

consumed in consideration of the several points in this agreement and this would carry this session through to a later hour than I believe those members of the Convention, at least those members of the Convention who have just returned from Bismarck, without having had any sleep within the last thirty-six hours would care to remain here. I would therefore move you that this report be reported as received and that the reading be postponed until tomorrow morning.

This motion received a second.

Mr. Caldwell: I would say in connection with this fact that tomorrow morning's Press will contain a complete copy of this and members of the Convention will have an opportunity to read it and understand it more completely than would be the case by hearing it read.

Mr. Peck: It will appear in our Journal tomorrow morning will it not?

The President: Those favoring the receiving of the report of the Joint Commission this evening and postponing the reading of the same until tomorrow morning, say aye. Those opposed say no. The ayes appear to have it; the ayes have it and the motion prevails.

Mr. Peck: I move we adjourn until nine o'clock tomorrow morning.

Which motion prevailed and the Convention stood adjourned.
Hall of the Constitutional Convention, Sioux Falls, Dakota, August 2nd, 1889.

Convention called to order at nine o'clock A. M.

President Edgerton in the chair.

Prayer by Chaplain Wakefield.

We marvel to ourselves, O God our Heavenly Father when we consider Thy infinite love manifested toward us. We come before Thee this morning to thank Thee for the favorable auspices under which we meet and we ask Thee, that in this, our closing work for the great commonwealth that we represent that nothing will be done that will mar or impede the future peace and prosperity of our beloved State.

May the chief desires of our hearts this morning be, to honor Thee and serve our fellowmen, not only those who are today watching the progress of our work, but those who are to follow in our footsteps.

O Lord, give us this spirit this morning, we ask in Jesus' name.
AMEN.

The President: The clerk will read the Journal of the preceding day.

The Clerk reads the Journal.

Mr. Spooner: I move that we dispense with further reading of the Journal.

Which motion received a second.

The President: It is moved and seconded that we dispense with further reading of the Journal. Those favoring this motion make it known by saying aye. The ayes have it. Further reading of the Journal is dispensed with.

The President: I suggest to the Convention that I have a communication here this morning from the Superintendent of the Burlington Railroad, which the Clerk will read to the Convention. I thoughtlessly omitted it last night and it would be proper for the Convention to take some action one way or the other at once. Either by accepting or refusing to accept it or to refer it to a Committee so that something can be done with this.

The Clerk reads the communication as follows:

Sioux Falls, Dak., Aug. 1, '89.

HON. A. J. EDGERTON,

President Constitutional Convention.

On behalf of the management of the Burlington, Cedar Rapids and Northern Railway, I extend to you and the members of the Constitutional Convention and their laides, the courtesy of our road from Sioux Falls to Spirit Lake and return.

Yours most respectfully,

THOS. H. BROWN.

The President: What will the Convention do with the communication?

Mr. Davies: I move that the invitation that was extended to the Convention be accepted for Saturday evening.

Motion received a second.

The President: It is moved and seconded that we accept the invitation of the Burlington Railway Co. for Saturday evening. Those favoring the motion make it known by saying aye; those opposed, if any, by saying no. The ayes have it and the motion prevails.

The President: I would suggest to the Convention still further; this morning I met with the Senate Committee sent out here to examine the question of irrigation, Senators Stewart and Regan. They informed me that they could only spend the day in Sioux

Falls, they would be glad to meet a few gentlemen from the Convention, not many but a few gentlemen from localities scattered over South Dakota who could give them some information in reference to this question that they might embody it in their report and if convenient to this Convention they would meet us here at two o'clock this afternoon. I said to them that undoubtedly the Convention would be glad to accept of their proposition and that seven or eight gentlemen would be selected in some manner to answer such inquiries as they might suggest and present such information as they might desire.

Mr. Spooner: I move that the proposition be accepted.

Which motion received a second.

The President: It is moved that the Convention extend to the Senate Committee a cordial invitation to meet us here this afternoon at two o'clock. Those favoring the motion make it known by saying aye; those opposed by saying no. The ayes have it and the motion prevails.

Mr. Van Buskirk: I move that a committee be appointed by the Chair in accordance with his suggestion.

The President: It is moved that the Chair appoint a committee to furnish this information for the Senate Committee. Those favoring the motion make it known by saying aye; the opposition by saying no. The motion prevails.

The President: I would state to the Convention that I have received an answer to the memorial in reference to the School lands which the Clerk will read.

Clerk reads:

Executive Mansion, July 9th.

DEAR SIR:—

I am directed by the President to acknowledge receipt of your letter of the 2nd inst., enclosing memorial passed by the Constitutional Convention, both of which have been referred to the Secretary of the Interior.

I have the honor to remain,

Very respectfully,

O. L. PRUVEN,
Assistant Secretary.

The President: Unless otherwise ordered by the Convention I will direct the Secretary to read the list of Committees to ascertain what reports are yet to be made.

The Clerk: The Congressional and Legislative Apportionment.

The Chairman: The report is read.
Judiciary.
The Chairman: No further report.
Schedule.
No further report.
Name, Boundaries and Seat of Government.
No further report.
State County and Municipal Indebtedness.
No further report.
Executive and Administrative.
No further report.
Legislative.
No further report.
Bill of Rights.
No further report.
Election and Suffrage.
Nothing more.
Federal Relations.
No further report.
Education and School Lands.
No further report.
Municipal Corporations.
No further report.
Corporations Other than Banking and Municipal.
Nothing further.
County and Township Organizations.
Nothing further.
Revenue and Finance.
No further report.
Public Accounts and Expenditures.
Nothing further.
State Institutions and Public Buildings.
No further report.
Mines, Mining and Water Rights.
Nothing further.
Roads, Bridges and Other Internal Improvements.
No further report.
Exemptions.
Nothing further.
Rights of Married Women.

Nothing more.

Banking and Currency.

No further report.

Military Affairs.

Nothing further.

Amendments and Revision of the Constitution.

No further report.

Printing.

Report submitted.

Seal.

No further report.

Miscellaneous Subjects.

Nothing.

Compensation of Public Officers.

No further report.

Arrangement and Phraseology.

Will report this afternoon or tomorrow.

Manufactures and Agriculture.

No further report.

Expenses of the Convention.

Mr. Huntley: I would like to say to the members of the Convention that I hand in today the statement and if they find any inaccuracy that they will report it to the Committee. It does not agree very well. Some distances traveled are nearly one-sixth more. It is the desire that the members look over their reports and hand them to the Committee and if they find any error that they will do so as soon as it may be done.

Engrossment and Enrollment.

The report is not ready.

The President: I have designated this Committee to meet the Senatorial Committee at two o'clock this afternoon. I have, so far as I have known, tried to select men who have some practical experience with the question of irrigation. The Clerk will read the list.

The Clerk reads:

Dr. McGillicuddy, of Pennington; Mr. Peck, of Hamlin; Dr. Spooner, of Kingsbury; Mr. Couchman, of Walworth; Mr. Hall, of Sulley; Mr. Houlton, of Douglass; Mr. Eddy, of Miner; Mr. Murphy, of Hanson; Mr. Wood, of Spink; Mr. Cook, of Marshall; Mr. Wescott, of Deuel.

The President: The next order of business will be the communication and presentation of petitions,—next Unfinished Business of the preceding day,—reports of Standing Committees; reports from Select Committees; consideration of reports of select Committees; presentation of resolutions and propositions relating to the Convention.

Mr. Jolley: I offer the following resolution:

RESOLVED: That the president of the Convention have the custody of the debates until the Legislature shall order and provide for their publication, and that he, with Hon. A. G. Kellam and Hon. H. F. Fellows, shall prepare the same for publication and cause the same to be published.

The President: Is the Convention ready for the question? As many as are of the opinion that the resolution be adopted, say aye; contrary minded say no. The ayes have it; the resolution is adopted.

The President: The next business in order will be the consideration of the balance of the report of the Committee on Schedule, beginning with Sections 19 and 20.

Mr. Williams: By consent, the amendment that was offered by myself was divided into two parts; the first is that which changes the date from 1892 to 1891 affecting the term of office of the State officers and the Legislature and that which affects the judges I wish to withdraw with the consent of a second and of the Convention; the question before the House is that which changes the date from 1892 to 1891 and effects the State officers and members of the Legislature making the term of office of the members of the Legislature expire in January, 1891.

Mr. Jolley: This question I do not think is a very material one; that is I do not think it is as material as the one we discussed last Friday afternoon; still I think we had better be careful how we decide this question. The difficulty originating in the mind of the gentleman from Bon Homme and those who view the matter exactly as he does, is the question whether this is an election under this Constitution or not, if it is an election under this Constitution then there can be no question as to the terms of the State officers. And if it is not an election under this Constitution I do not know what kind of an election it is. The question is dispensed, (disposed of) that is, (if there is) any doubt if we look at what this Convention has done already relative to the Schedule report and if the members will turn to Section 7 which was discussed fourteen or fifteen hours last Friday, they will find a provision which sets this matter at rest. "The

election herein provided for shall be under the Constitution herewith submitted." There can be no question about that language; it is plain and without ambiguity. And the Convention last Friday afternoon decided that this election on the first day of October shall be an election under this Constitution. Now, Mr. President, if that is correct, then the conclusion is irresistible that this being an election under the Constitution, these officers are provided for under the Constitution; and the Governor and State officers shall be elected for two years. The Omnibus Bill says we can provide for a full set of officers. Then where do we get any other provision for electing these officers; there is not a single word as to what officers we shall elect; not a single provision or word in it stated as to what officers we shall elect; then it comes back to this Constitution it having provided that such and such officers shall be elected; then it follows as a conclusion that they shall be elected as provided by the terms of this Constitution and it shall govern. There is nothing concerning a half year or fourteen months or twenty months; the Constitution says that we shall have such and such officers and that same Constitution says that they shall be elected for two years; then if the Constitution has made the rule that this first election shall be under the Constitution there can be no question as to that. Then Sir, so far as the judicial officers are concerned there is no particular ambiguity, no particular doubt, and no uncertainty; the Constitution says that under the provisions of this Constitution judges shall be elected who shall hold office for four years after the first election; that election is under the Constitution because we cannot under any provision of the Organic Act elect any judges; we must act under the Constitution. In the proceedings yesterday we provided such and such judges now if we do not get these State officers from that Constitution we do not get them any place. If we elect those officers and those judges under the provisions of the Constitution all of the terms provided for in that Constitution must be fully carried out. It is that Constitution or nothing.

