled. It might take some dignity away from the lawyers, but I tell you I know from my experience that the county court is what favors the poor man, and there is where my vote will go.

Mr. MILLER. It seems that the gentlemen who have spoken think that county courts would necessarily be a panacea for all the ills they have individually suffered by reason of some improper conduct in some court. I don't know what guarantee you have that a circuit or county court would not continue a cause as well as a District Court. If a judge is honest he will continue a case on the proper showing being made, and if you suppose that the judge of the county court will not continue the case when proper showing is made, then you are presuming that he is showing partialty. But I desire to refer particularly to the argument of the gentleman from Benson. It seems to be his theory that it is unsafe to trust the affairs of estates in the hands of the probate judge, but if you put them into the hands of the county judge, then your property will be taken care of. The judge of probate is elected by the county at large, because the citizens think him to be the most competent man for the place that they can select. Have we any right to presume that the county judge, who is elected within the same territorial limits will be any better man than the judge of probate, or any safer to leave the estate with ? It is a question that rests with the electors of each county. The same electors elect the one and the other, and whichever they

elect he is expected to be possessed of the qualifications for the place. But they claim this county judge will be a better man and pay much better attention to the duties of the office than the probate judge does. What are the facts? They desire to give him civil jurisdiction to quite an amount; also criminal jurisdiction of what the gentleman from Benson calls petty offenses, and then he cites a case of felony, and then the surrogate court with jurisdiction of civil cases, criminal jurisdiction which must absorb a large part of his time and attention, and he is going to be better qualified to take care of estates of decedents. In some counties the probate judge is occupied every day in the 365 that it is possible for him to sit in a court, in conducting probate business of his county alone. He requires not only his own but the assistance of a competent clerk in order that he may keep up with business. Make a county court in his office, and have him annoyed all the time with civil and criminal cases, and every estate in such a county as Cass brought to him for administration would be sadly neglected, or else the civil and criminal business would be neglected.

It is the experience of the older states where probate law is the best managed, and where estates are the best managed, that it must be done through a good probate judge, who has the jurisdiction of nothing but the estates of decedents; makes them his special business, and if a competent man is elected, as is usually the case, other politics are sometimes forgotten when they think that they are electing a man who may have to take care of their estates. He is usually a competent man, because he gives his exclusive time and attention to it, and is not bothered with any of this other work. In most counties of this Territory the probate court will, in the near future, as the counties get settled up, have to give a large portion of its time to probate business alone. The gentleman claims that he desires a surrogate court because it will lessen the expense of litigation and that it will tend to lessen the fees of the attorneys. There is no greater absurdity than this. A surrogate or county court will increase the expenses of litigants beyond all account—beyond any comprehension of the gentleman who has not passed through that sort of business. An attorney will charge just about the same in all probability for going into the county court as for going into the district court, to try the same case. His case is begun, and one man or the other generally gets beaten. The fellow that is beaten is just as

sure nine cases out of ten to appeal that case to the district court, and have it retired, as he is to live, for it is right there in his own county, and he thinks he will take another chance. How many civil cases, even of the importance that go into the justice court, go up to the district court. The same thing will be true to a greater extent when you get into the county court where the jurisdiction is increased, and the amount involved is greater. So that in your county court you pay your attorney for the trial of the case in the county court, and in the district court, and your county court is but another step to get into the district court. You go through the county court instead of serving a summons and going direct into the district court.

The gentleman from Benson cites the case of a man who was compelled to lie thirteen months in jail awaiting the judge before he could be tried. That was undoubtedly when two judges undertook to do the business of the Territory and North Dakota. This applies no longer, for we are to have districts so arranged that the judges can hold court twice a year, and that trouble is obviated. I can see nothing but objection to the county court system. There will be nothing but added expense, added annoyance, and no return whatever to the litigant, the people or the attorney. It is true that if we were to have only two judges in North Dakota it might be desirable to have a county court, so that business might be done more frequently, but with six judges they will be able to do all the business, and have terms of court as often as will be necessary.

Mr. PARSONS of Morton. I wish to state a little of my experience in regard to county courts. The little State of West Virginia, in which my folks dwell, has more litigation in proportion to its inhabitants than any other state in the Union, but we adopted a system of county courts which was somewhat different from the one now under discussion, but it answered the same purpose. The argument has been advanced that it deteriorates and drags down the profession of the law. I have seen cases in that court in which the best lawyers of the state were engaged. It does not surprise me to hear the remarks of the gentleman from Cass. If all the counties in North Dakota were like Cass it would be different. We are differently situated than other parts of the State. We found down in West Virginia, instead of dragging the profession down it brought up the standard of the justice of the peace from being a byword and a matter to be scoffed at, until

honorable men—men that were competent to take the places—were elected. If we would add to the dignity of the probate court there would be an added quality to those who held the office. It seems to me that there is no one measure that has been tried in these United States as thoroughly as this, and it seems to me that we should adopt it for the purpose of getting some means of speedy justice at hand. If it were possible to pass such a measure here I would urge a measure that would make the jurisdiction of the county court $50,000 instead of one, give it criminal jurisdiction in most cases, and give it sufficient power to take in nearly all the cases we have. As a matter of fact where the county court system has been tried very few cases have been appealed. In West Virginia the president of the court is ex-officio chairman of the board of county commissioners. The added dignity gives us a court that is reliable, and it is not limited to a man who is learned in law. On the contrary I could refer you to Judge Hagan and Dr. Moore who have occupied the place, and nobody has ever given a better administration of justice than they have. One is a farmer and the other a doctor. Perhaps at the first session of the court there were some mistakes made, but their administrations were satifactory to the people, and favored by the people. If you could give us the county court the District Court would have far less to do as well as the Supreme Court. In nine cases out of ten the cases would stop at the county court.

The committee then rose.

Mr. LAUDER. I move to adjourn.

The motion prevailed, and the Convention adjourned.