This Schedule is a very important thing in its place, but after this Constitution is adopted and we are admitted as a State into this Union, I doubt whether a person will say anything more about this Schedule. This is a bridge to carry us over from a Territorial to a State government; only that and nothing more; having done its work it ends right there. Again I wish to call the attention of the Convention to this fact; it is a very serious legal question. There

may be complications that will arise, if you deviate from that Constitution in a single particular. This is a violent presumption, Mr. President, but I will make the assumption,—suppose I was elected Governor at the election on the first day of October 1889 (laughter) and that you go to work and amend this Schedule as provided by this amendment, and the gentleman is elected next year; the first Tuesday of January 1891 he comes to me and says, “Here, old man Jolley, your time’s up, walk! I say “No Sir, Mr. Williams, the Constitution that the people adopted on the first day of October says that I shall hold office for two years; for two years I am going to remain here or until such time as the Supreme Court of South Dakota says “Walk”, then I will go and not until then.” This complication is not far-fetched, it stares us in the face and we are liable to meet it if we go to work and elect a man governor,—if you elect me Governor for two years, I serve my time out. It is easily settled,—this difficulty; the other way you have that complication. The logical conclusion is that we elect a Governor, no doubt about that; we shall elect that Governor for two years, no doubt about that. Now this Convention goes to work in this Schedule and says, we shall elect for fourteen months, if the amendment is adopted. Then in that event I say if we come before the Supreme Court, the Supreme Court will say “You have said in Section 7 that this election is an election under the provisions of this Constitution; then the provisions of this Constitution shall govern it in every respect. There is no question in my mind about it, Mr. President, gentlemen will differ; we are constituted differently. There is a clear, plain provision in the Constitution as to what shall be the terms of office and when we leave the Constitution we are at sea.

Mr. Dickinson: I would like to say a word on this because I have a good deal of interest in it and on the side of those who have offered the amendment that is, in my heart, my preference. I was a member of the Schedule Committee and also of the sub-committee who passed upon this provision and when we first agreed it was that the terms of the officers should be a short term and that there should be a general election of all officers in 1890. I was satisfied with that and gave very little attention to it but afterwards when the other members of the sub-committee and the lawyers and myself came to the conclusion that it would be illegal to have the term two years and have a general election of state officers in 1891. Again I opposed it. Then I gave it more careful consideration and came to

the conclusion for the time being that they were right; it would have to be two years' terms and the election of State officers in the odd year. I concurred with the report and submitted it to the Convention all my sympathies are with the other side. I talk on this side because I think we are obliged to take this position. The terms "under the provision of the Constitution" and the term "after the admission of the State into the Union"; I ask the closest attention of the Convention to these two terms. Unquestionably these terms are used in the Constitution of 1885 "after the State is admitted into the Union." It provides for the election of the judges and other officers at the first election held under the Constitution manifestly they intended there a distinction between these two elections, election under the provisions of the Constitution, and the first election after the admission of the State into the Union. The argument was based yesterday on the division of these terms, that this was not an election under this Constitution, the first election after the admission of the State into the Union would be an election under the Constitution. Mr. President, I would ask the Convention's attention to this. What was meant by the framers of the Constitution of 1885 by the expression, "under the provision of this Constitution? They said that the Judges should be elected under the provisions of the Constitution; as a matter of history when were the Judges elected? As a matter of history when was the Constitution voted upon? The officers were elected then so when the Committee was appointed to call the election they understood that the first election was the election that the Constitution was voted upon. They were just exactly at the point we are today, and if that was an election under the Constitution, this is an election under the Constitution on the first of October. If it is not an election under the Constitution it must be an election under the election law. The qualification of electors provided by the Constitution of 1885, for that election was not held,—the first election in 1885 was not held under its provisions but under the Territorial law, just as ours will be this fall. But it was an election under the Constitution in this sense that it was an election to fill the offices for which the Constitution had made provisions; all the State offices which it would be necessary to fill. We have a historical definition of what an election under the Constitution means that they had contemplated a distinction between that election and the first election after the State had been admitted into the

Union, when county officers are to be elected. You will see at once that the framers of the Constitution of 1885 undoubtedly provided for two elections. One at which the State officers and judiciary should be elected and one at which the county officers should be elected. They provided for those elections. I say to the members of this Constitutional Convention that those distinctions are matters of history. You cannot possibly go behind them.

Section 5 of article IX refers to county officers the question also of general election is referred to in Article VII Section 4 where it says, "All general elections shall be bi-ennial". I ask the attention of the gentlemen who are on the other side to that provision of that section. What is meant by that section of Article VII? "All general elections shall be bi-ennial?" Is it, as argued by the gentleman from Hand last night? The Convention contemplated a general election according to the definition which says for convenience it shall be understood all general elections shall be on even years. Well, will it necessarily follow all the elections shall be bi-ennial? It would be like putting in a section saying that these terms shall never be less than two years because according to that definition it must come on even years. If I understand it, if that is put in it makes this difficulty possible, that when the even year comes around somebody would say this: "This is the general election, these State officers ought to be elected now if they are elected on the odd years therefore they put in this section providing that all other elections shall be bi-ennial. And that State elections also should be bi-ennial. They should come on the odd years. I deny that. You will find everywhere there is that provision for two elections. There is not a member on the floor this morning that doubts that if the State had been admitted under the Sioux Falls Constitution there would have been an election of State officers in 1885 and following in 1887 there would have been another election of State officers and in the even year there would have been an election of county officers. This is a matter of history. We know what year the Constitution was framed, what year they elected their first officers and if they had been admitted we know what year they would have gone into office. We know they would have held two years and this year would have been the year for the election of State officers. This prepares the way for an argument which to my mind is conclusive in this matter unquestionably. The Constitution of 1885 made it necessary that there shall be a general election each year. On the

odd year of State officers, on the even year of county officers and saying that it makes provision for it. That being so, we have a provision distinctly made for two elections by the Constitution that we are sitting here to modify. Now, a change of the Constitution is contemplated by the amendment offered. To adopt that is actually to change the Constitution; it is surely an amendment to the Constitution; it is a more complete change and radical change or amendment of the Constitution than anything that has been before offered here since the Convention has been in session. It is something absolutely beyond our power. We remember that every member upon this floor has been arguing that we must be careful to not exceed our power.

Mr. Hartley is called to the chair by the President at this point.

Mr. Dickinson: You will provide for an election of State officers on the even years and you would provide for an election every once in two years. In my estimation it is wrong. I would be glad to have it the other way but we have no power to change it; it is best to leave it to the Legislature. It is not the office of the Convention to amend the Constitution in the Schedule and that is just exactly what we would be doing if we adopted this amendment.

Mr. Woods (of Pennington): I do not desire to attempt to add much to what has been already said. It seems to me some of objections to the amendment are not well founded. One argument is that this Convention has already determined that this coming election, this October election, is under the Constitution. Now if we have so determined it, it would be crossing the bridge before we come to it. In the first place we have not the authority to determine it. In the second place we take issue with the gentleman that we have not so determined it. I commence at the beginning of Section 7 of the Schedule report.

Mr. Hole: You have the old copy; the corrected copy is different.

Mr. Woods: "The election provided for herein shall be under the provision of the Constitution herewith submitted, and shall be conducted in all respects as elections are conducted under the general laws of the Territory of Dakota except as herein provided." I was not aware that this Convention had taken this action but even if the Convention had taken that action, I ask it now for the benefit of the Convention if they have acted wisely. I would like to have this election held under the provisions of that Constitution

using the expression, "Under the provisions of the Constitution", does not strengthen the position any. The election is held and our authority for calling the election at all is under the provision of the Omnibus Bill that makes the rules and regulations for that election. Now, if these words are contained in the Constitution we can adopt that so the election will be held under the rules of the Constitution. I submit this, Mr. President, this election cannot or will not be under the Constitution. Why? Because we have none, we have no Constitution as yet; it must be resubmitted for ratification on the first day of October. We have no Constitution under which this election can be held; none whatever. We hold the election, then, under the provisions of the Omnibus Bill; we cannot hold the election under the Constitution because we have none under which to hold it.

What is the term of office for the Governor, fixed by the Constitution? Why is it two years? Members of the Legislature? Two years. To illustrate; if this section is held under the Constitution and they execute the duties of their office under the Constitution,—and of course they will have to qualify under it, then we will have two regular sessions of the first Legislature.

Now let us see how we make this out. The Schedule and Ordinance provides that they shall hold the first session of the Legislature sometime in October, the third Tuesday of October; limited to what they shall do. Then the regular session will take place in January, hence there will be two regular sessions of the Legislature under the Constitution.

Mr. Clay, from Jolley, or Jolley from Clay (laughter) illustrates the difficulty we shall encounter by supposing he should be elected Governor. It strikes me, one year or a little over would be sufficient-long for a demonstration of that character. (Laughter). I do not hesitate to say that it would be sufficient. (Laughter). But this is a departure; the Constitution declares that the general elections are bi-ennial. At the time that the Convention of 1885 assembled there was a law upon the statute books, and is yet, defining and declaring what the general election is. At that time this election coming upon the even years. That Convention was a Convention of Dakotans; they were citizens and presumably familiar with that provision of the statutes. It is not for us to presume that the Convention did not use the words "general" in the sense in which it was used in the statutes of the Territory at

that time "the general election shall be bi-ennial, there being a statute declaring when the general elections should be held and what a general election was. They used the term "general election" in the same sense that the Legislature used it. If that is true, if we presume that the Constitutional Convention of 1885 acted with reference to the statute of the Territory in putting in Section 7, referred to by my friend from Codington, if we presume that they acted with reference to that provision of the statute, then we can have no doubt as to what they meant by using the term "general election". It meant an election falling upon the even numbered years; it does not seem to me that we should presume or even act on the presumption that the Convention of 1885 presumed or did so foolish a thing; but they intended to do reverence to the customs of the Territory and they used that expression under, and in the same light of the statute. If that Constitution declared general elections are bi-ennial and if we can find the use of the word general when used in that statute then general elections must be bi-ennial and on the even numbered years; then if we now should provide for the election of these State officers to go over until the fall of 1891 we would have a general election on an odd numbered year. In other words there would be elected officers who can only legally be elected at a general election. We would be providing for their election annually, an annual election; that is where the distinction lies. The Constitution provides with reference to the election of certain county officers that they shall be elected at the first general election after the Constitution takes effect. Very well; now, this Constitution will probably take effect during the year 1889, we will probably be in the Union as a State under this Constitution before the end of October that is what they calculate upon. Then if each election is a general election then we shall elect all the county officers and the State officers in full in November; that will be the first general election under the Constitution because there is an election in November and we make it a general election.

I think, gentlemen of the Convention, you can see that every county officer elected last fall for two years, who qualified and is in possession of his office, would question your authority to oust him from his office or provide for an election to fill his place in November, 1889. I do not think we could do so in view of the fact that the Constitution has provided all the general elections shall be bi-ennial. Then it is not competent for us to change the election

from the even numbered years to the odd numbered years. You have no right to cut off their term of office. It would lead to a chaotic condition of affairs and unless there is some reason for this founded in argument more strongly based than any I have heard, I think we had better not provide for a contingency of that kind. There is not any provision, I say, contained anywhere for our doings here or for acts we have performed except those found in the Omnibus Bill. That being so, we provide for holding the coming election under the Omnibus Bill for filling the office of Governor under the Constitution and any Governor elected under the Constitution his term of shall be two years and if elected under the provisions of the Act of Congress, that fixes his term; in other words the Constitution fixes the term of all offices under the Constitution upon coming into the Union as to the separation of the question here, I desire to call attention of the Convention briefly to some provisions of the Constitution in reference to that. In Section 26 in Miscellaneous, under Article V the provision is that: Sec. 26. The Judges of the Supreme Court, Circuit Courts and County Courts shall be chosen at the first election held under the provisions of this Constitution, and thereafter as provided by law, and the Legislature may provide for the election of such officers on a different day from that on which an election is held for any other purpose, and may for the purpose of making such provision, extend or abridge the term of office for any of such judges then holding but not in any case more than six months. The term of office of all Judges of Circuits Courts, elected in the several judicial circuits throughout the State, shall expire on the same day." Their terms of office are fixed by acts of legislature; they may shorten up their terms and they may provide for an election at a different time. Of course if this Constitution is ratified, but if it is rejected, no matter how many different officers we elect, they will fall with the Constitution—everything goes down with it. The Legislature has the power to fix a different election time for the Judges and they, in so doing, cut down those terms fixed upon. The Legislature may do so, then so far as the Committee's report and Section 19, I think the figure four need not be stricken out for the reason that, by taking off six months from the tenure of office the Legislature may provide, and it seems to me in this way that the Legislature will be more liable to provide for our Judges being elected on a different date from that upon which any other officer is elected and it seems

to me if we can induce the Legislature to provide for the election at a different time than that upon which any other officer is elected, it is a most desirable thing to do. It seems to me that the Judges should not only be elected on a different date but that they should be nominated in convention at which no other officer is nominated, not to subject the judiciary of our state to grow into political convention and rustle in the barter and trade common in such gatherings. Then I say that wisdom directs that we should leave the figure four in the report in the section as the Committee have made it; but in the other section of the question as to the figure two coming out, we have no possible authority to let these officers hold until 1892 and have an election in 1891. If they hold until 1892 they should hold until the first of January 1893. The Constitution provides the general elections shall be bi-ennial. But gentlemen say, we shall have an election between for our officers because they are to hold each year. He says the general elections shall be bi-ennial and that means biennially annual. I never heard that construction contended for before. Biennial means, in fact annually. The election shall be biennial and annual. A general biennial election and that annually. It don't seem that construction,—

Mr. Davies, of Edmunds: Mr. President, if this Convention has committed a blunder in adopting Section 7 of the Schedule, that is no reason why we should now continue it throughout the succeeding sections. Right in connection with what the last speaker has quoted to us from Section 24 of the Omnibus Bill, I will read only a few lines:

“That the Constitutional Convention may, by ordinance, provide for the election of officers for full State governments, including members of the Legislature and Representatives in the Fifty-first Congress.”

And reading in connection, also, with that, a portion of Section 8 of the Omnibus Bill, as follows:

“That the Constitutional Convention which may assemble in South Dakota shall provide by ordinance for re-submitting the Sioux Falls Constitution of eighteen hundred and eighty-five, after having amended the same as provided in Section 5 of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, eighteen hundred and eighty-nine.”

Now, the honorable and Jolley member from Clay, asserts, as

if it was absolutely so, that we are laboring under the Constitution, but where is the argument to establish that assertion? The election of next October is authorized right here in these two sections 24 and 8 of the Enabling Act. Without this there would have been no election this fall, and there is nothing in the Constitution warranting or authorizing an election this fall. Now then, with reference to the two expressions, "under the provisions of the Constitution and "after the admission of the State". The argument in reference to those two statements would have some force were it not for the fact that one of these is the very amendment to Section 7, which section a large proportion of this Convention voted against. If the Convention was correct, then this would have some force now, but the question now is, are we correct? Again, as to the historical argument adduced here; that in analogy fails. Why? Because the state of things existing prior to the Enabling Act have no bearing on the state of things as they now exist. Suppose, Sir, for the sake of this argument—and we find it is so—that the Enabling Act and the Constitution do not tally—that there is a conflict of authority between the two; then which shall guide us? Suppose for a moment that the Enabling Act and the Constitution which we are about to adopt conflict with reference to some of the details in these election matters. Which one of these two are we to follow? Which is our guide? Who for a moment can say that a thing which shall come into existence next October, provided we vote for it, has greater force than the enactment of Congress passed some long time ago and which is today the law of the United States? The Constitution which we shall vote for next October is not yet in existence, as has already been said. The breath of life will not be in that Constitution until next October. There is no question but what we shall vote for it, as a State, but it is that contingency that exists. The situation of today is not a reality; it is something which we are going to make a reality next October; and I don't see how anyone can for one moment say that that has binding force today over and above the Enabling Act which authorizes and gives us the power, and without which we would have no election next October.

Now, as to the conveniences resulting from the two, I don't think the conveniences are what will govern us in this matter. If that point is settled, which can be determined only by the vote of this Convention, the amendment provides for the settling of these

differences; it brings about the two elections on the same year, and on the even numbered years. The people of this Territory have already decided that it is their choice that we should not have elections every year. but the provision of this Constitution—of this Schedule—is now that we shall have elections every year, contrary to the expressed wishes of the people of both North and South Dakota. The amendment provides for putting away that great objection. It is an objection that is universal; it goes right down into the pocket of every voter and every property holder in South Dakota, and this is one reason why the people object to this perpetual election every year, not only for the expense of the business, but the inconvenience to the people of the State. It seems to me that the amendment disposes of that objection and that the amendment is grounded both upon authority and law and that the original schedule is wide of both of these.

I will not take more of your time, for I know that quite a number of the gentlemen present have studied this question and are in favor of this amendment, and I will give way to them.

Mr. Caldwell, of Minnehaha: I understood, Mr. President, by something said by the gentleman from Pennington, that there was a likelihood of the statutory definition of "general" and "annual" elections cutting some figure with reference to the question in hand; and if this is to be the case it may be well for the Convention to know that the Territorial statute giving a definition of the terms "general election" and "annual election" has been repealed some two or three sessions of the Legislature ago. There is not now properly upon the statute books of this Territory any law undertaking to give a definition whereby the term "general elections" shall have any reference to even-numbered years, or the term "annual election" to odd-numbered years. It is a fact that the statute as originally enacted, has a place in the compiled Laws of this Territory, but it is a fact that it was placed there with the expectation of having it specially re-enacted by the Legislature, in order that there might be this distinction, and the matter was brought to the attention of the Legislature last winter, but it went to wreck. The act asking that this be re-enacted did not get through nor come up for consideration. So I simply call attention to the fact that there is no Territorial statute giving any special significance to the term "general election".

Mr. Boucher, of McPherson: Mr. President, on that question

it seems to me that the Compiled Laws of the Territory of Dakota as they have been published and approved, will be the best authority that we can have upon the subject, and I understand there is no question but what the Compiled Laws of the Territory—(Cries of “louder, louder”). I say there is no doubt but that the Compiled Laws of the Territory today do make that distinction; that the general elections are the elections held on the even-numbered years, and the annual elections held in the odd-numbered years. Now, where the gentleman from Minnehaha gets his authority for saying that that is not the law of the land, is something I can't see. It is his authority against the law of the Territory as adopted and approved by the Governor.

I did want to come up here loaded, but these gentlemen who have preceded me have stolen my thunder. However, there is one thing I do want to say in connection with the remarks made by Mr. Jolley from Clay. He bases his authority that this election is held under the Constitution from the language found in Section 7. Now, what is a general election? If I understand a general election, it is the election whereat the general officers of the State are elected. Now, Section 20 of this Schedule offsets Section 7, because it says that the first general election under the provisions of this Constitution shall be held on the first Tuesday after the first Monday in November, 1890. That is what Section 20 says, and I say that that is right. That is right. The first general election that we will have under the provisions of this Constitution will be in 1890, provided this Constitution is ratified next fall and provided the President sees fit to issue his proclamation. Thus we will have an election, and then we will have the first election under the provisions of the Constitution. This election is the bridge that takes us over until the first election under the Constitution. I believe that this amendment ought to carry. We certainly have a right to do it; we certainly have a right to elect our provisional State government to hold over until the first general election under the Constitution, and it is certainly in consonance with the good judgment of the whole people that that should be done.

Mr. Humphrey, of Faulk: Mr. President, in the debate on this question I am impressed with the fact that has confronted us from the beginning, that we are a body of seventy-five people deprived of the ordinary sovereign power, hedged about on the one side by the Omnibus Bill and on the other side by the Constitution, and

every question depends upon our power, and not upon this question whether or not this election is under the head of "general" or "annual" election. I am surprised that those who compiled the present Territorial law inserted in that volume a law on the supposition that it would be enacted by the next Legislature, which I don't regard that as material to the question before us. It seems to turn and hinge upon the question whether this first election, on the first of October, is under the Constitution or whether it is under the authority of the Omnibus Bill. While it seems to me clear that it is under the authority of the Omnibus Bill, in one sense of the word, it seems to me clear that without the Constitution it would be void and that the officers we elect and the terms for which they are elected are void and without effect in any way unless the Constitution is adopted, but if the Constitution is adopted they are in full force. If that is not true, what was our position in 1885? We had no Enabling Act at all. Would anyone hold that those officers elected at that time were not elected under the Constitution? Now, I am free to confess that I have listened to the debate from beginning to end without deriving information therefrom sufficient to cause me to be convinced one way or the other, and therefore in this, as in some other matters before the question, I find it necessary to do what I think best. The measure being necessary, or whether it is expedient or whether it is consistent with our desires, is not what must control us in this question. It is a question of power, and if it is, as I believe, an election under the Constitution, the officers should be elected for the terms prescribed by the Constitution.

Now, in the year 1885—that was one of the years—the gentlemen who made that Constitution provided for that election, and it would appear to be an intelligent and candid interpretation of the Constitution thus made by those who provided that Constitution, to say that they did provide for an election annually. Now, some object to that, and possibly with good reasons, but that is not the question; others favor it for what they believe to be a good reason, but that is not the question. I find no provision in the Omnibus Bill that necessitates an amendment of the Constitution relative to the terms of the officers elected thereunder, and unless we can find it we have no right to change those terms; and, as much as it may be regretted, it does seem to me now that this schedule Committee have compiled the Schedule in conformity with the pro-

visions of the Constitution. I therefore insist upon voting for the report of the Schedule Committee as it now stands.

Mr. Davies, of Edmunds: Mr. President, I would like to ask one question. Under the provisions of our laws as amended, we have one qualification for voters, and under this new Constitution we have another. It is, I think, in the Constitution ten days, and twenty or thirty days under our present law. If the question comes up—if some one is challenged at the election next October, which law shall be followed? Is there any question but what the law of the Territory, as amended, would govern in this matter, rather than the law of the Constitution, which declares that a man need only be in the precinct ten days? Now here is one question that comes right square and fair; here is a question you must explain, and I will simply ask now, which one of these two are we to follow? If not under the Constitution, then it so something else; which of the two is it? I think that will satisfy the question.

Mr. Humphrey, of Faulk: As I understand the interpretation of the Constitution, it is that all laws of the Territory are in force, except as modified by the Constitution. Consequently, this election being held under the Territorial laws, they would be only in force in regard to the State officers we have no Territorial law pertaining thereto whatever. Consequently, the procedure of the rules and regulations in the election for the adoption of the Constitution are in no manner effected, because the Constitution is the beginning of all matters pertaining to the officers and their terms under the Constitution. We come in contact with Territorial laws here, and we are between the laws and the Constitution. While we as a body, are powerless to repeal or alter any Territorial law, and we are powerless to repeal or alter the Constitution, if there is a question of law as to the results, it is a question for the courts and not for us to determine.

Mr. Sterling, of Spink: Mr. President; it seems to me like a strange construction to say that because Section 7 provides, and because there are certain provisions in the Constitution like this: "The election provided for herein shall be under the provisions of the Constitution herewith submitted"—I say it seems to me like a strange and a narrow construction, in one sense, to say that that shall pertain not only to the election provided for under the Constitution but to the term of office as well, of any officer provided for in the Constitution, and I don't believe the language

warrants any such construction. I think that in a sense we do elect these officers under the provisions of the Constitution, in this, that we elect the identical officers provided for in the Constitution; and it cannot be said that because the language is that the election shall be as under the provisions of the Constitution that it pertains to the term of office of the officers elected under this provision. It may be, and I believe in this connection it would be construed to apply simply to the officers elected, and not to the term of office. I think it has been frequently provided in Constitutions, or rather in the Schedules and Ordinances of Constitutions adopted, that the elections for the first term, or the elections under the provisions of the Constitution shall be for the shorter term, in order that it may be at the general election as theretofore held in the Territory, or in the State in the case of the adoption of a new Constitution by a State. That is, that first term, under the Constitution formed, or under a new Constitution, is regarded in many cases as initiatory or provisional, and if general elections had been theretofore held on the even-numbered years, the first terms of the officers were regulated accordingly, so that the elections thereafter might be at the even-numbered year, as they were under the Territorial form of government, or, under the old Constitution. I find in the Constitution of Nevada that it is provided that the terms of the State officers shall be four years, and I find, not in the Constitution, but in the Schedule and Ordinance it is provided that the first term of the officers shall be for two years, and so I think that with that in view, it is competent for this Convention to say in the Schedule and Ordinance that the election for the first term may be for a shorter term, in order that it may conform to the elections as theretofore held.

Mr. Dickinson, of Day: Mr. Sterling, you were a member of the Constitutional Convention of 1885.

Mr. Sterling, of Spink: No, Sir.

Mr. Dickinson, of Day: I will ask you if the Constitutional Convention of 1885 would not have said so, if they intended the first to be the short term?

Mr. Sterling, of Spink: I don't know that it was necessary for them to have said so.

Mr. Dickinson, of Day: Do you understand that the first term provided for was the short term? Were they elected for two years each, or for one year?

Mr. Sterling, of Spink: I think they were, as a matter of fact, elected for two years, but in regard to the gentleman's construction of the term biennial, in which it is said that general elections shall be biennial, in the Constitution, I can't answer that better than the gentleman from Pennington did, and it seems to me ridiculous to say for an instant that all general elections shall be biennial, and at the same time make provision that shall make all general elections annual, or giving us annual elections, as it would according to the gentleman's construction. I think it is plain from the Constitution of 1885 that they did have the general election in view, and I think so from another reason than appears from the face of the Constitution itself. It provides that county officers—at the first general election after the admission of the State into the Union, certain county officers shall be elected. Then, whether it is law now or not, the general election came upon the even-numbered years. They had that in view and they had in view the fact that the terms of the county officers elected under the Territorial term would expire at that time, so that the election would come at that time, and that is evidence, and the only evidence, of what they considered a general election, namely; the election that should come upon the even-numbered years. And I believe that, taking the whole thing together, that in connection with the rest of the Constitution, it is plain that they meant not only the election of the county officers, but the election of State officers, as well, to be at a general election. The mere fact that in the body of the Constitution, naming these different State officers, it is provided that their terms shall be so long—two or four years—I say does not prevent us, in initiating the government, to limit their terms so that their election shall come at a general election.

In conclusion, let me say, we have the power to fix the tenure of officers, however elected, for the power to elect by implication gives us the power to fix the term; the greatest always includes the lesser. While we cannot fix a three-year term, we may fix a one year term, and I say the power to fix and provide for the election of the State officers carries with it necessarily the power to provide for the tenure of office, if we desire, a different and a shorter period than the period fixed in the Constitution. We cannot hold this election under the Constitution; if we could, there would be no necessity for this discussion; the Constitution would answer every question that has been asked here. The Constitution provides it

shall be under the laws of the Territory according to this provision. It is a special election that we are providing for—not a general election or an election of any sort except a special election under the authority of the Omnibus Bill.

Mr. Van Buskirk: of Codington: Mr. Chairman, I would like to say just one word. It seemed to me that, so far as this declaration in this Section 7 was concerned, it was a very insane thing, because, how we can hold an election under a Constitution when we haven't got any, is one of the mysteries I am not able to solve. Suppose, if you please, which is not likely to happen, that the people should not adopt this Constitution on the first day of October; could you have an election under the provisions of a Constitution that never had any existence? We all know that neither a law or a Constitution can speak except from the date of its passage or adoption. No law of this Territory can speak except from the date of its adoption by the Legislature. Suppose a man should do an act which is innocent under the law today, and suppose a week from today a man should do an act which the Legislature in the meantime has declared criminal; could you convict him? Why certainly not. It is all nonsense. It is a very insane provision. You might as well say that a rose is a tulip; it wouldn't make it so. The gentleman from Minnehaha, who was one of the compilers of our law, does not suggest to you that that law was not in force in 1885. We all know it was in force then, and so it would not signify whether it was in force today or not. They were simply using the language of the law as it existed at that time. This Constitution has not now, nor never can have any existence until the people adopt it.

Mr. Dickinson, of Day: Mr. Chairman; I am talking against my wishes all the while in this matter, and I am very earnest in the matter on account of my convictions being that the Constitution and law is against my wishes. It seems to me we are in danger of making one of the gravest mistakes, if we adopt this amendment. I would be glad to see the substance and the intent of that amendment in force, but I believe if we adopt that there we shall make a great and grave and serious mistake, which we shall be held accountable for. With all respect for the legal learning of these gentlemen in this matter, I can't understand how they arrive at such a construction of this Constitution;—an election in which the Constitution was voted upon at the same time that they voted for State officers; and I maintain that by an election under this

Constitution is simply meant this—it was an election to fill the offices for which the Constitution made provision. The Constitution provided for the election of a Governor, a Lieutenant Governor; it provided for the whole list of State officers, and the whole list were elected. It was in that sense a general election. It was a matter of history that they so called it and they held such an election and elected such officers, and it seems to me we cannot get behind that definition, which is a matter of record and not a matter of guess. There is one other point that it seems to me these speakers have evaded, and that is this question: If you adopt that amendment and make your elections once in two years, is that a virtual amendment of the Constitution, or is it not? That is a simple question. There can be no question but that the Constitution of 1885 provided for two elections. There is an older definition of the term “general election”; there is a definition of “general” and “general election” which makes it to mean an election which is general in its cause and effect; not merely as to State officers. Each of these elections may be biennial—every two years, upon the odd year; every two years, upon the even year. But is this an amendment to the Constitution, or is it not? The Constitution provides for an election every year. By this amendment you will make this election come once in every two years, and I would like to see it, but the question is, friends, is it right? Have we the right to do it, or shall we leave it for the Legislature to submit an amendment to that effect?

Mr. Wood, of Pennington: If we are empowered in this to provide for the election of certain officers, have we not the power by necessary implication, to fix the tenure of those officers if we fix it less than that provided for in the Constitution?

Mr. Dickinson, of Day: It seems to me if we follow the officers provided for in the Constitution, we must follow it for the terms provided for in the Constitution.

Mr. Van Buskirk, of Codington: Why can't we make it three years instead of less?

Mr. Dickinson, of Day: Make it just what the Constitution provides.

Mr. Willis, of Aurora: Mr. President; I feel I have reached that point where I have acquired the requisite legal information which will enable me to vote intelligently upon this subject. My impression is that this would be a good time to take a vote. I seem

to feel that the atmosphere is charged with the sentiment upon the part of the majority in favor of the amendment. There are several points that have been made here that lead me to this conviction in favor of the amendment. One of them is the knowledge that we are a BRIDGE! It is a fine figure, and I think it is a figure that represents a fine fact. We are a special body, for that special purpose. I like this provisional idea that is suggested. We are to make a PROVISIONAL PROVISION! A conditional provision for the adoption and the assumption of all the effects and functions of statehood. We are to provide for the setting-up of a regular and orderly statehood housekeeping. And I like this idea that we are a bridge, and we are a special body and that we have no special powers, which leads us and others to the conclusion that we have the authority for the adoption of the amendment. And way back of that, the reason that has been so spoken of here—a sentiment that comes from my neck of the woods, namely; a feeling that if expressed would say, "From the abominations and distractions and the demoralization usually attendant upon a general election, good Lord deliver us just as much as possible." Let us be delivered from the demoralization and from the extra expense, if we have a real substance or authority for it, by the adoption of the amendment—the extra expense and demoralizations of annual elections. Give us only biennial elections.

Now, I hope that either the vote will be taken right now, while I think the majority feeling is in favor of the amendment, or that, if the discussion proceeds, that a vote will be taken right after some lawyer makes a strong speech in favor of the amendment! I want you to take in view this fact, that preachers and those having the political proclivities of my friend from Pennington, have no political roads to run, and we are trying to act in the best interests of the greatest number. I hope the vote will be taken

Mr. Hole, of Beadle: Mr. Chairman; before this vote is taken I want to, in a brief way, show how we arrived at these conclusions, but before branching on that theme, I wish to say that my friend who has just preceded me has a wrong idea of our duties. We should first learn what our powers are, and second, if there is any possible question of power, take that side on which there is none—not attempt to build ourselves up or to build our opinions up by some fine-spun theory of law to support a prejudice or wish, but rather go back and study the facts—our powers—and if there is

doubt, go on the safe side. The Constitution has pointed a course, and, while there is a fine-spun theory that we cannot elect under the Constitution, I think, gentlemen, when considered, you will see that we can. This election, if not under the Constitution, is nothing. If that Constitution falls, the election is nothing. The only other possible source of power is the Omnibus Bill. The Omnibus Bill don't provide for any term of years or any salary. It says you may on the first day of October have an election. You don't even have to have the election at that time, unless you wish to. Now, we will start back with the original Constitution made here in 1885. The Constitution was made in 1885 and there was an election held the following fall. Was that a provisional election? In the Schedule and Ordinance as provided for in 1885 it does not state the term of office of anything of the kind. The officers were elected under the provisions of the Constitution. The election of Governor Mellette and other officers elected at that time was for two years. Their construction of it was biennial, which was a general election. They were elected under the Constitution of 1885 and to hold to 1887, and again in 1887 they would have another election, and the officers then elected would hold to 1889, and then our election would have come in November, 1889, if it had not been for the Omnibus Bill, which gives us the authority to hold our election in October. There is not a question but what that was intended; there is not a question but what the Supreme Court was elected for the full term, as provided in that Constitution. The Schedule nowhere indicates any other term or kind, and I think anything short of this will be in the nature of an amendment to the Constitution. We voted on this in May, and we must stand right to the text, which is provided in the Omnibus Bill. This Omnibus Bill nowhere provides for any such change as this. Does that provide that we can change the Constiuttion and have it read one year and three months, or anything of that kind? It doesn't do it. Then where do we get the power, unless we assume it? I take it, if we assume that power we amend the Constitution. The Omnibus Bill says we must elect officers as provided for in the Constitution. Now, if we don't follow that law we amend the Constitution, which is unsafe and dangerous.

Mr. Sherwood, of Clark: When would the general election have occurred under the Constitution of 1885?

Mr. Hole, of Beadle: There was two elections provided in

1885, and there was one provided, and it was held, and it would have been valid for all purposes if we had been admitted, and there was another election provided for in 1887. There were no conditions in the Schedule—no provisions for any provisional government. The officers were elected for the two years and the four years. That was regarded as the first election under the Constitution.

Mr. Wood, of Pennington: Let me ask you, if we adopt the report of the Committee, then will we necessarily have to elect sheriffs, treasurer's and other county officers at the election in November, 1889?

Mr. Hole, of Beadle: I was just going to answer that question. The Constitution provides that at the first election certain officers shall be elected. Now, that election was in November, 1885. They held for the two years. Now, a little further along the Constitution provides—when it comes to county officers it makes another provision, and it says at the first general election after the admission of South Dakota into the Union. Now, we all know that they intended that the Territorial officers should hold until the next fall—the county officers, until the fall of 1886. They elected their officers and were all ready to put the machinery in motion, and expected to do that between the first day of December and February following. During that winter sometime they intended to be admitted—

Mr. Wood, of Pennington: How is it about our members of Congress; will we not necessarily have to elect again in the fall of 1890 two members of Congress?

Mr. Jolley, of Clay: That is provided for by the United States law.

Mr. Hole, of Beadle: That is not necessary for us to discuss here. That is provided for. We can get at that.

They held their election for State officers in 1885. The intention was to hold the next election the next fall. They say, when they come to speak of county officers which the Territorial law provided for, that they shall be elected at the first election after the admission of South Dakota. Well, their term of office expired on the next year—on the even year—and it provides they should be elected that year; and I think when you come to discuss this matter and to consider the history of this, there is no question but what there were two elections provided for; and the word "biennial"—you can speak of that as ridiculous, but it is not. The tenure of the offic

shall be biennial,—both State and County. The tenure of the State officers was to commence on the odd year. They were elected in odd years and there is no provision in the Schedule to level that up. Then there was intended right along a biennial election for the State officers, and that was to be on the odd years. And for the election of county officers, it was also there provided that it should come on the even years, and the elections on that should be biennial.

Mr. Van Buskirk, of Codrington: Will you advise us when the terms of the members of the Legislature and the State officers begin under the Constitution?

Mr. Hole, of Beadle: Under the Omnibus Bill we have our election in October and the members of the Legislature meet directly afterwards to do certain duties, but the functions of their office, as law-makers, does not commence until after we are admitted. There is a confliction there between the Constitution and the Omnibus Bill.

Mr. Van Buskirk, of Codrington: Do they not exercise the functions of a Legislature?

Mr. Hole, of Beadle: They do, under the Omnibus Bill, but no further.

Now, gentlemen, I like this idea of a bridge, too. I think it is a pretty thing, but let us not bridge or trench. Let us do what is intended to be done, and if we have a creek that is only ten feet wide, let us build a ten-foot bridge, but not a two-months bridge. You could make this bridge unwieldy and cumbersome, but let us bridge just what the people who have sent us here want us to do. It is always a pleasant thing to feel that you have power, but let us not do an unsafe thing here.

Mr. Sterling, of Spink: Do you think the election as provided for in the Schedule and Ordinance of 1885 is any indication of our power at all?

Mr. Hole, of Beadle: It is a circumstance that shows how they interpreted the Constitution. We have the same Constitution now, exactly. The Enabling Act gives us no power to change that. It does not say we shall elect the Governor and State officers for any other time than the two years referred to. The gentleman from Pennington says the greater includes the less and the power to elect gives some other powers, but if that is so and we can change the term and all that, we can change the salary, we can change their

age and the color of their hair! It is ridiculous to take that position. We can elect the officer as provided for in the Constitution, and nothing else, and anything contrary to that will lead us to endless confusion and possibly to endless litigation. Now, I think the better feeling of the Convention is that if there are two ways, one which is safe and one in which there is a possibility of a doubt, take that course, even though you don't want to. This can be corrected by an amendment and can be corrected at any time, and my idea is to correct that.

Mr. Wood, of Pennington: Then you conclude, as I understand it, that Sheriffs and the like must be elected in November (October?), 1889?

Mr. Hole, of Beadle: No, Sir; I just said they should not. I think I have explained that—that we were following out the interpretation as made by the framers of the Constitution of 1885. They intended to hold their elections on the even years. We will be admitted this winter and we will hold the election as provided under the Constitution, and the Constitution clearly and expressly provides for two elections, and there we get the two elections. There is no possible conflict of doubt in that. I think this is unsafe; we might make up various arrangements; we might make the Schedule entirely different. I don't think it is the time now to experiment. Let us take the plain course indicated in the Constitution and we will be safe.

Mr. Huntley, of Jerauld: Mr. Chairman; I simply want to say a word. Some gentleman has asked in regard to the views of the Committee of 1885 that framed the Schedule. I wish to say, as a member of the Committee, that there was no such dispute as this arose in that Committee at all. It was the intention of the Committee to make the elections biennial and not every year. I think that is what every member of the Schedule understood and thought they were doing. I don't think that question arose in the discussion in the Committee at all. In fact, the hopes and fears were evenly balanced, and the effort of the Committee was to do something so good that it would recommend it to the judgment of every man.

Mr. Hole, of Beadle: Under the provisions of the Constitution of 1885 when did you expect to elect the county officers?

Mr. Huntley, of Jerauld: Well, that question did not arise in the Committee.

Mr. Hole, of Beadle: It must have arisen. The common sense of any man would suggest it.

Mr. Huntley, of Jerard: Well, they didn't have any! The idea was that they would hold their offices until the expiration of their time—that the first officers would hold until the general election. Nothing of disputation, however, arose in the Committee on that point, but from the fact that it was fixed that the election should be biennial, and no arrangement made for curtailing or extending the term of the county officers, my understanding of it was that the general election would come at the time when the county officers' terms expired.

Mr. Hole, of Beadle: Let me ask you another question. Then the election of county officers would be on the next fall after the election that was held for Governor?

Mr. Huntley, of Jerard: Certainly.

Mr. Hole, of Beadle: Well, how long did you elect Governor Mellette and the other officers for at that time?

Mr. Huntley, of Jerard: I don't think it was specified. I think the understanding was, until the next general election.

Mr. Hole, of Beadle: There is no possible doubt but what you had an intention at that time. I know I had too much faith in the Committee at that time to think that they didn't intend something.

Mr. Huntley, of Jerard: Well, I think they intended to elect Governor Mellette until the next general election. However, the question was not in dispute there at all. It was not made a point or a question or an issue at all in the Committee, but I think that was the understanding, and taken for granted, and I know that it is the idea of the people. The question was asked me more than a dozen times before coming here to this Convention, whether the Convention would be likely to fix for a general election this fall, and if the county officers all should be elected this fall, or whether the county officers would hold through their term and a general election of county and State officers be held a year from this fall, and no one ever broached the question to me at all as to whether the election should be made annual. They all interpreted the Constitution to mean that our election should be biennial—that there should be an election only once in two years. I did not meet the first individual that ever thought anything else. or broached any other thought to me.

Mr. Neill, of Grant: Mr. President—

The President, pro tem: Mr. Neill, of Grant.

Mr. Lee, of Spink: Mr. President; I think every member's mind is made up and—

The President, pro tem: I recongized Mr. Neill first.

Mr. Neill, of Grant: Mr. President; I am somewhat reluctant to give the Convention some light on this mooted question of how the Convention of 1885 viewed this matter of general elections, from the fact that I am afraid it is different from what I would like to have it; but, notwithstanding that, as it will be a matter of information to you, I would simply state that the question was not much discussed in 1885 whether or not we could make the State elections co-incident with the general election. We were too fearful at that time of encountering the opposition of any organized body in the new State and finding its adverse influence against the adoption of the Constitution, and we handled those things very gingerly, and that question was perhaps never raised in the Committee further than to be mentioned and passed by, for the simple reason that they did not wish to antagonize our county officers throughons the new State. It was not intended that the general electiout should be changed, but that county officers should hold their full term of two years and be re-elected at the regular election under the Territorial laws. The question as to the election of the State officers under the Constitution—I would not construe it that they were elected under that Constitution as by authority—as by provision of manner, but that the Constitution itself had no authority consequently the manner prescribed by the Constitution was adopted as a mode or manner of election, the authority coming from the Convention itself. But now as to the tenure of those State officers; they were elected and no specific time fixed for their term other than the general provisions of that Constitution. They were elected in 1885. We did not expect to be admitted inside of six months. That would leave them a year and a half of the two years for which they would be elected at that time. That was considered in itself sufficient for the first State officers of the new State, if we were fortunate enough to be admitted at that time, but the supposition was that they were elected for “during the war”. The supposition was that they were elected for two years under the Constitution—that would bring the year following the regular election under the Territorial laws.

Now as corroborative of this, you will notice that in Section 24 of the Schedule and Ordinance it reads as follows:

“The first legislature assembled, after the adoption of this Constitution, shall have the power to continue in session longer time than sixty days, or to adjourn from time to time, and re-assemble at the call of such officers as they may prescribe, until the State shall be admitted into the Union, or their term of office shall expire.”

That is their term of office might expire before they were admitted into the Union. Now, granting that their term of office must expire at some prescribed period, namely, two years as prescribed in the Article on Legislative and Executive, that would be true of any other State officers. When we held an adjourned session of the Convention of 1885, at Huron, the two years were approaching completion. It was thoroughly discussed at that time, and planned for another election in the fall of 1887, and I think that the “Executive Committee” as provided for in this Schedule and Ordinance, was instructed at that time to call that election of 1887 to re-elect the State officers and legislators, but that was never carried out, owing to the weak prospect, as I might say, of our admission and of the success of our movement. It was so discouraging and so unpromising that it was not supposed under the Democratic administration then that we had any hopes under the Sioux Falls Constitution, and I suppose the authorities, under those circumstances, failed to call that election in 1887; but it shows what the intention of the framers of this Constitution was as to the tenure of office; namely, that they intended it should be for only two years, and if we were admitted that there should be another election to re-endorse them in their offices.

Mr. Williams, of Bon Homme: Mr. Chairman; we find the argument based upon this portion of Section 7: “The election provided for herein shall be under the provisions of the Constitution herewith submitted.” Now, I happen to know the history of that phrase as it came from the lips of its author. It was proposed in a meeting of the Committee on Schedule and Ordinances, after I had stated my views in this matter in accordance with what I have stated here on the floor of this Convention. I considered then and I consider now that my views were unanswerable, in the position I took, and in order that the Chairman of that Committee might bridge over the difficulty that these facts originated, he gave notice then and there that he would offer as an amendment, these words,

that this election is under the provision of this Constitution; and that is the history of that phrase in this section. And I will say further that this provision has been adopted by this Convention; it was adopted by this Convention through an oversight. I had an amendment ready, but in the scramble last Friday night that was adopted when I was not paying particular attention, and I understand that when other gentlemen had read this up this week it struck them as peculiar that this Convention should attempt to do anything of that kind, and they told me they proposed to offer an amendment to strike out as being considerable nonsense.

Now, what is meant by this section 26 of Article V? "The Judges of the Supreme Court, Circuit Courts and County Courts shall be chosen at the first election held under the provisions of this Constitution." I take it that that phrase means that at an election to be provided for by law, which election must have the legal force and authority of law, and not that this Convention, by Ordinance, may extract "provisions", by the wording of the phrase "of this Constitution" and put it in the Ordinance and thereby make it under the provisions of the Constitution. The phrase means this, that when that Constitution becomes the organic law of this State, then any law that the Legislature may pass in pursuance of that organic law, calling an election, whether at that election provided for in the Constitution, or by the Legislature, it is that the election will be under the Constitution. The phrase means this; "UNDER THE AUTHORITY OF THE CONSTITUTION". Not the mere words extracted and put into some other instrument and called "under the Constitution". It might be under the wording of the Constitution, but it could not be under the provisions. It means, when that provision becomes the organic law of this State. If there is any provision made for the election before the general election, then these officers shall be elected at that election. Then the Constitution contemplated this; that if the Legislature, having power by virtue of this Constitution, calls an election at a time other than at the general election, that these officers may be elected at that time; and that same section makes provision that the Legislature under the authority of the Constitution—not under anything else, and under no other body—but that the Legislature, under the authority of the Constitution, may abridge or extend the time of the Judges of the Court who shall have held the office of judge at the time the Legislature acted—that they shall abridge or extend the time six

months. For what purpose? For the purpose of making provision that the Judges of our Courts may and shall be elected at a time different and other than at the election at which our county and State officers are elected. That is a good provision. But then, that would be an election under and by virtue of the authority of the Constitution, and I claim that that is just exactly what the phrase "Under the provisions of this Constitution" means. It means, under and by virtue of the authority conferred by this Constitution.

Now, what is the condition we are in here today? What is the argument of the gentlemen who take the opposite view and maintain that this is for the election on the first of October? I claim we might just as well say we can hold an election on the first of October, on the fifth day of October, or at any other time we see fit to call an election. We can assemble and vote, but would our votes be counted? There must be an election fixed by competent authority. What authority has fixed this election for the first of October. It is fixed by Congress; that is the body that fixes this election. Then Congress goes on and says in the Enabling Act that this Convention may by ordinance provide for the election of officers. Does it say a "Dictator" or a "Commander-in-Chief", or some other officer not provided for? No, Sir; it looks into the Constitution and sees what officers are therein provided for when we become a State, and it says that this Convention, BY ORDINANCE, —not by the authority of the Constitution; that is a dead letter— but that this Convention, by ordinance, may provide for the election of these officers provided for in the Constitution—the officers fixed in the Constitution. But does it say they shall be elected for any particular length of time? It says the officers provided for in your Constitution may be, by ordinance, provided for their election at this time and no other time. Now, the officers provided for are the Governor, Lieutenant-Governor, Judges of the Supreme Court and other officers. Their term of office is fixed—the term of Governor, Lieutenant-Governor and other State officers and the members of the Legislature. But the term of what? The term of the GOVERNOR ELECTED UNDER THE CONSTITUTION; the terms of the other State officers, ELECTED UNDER THE CONSTITUTION. I take it that these are the identical officers provided for. They are gentlemen elected to fill the offices provided for in the Constitution, but not elected under the Constitution. Why do we do this? Simply this;

if we adopt this Constitution on the first of October, we have an organic law, and in order that the laws of the State may be operated we must have officers. Suppose we did not elect a Legislature and State officers. We would not have one single agent to carry that government into operation. We would not have State officers to execute the laws. Then it is absolutely necessary that this State government shall go into operation and that we elect a provisional set of officers in order that we may start and maintain that government in operation until the State government, by the chosen agents of the people, may operate and set in motion the government, under and by virtue of the people thereof. We must elect these agents at that time, but not under the Constitution. We only elect them to take their places under the Constitution.

I have taken some pains to inform myself outside of the work of the Committee on Schedule. On night before last, in Yankton, I met an old gentleman who was a member of two Constitutional Conventions in Wisconsin. He told me that that was the only practice that they had and that he knew about, that the Convention, by ordinance, only provided for the terms of officers and legislators until the State could be put into operation, and after that they went on and did it under authority of the Constitution. I have sought to find somebody that has been in constitutional conventions. Then my argument is this: That this being an election not under the Constitution, that the terms of the officers are not bound by the Constitution, that they are provisional; it is a provisional election and the terms of officers elected at that election shall be provisional, and no other. I say there is not one syllable, from beginning to end that provides for but one election. It makes provision that the Legislature may provide for another election; that the Legislature has authority under this Constitution to provide for another election than the general election. But that election is not here provided for. The Constitution passes over to the Legislature the power to provide for it; then the only election provided for in this Constitution is the general election. And if this report, as it comes from the Committee, is adopted, instead of the amendment—an amendment to the report being an amendment to the Constitution—the Legislature has the discretion to provide or not to provide for this other election. That is virtually an amendment to the Constitution and you might just

as well add a section here, because the power is here, and you can't get around it.

One gentleman says it is going to drive us to trouble and expense, under that phrase in the Constitution. I say if there is any hole through which this Convention can crawl to beat down and prevent a general election every year, this Convention ought to expect it and make provision for it. The sailing is clear, however, and it is only clear in that direction. It must be provided for as this amendment contemplates, or else we are all tangled up. The Legislature, if it sees fit, can call another election. If the people don't see fit to have another election, they need not have it; if they don't need it, they don't need to have it.

And now, with the consent of my second, I will withdraw that part of my amendment which relates to the election of Judges, and I wish to say one word on that. If the report as to the election of Judges, as it comes from the Committee, is adopted, at the general election it will be necessary for the Legislature to provide for the election of the members of the Courts at a different time, but it will be necessary that they be elected at a different time in this amendment, and that is why I withdraw it.

Mr. Wood, of Pennington: As the seconder of that amendment, I will consent with reference to striking out the figure "4" after figure "9" is Section 19.

(Cries of "question, question, question".)

Mr. Jolley, of Clay: Mr. President; I had some notes here this morning as to what arguments I should present to the Convention for voting against the amendment of the gentleman from Bon-Homme, but some gentleman, either the gentleman from Pennington, or somebody else, hooked my memoranda.

All I have got to say is this; that the gentlemen who offered the amendment have tried to blind the Convention. If you pass this amendment you elect a Legislature in 1889, and then you elect them in 1890—sessions of the Legislature in 1890 and 1891. You gentlemen who are opposing these officers holding their offices for two years, do it on the ground of economy. Now, if an election don't cost very much where you elect a Legislature, then it don't cost very much where you elect State officers; and if you think the sessions of the Legislature don't cost very much, look at the last session of the Legislature; and in the language of one who was cast on a desolate island and who seemed not to have much hope in this

world and none in the next, I exclaim, "From the rocks and sands and barren lands and two sessions of the Legislature in succeeding years, good Lord, deliver me!"

Mr. Boucher, of McPherson: Mr. President; a gentleman raises the question, do we by adopting this amendment proposed by the gentleman from Bon Homme, amend the Constitution? I give the answer for what it is worth, that we certainly do not. Nobody pretends that we do, because we have got no Constitution to amend. The Constitution provides that these officers shall hold for two years. How can we, by ordinance make that consistent with the Constitution? We can only have officers elected for two years and have the elections come biennially by electing these officers at the next general election. That is the only consistent way we can arrive at it.

(Cries of "Question, question, question.")

Mr. Williams, of Bon Homme: Mr. Chairman; I move the previous question upon the amendment.

I withdraw the motion and ask that the main question be put.

Mr. Hole, of Beadle: Mr. Chairman; I will ask for a call of the roll.

The President, pro tem: The Chairman of the Schedule Committee moves the adoption of Section 19; the gentleman from Bon Homme moves the amendment that the word "1892" be stricken out and the word "1891" be inserted in its place. How shall you vote? (Cries of "Roll call, roll call".) Those in favor of the amendment will answer aye, and those opposed no, as their names are called.

The roll was called.

The President, pro tem: The vote stands 36 ayes and 36 noes. The amendment is therefore lost.

Mr. Hole, of Beadle: Mr. Chairman; I move you the adoption of Sections 19 and 20, as reported.

A Delegate: I second the motion.

The President, pro tem: All those in favor of the motion to adopt Sections 19 and 20, as reported, by the Committee on Schedule will signify it by saying aye; opposed, no. The ayes have it, and the motion prevails.

President Edgerton resumed the chair.

Mr. Hole, of Beadle: Mr. President; I move you that the report of the Schedule Committee, as a whole, be adopted.

Mr. Kellam, of Brule: Mr. President—

Mr. Hole, of Beadle: Mr. President; I will withdraw the motion for the present. There is an addition to be offered by the Commission from North Dakota.

Mr. Brott, of Brown: You mean from SOUTH Dakota.

Mr. Hole, of Beadle: I ask that this motion may be made to include the recommendation of the Committee from North Dakota, and I would ask for the reading of that part asked to be included in the Schedule and Ordinance.

Mr. Brott, of Brown: Please say from "South" Dakota; we don't want to be understood as from North Dakota!

Mr. Caldwell, of Minnehaha: Mr. President; that portion of the Schedule and Ordinance suggested by the South Dakota Committee on the Joint Commission is a part of the general agreement which has been submitted, and if it could be done it would seem to me it would be proper to hold open consideration of the Schedule until after the entire agreement has been submitted, because that portion of it that is recommended to go into the Schedule and Ordinance is incidental to the report itself.

Mr. Jolley, of Clay: Mr. President; I move that the report of the Committee on Schedule be laid aside, and that we take up the report of the Committee from the Joint Commission.

A Delegate: Second that motion.

The President of the Convention: It has been moved that the report of the Committee on Schedule be now laid aside and that the Convention take up the report of the Joint Commission. All those who favor this motion will say aye; contrary no. The ayes have it. We will now proceed to the consideration of the report of the Committee. Major Kellam, of Brule, I understand you wish to bring that up now?

Mr. Kellam, of Brule: No, Sir; I was about to suggest, upon the motion of Mr. Hole, to adopt the Schedule Committee report as a whole, that before action was taken upon that, the agreement, or so much of it as the Commission recommends should go into the Schedule, ought to be considered.

The President of the Convention: There is nothing before the Convention, as I understand.

Mr. Caldwell, of Minnehaha: Mr. President; the agreement has been presented to the Convention and is upon the Secretary's desk.

Mr. Huntley, of Jerauld: Mr. President; I move that we proceed to consider the report of the Commission.

Mr. Harris, of Yankton: Mr. President; I move as an amendment, that we incorporate this agreement which they have arrived at, in the Constitution. We have no right to consider it. It is our duty to incorporate it in the Constitution.

Mr. Hole, of Beadle: I second the motion.

The President of the Convention: It has been moved that the Convention now incorporate in the Constitution the agreement arrived at by the Joint Commission.

Mr. Kellam, of Brule: Now, Mr. President, I apprehend that there is not a perfect understanding of the thought suggested. The Enabling Act under which this Convention meets and this Commission was appointed, provides that the agreement reached by this Commission—this Joint Commission,—shall be incorporated into the Constitutions of the respective States. That much is certain, but what I had in my mind is suggested and arose by the action of this Convention upon the Schedule report, and it is this: After the Commission was organized at Bismarck and had begun its deliberations, it was developed that there was quite a lack of harmony in the Commissions of both North and South Dakota, as to the powers of that Commission with reference to the disposition of the records and archives of the Territory. There seems to be a conflict between Sections 5 and 6,—Section 5 declaring that the records, books and archives of the Territory shall remain at Bismarck, the capital of North Dakota, until an agreement is reached regarding the same by the States. Section 6 provides:

It shall be the duty of the Constitutional Conventions of North Dakota and South Dakota to appoint a Joint Commission to be composed of not less than three members of each Convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the Territory which shall be assumed and paid by each of the proposed states of North Dakota and South Dakota; and the agreement reached respecting the Territorial debts and liabilities shall be incorporated in the respective

Constitutions, and each of said States shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such States respectively."

We were unable to harmonize what was a disagreement among ourselves upon that point, and as a compromise and an agreement upon which we could unite, we, before any agreement as to the disposition of the records was made, passed a resolution that whenever an agreement should be reached each Commission should recommend to its Convention the incorporation of that agreement into the Schedule of the Constitution submitted by that Convention, so that it might be accepted by the people and thus become the agreement of the States. The point was, that the Joint Commission under the two Sections 5 and 6 had no authority to make absolute disposition of these records, or, that the authority which seemed to be conferred by Section 6 had already been limited by Section 5.

Now, the thought that I had was that we want to report to this Convention the agreement we have made with reference to the records and archives of the Territory, and also report to you the resolution that was passed by the Joint Commission, that that agreement should be made a part of the Schedule in each Constitution. It is not with reference to the agreement as to the debts and liabilities of the Territory that I now refer.

Voice: Well, that is not the question before the house.

Mr. Kellam, of Brule: That is the very reason I urge this thought.

Mr. Harris, of Yankton: My intention was to move that the agreement, commencing at the Preamble and ending with Article XXIV, should be incorporated into the Constitution. We have no control over it. I did not intend to include their recommendation about incorporating the agreement about the records in the Schedule. I do not think my motion was broad enough to cover anything but that ending with Article XXIV—the agreement, commencing with the Preamble and ending with Article XXIV.

Mr. Caldwell, of Minnehaha: Mr. President; it will probably assist the Convention in arriving at a conclusion upon the motion of the gentleman from Yankton, if the Convention will understand that there are practically three divisions of this Agreement in general which has been submitted by the Committee. There is that part of this agreement which refers to the debts and liabilities of the Territory; there is that part of it which is of general application,

and there is that part of it which refers to the public records. Only two of these parts are to be incorporated into the Constitution, or the Schedule and Ordinance. That part of the report with reference to the debts and liabilities must go into the Constitution. It is recommended that that part of it which refers to the public records, shall go into the Schedule and Ordinance; and there is no recommendation whatever in regard to that part of it which applies to public property and miscellaneous subjects. The Commission agreed upon what part of their general report should be submitted to the respective Conventions to be incorporated into the respective Constitutions. That is a different report from this general Agreement. The document which has now been conveyed to this Convention by the Commission from South Dakota includes everything that was agreed upon by the Commission, but in order that the Convention may have before it only so much of this report as it was decided by the Commission should be included within the Constitution proper, it will be necessary that there be another report from the Commission, which report will be ready, and made as soon as there shall be consideration of the report in general. So it would seem to me that the proper thing to do is to acquaint the Convention officially with what was the Agreement as a whole, which would be done by the reading of it at this time, or else by dispensing with the reading and regarding it as read, inasmuch as it is upon the desks of the members, having been printed in the Journal. It would then be competent to speak of these two provisions to which I have made reference, one of which is to be incorporated into the Constitution and the other of which is recommended to be incorporated into the Schedule and Ordinance. I will say that the agreement which has been decided shall be incorporated into the Constitutions, are Sections 1, 2, 3 and 4, and Section 10, I think, and 19 and 21; all of which refer to the matter of debts and liabilities, and they are the only Sections of the Agreement, as a whole, which refer to the debts and liabilities, and they are the only portions of the Agreement as a whole which the Omnibus Bill requires shall be incorporated into the Constitution.

Mr. Kellam, of Brule: I don't think I know exactly what is now pending before the Convention, but, whatever it is, I move as a substitute therefor, that the Schedule Committee report be amended by inserting, first, the matter found on page 12 of the

Journal (Page 144 of the bound Journal), commencing near the bottom of the page with the words, "The Agreement made by the Joint Commission" Etc., and including all down to the parenthesis; then following the Agreement that was made by the Joint Commission.

The President of the Convention: Mr. Harris, of Yankton, moves the adoption of the resolution to be read by the Clerk.

Read as follows:

RESOLVED, That this Convention do now incorporate in the Constitution the agreement of the Joint Commissions of North Dakota and South Dakota, commencing with the Preamble and ending with the close of Article XXIV.

The President of the Convention: To this the gentleman from Brule moves the following substitute:—

Mr. Harris, of Yankton: Mr. President, I rise to a point of order. It relates to another subject matter entirely.

Mr. Neill, of Grant: Mr. Chairman; Major Kellam, I think, is working under a misapprehension as to the nature of the motion the Convention is working under. It was decided that we take up that portion of the Agreement of the Commission which should be incorporated into the Constitution proper. That was the motion, I understand, of Mr. Harris, of Yankton.

Mr. Kellam, of Brule: I did not understand that.

The President of the Convention: The gentleman from Yankton raises the point of order that the substitute moved by the gentleman from Brule does not refer to the same subject matter. From the reading of the motions I am unable to determine.

Mr. Kellam, of Brule: Well, if the Convention is now considering another matter, of course the point of order is well taken and I will withdraw my motion.

Mr. Harris, of Yankton: Mr. President; it is under this provision of the Omnibus Bill that I make this motion: "And the Agreement respecting the Territorial debts and liabilities shall be incorporated in the respective Constitutions, and each of said States" etc.

Mr. Price, of Hyde: Mr. President; I was about to remark that while the Agreement reached by the Commission contains many other things besides the report relative to debts and liabilities—and I will state further, that the Joint Commission have passed and will present to the Convention at the proper time what in their

judgment ought to be incorporated in the Constitution—after a full and fair discussion of the whole they came to the conclusion that it would not be necessary—in fact, that it would be unwise and cumber the Constitution, to insert this Agreement in full, as contemplated by the gentleman from Yankton county, and they desire to insert so much as in their opinion would be necessary to insert in the Constitution. While it is true that the Omnibus Bill says that “The Agreement” etc., shall be incorporated, this report refers to many other things.

Mr. Harris, of Yankton: I would like to inquire if there is anything in that Agreement, commencing with the Preamble and ending with Article XXIV, that would be improper to put into this Constitution?

Mr. Price, of Hyde: I think not.

Mr. Harris, of Yankton: Well, if there is nothing there that is improper to go into the Constitution, I believe we had better put it all in at once and get rid of it.

Mr. Caldwell, of Minnehaha: Mr. President; it will of course be appreciated as desirable by every member of this Convention, that what goes into the Constitution of South Dakota in regard to this mutual Agreement, should be a counterpart of that which goes into the Constitution of North Dakota in regard to this Agreement, and the Joint Commission have prepared and will submit a report which was arrived at, both with reference to the Constitution of North Dakota and with reference to the Constitution of South Dakota, and which includes some matters not contained in the language of the Agreement as already submitted. For instance, it was necessary of course that there be adopted by both Conventions a section by which each State should assume the liabilities taken by each under the Agreement as arrived at; and this report to which I refer, which relates particularly to debts and liabilities, contains that, and it is already prepared. This is in the hands of the Chairman. But the proper thing, as it seems to me, is for this Convention to take up for consideration, by reading, this Agreement, or else by postponing the matter of Agreement and considering it read, the text of it being on the tables of the members. When that is done then there will come up the further report of the Commission, which includes only so much of this matter as was decided

by the Joint Commission should be incorporated in both Constitutions.

Mr. Clough, of Codington: Mr. Chairman; it seems to me this Committee ought to be allowed the privilege of making a report conveniently, and as it is now five minutes of twelve o'clock, I move that this Convention do now take a recess until two o'clock, when the Committee be requested to present a report as they desire so to do.

A Delegate: I second the motion.

Mr. Hole, of Beadle: Mr. President; isn't that hour occupied already by an arrangement to meet the Committee that come in regard to irrigation?

A Voice: We don't want to irrigate!

Mr. Caldwell, of Minnehaha: Mr. Chairman; of course I know that a motion to adjourn is not debatable, but then I know this whole matter can be disposed of in five minutes. If this general report is to be regarded as in the possession of the Convention, then there is no action in this Convention necessary upon that, and if the Committee—

Mr. Elliott, of Turner: Mr. President, I rise to a point of order. There is a motion to adjourn before the house.

The President of the Convention: This is not a motion to adjourn. It is a motion to adjourn and instruct, which I understand is debatable.

Mr. Caldwell, of Minnehaha: It will be regarded as being in and this report can be fixed up in five minutes.

The President of the Convention: The motion before the Convention is that we now take a recess until two o'clock and that the Committee appointed by the Convention of South Dakota to form a part of the Joint Commission be instructed to make a report at that time.

Mr. Kellam, of Brule: Mr. President; I would state that this Committee is ready to report, and it has been since the moment it landed here, if it only had the opportunity to report.

The President of the Convention: As many as are in favor that the motion prevail will say Aye; contrary no. The ayes appear to have it.

(Cries of "Division, division.")

The President of the Convention: Those of the opinion that the motion prevail will rise and stand and be counted.

The Clerk announced that there were 42 ayes.

The President of the Convention: There are 42 ayes and the motion prevails.

The Committee appointed to meet the Senatorial Committee this afternoon in this room are requested by the Chairman of the Committee to meet him immediately after the adjournment, and that there may be no mistake, the Clerk will read the list of the Committee again.

The Clerk read the names of the Committee; when a recess was taken until two o'clock P. M.

Two o'clock P. M.

The Convention convened and was called to order by the President.

Mr. Van Buskirk, of Codington, was called to the Chair.

Mr. Edgerton, of Davison: Mr. President; I voted this morning with the majority to reject the amendment that was then proposed. I have been informed during the recess that the loss of that amendment will render it necessary that all of the county officers throughout South Dakota shall be elected this coming fall. I did not so understand it when I voted. I have had no opportunity to examine it and I have not decided, but if there is a possibility that that construction can be placed upon it, why I want the amendment to carry. I told the gentlemen that I would move this reconsideration, so as to allow them the opportunity of presenting that themselves to the Convention. I voted against the amendment and for the report of the Committee, because it was the report of the Committee. I took it for granted that the Committee had examined it and were better prepared than I could be, but if there is a possibility that such a construction can be passed upon it—and Mr. Wood, of Pennington, tells me he believes that is the correct law of the case—, then I voted without understanding its effect, and I therefore move a reconsideration of the motion by which the Convention refused to adopt the amendment.

Mr. Peck, of Hamlin: I will second that.

The President pro tem: Gentlemen of the Convention, the motion before the Convention is to reconsider the motion by which the report of the Schedule Committee upon Section 19 and 20 was

adopted and the amendment rejected. Is the Convention ready for the question?

Mr. Elliott, of Turner: Mr. President; so far as I am concerned individually, I am not prepared to vote upon that question now. I would like to hear from some of the Committee upon that question. If there is a possibility, as has been stated by the gentleman from Davison county, for the election of all of these officers, I shall certainly vote for the reconsideration, but if there is none, I shall adhere to the vote I made on the question this morning.

Mr. Hole, of Beadle: Mr. Chairman, the gentleman from Pennington came to that conclusion, I think, without reading Section 5 of Article IX. Section 5 of Article IX provides this:

In each organized county, at the first general election held after the admission of the State of South Dakota into the Union, and every two years thereafter, there shall be elected a Clerk of the Court, Sheriff, County Auditor, Register of Deeds, Treasurer, State's Attorney, Surveyor, Coroner and Superintendent of Schools whose term of office respectively shall be two years, and except Clerk of the Court, no person shall be eligible for more than four years in succession to any of the above named offices.

Mr. Wood, of Pennington: That is exactly what I did read.

M. Hole, of Beadle: Now, if there is no election provided for this fall, except in October—we are not to be admitted until after October—until sometime in November—why, it is an impossibility; there can be no officers elected until the next year. That is the intention. That is the understanding of every delegate and there can be no possible question on that point. If there is any question, that can be met without attempting to undo what has been thought to be the correct course, but there is no possible way in which these officers can be elected this fall. The provision as to all the State officers is as to the first election; the provision as to county officer is at the first general election after the admission of South Dakota into the Union. Now, there is no possible question there. There is no gentleman in this house who has any possible question as to what that means. It means that the election shall be held in November, the coming year. That is the first possible election under the Constitution. We cannot be admitted until after the time for the election of county officers has passed. There is nothing in the Schedule of Constitution which can possibly tend to any other conclusion.

Mr. Wood, of Pennington: I do not think it advisable on this motion to reconsider to argue the whole proposition.

The President pro tem:

Mr. Wood, of Pennington: Now, if the Convention desires to hear any further argument upon that proposition, then of course they will reconsider. I think the Convention would be acting wisely if they would support the motion to reconsider.

Mr. Lee, of Spink: Mr. Chairman; I am satisfied that we shall get into trouble in many ways and I don't wish to review all the ground that has been gone over here. There seems to be a distinction without a difference. My friend is talking about the beautiful bridge; the Omnibus Bill is the bridge over which we get to statehood, and it appears to me if we don't reconsider this that we have knocked the bridge all to pieces. I believe the gentleman to my left (Mr. Edgerton, of Davison) is correct. This law can be so construed as that we will have to re-elect all these county officers, and I will go heart and hand for the amendment.

The President pro tem: I will re-state the motion. This morning the Convention declined to amend the report of the Schedule Committee as to Sections 19 and 20, and the report of the Committee was adopted as to those Sections. Now the motion before the house is to reconsider that vote.

Mr. Jolley, of Clay: Mr. President; I call for the ayes and noes.

The President pro tem: The ayes and noes are called for. All those that are in favor of the reconsideration of the motion by which Sections 19 and 20 were adopted will vote aye, contrary no.

The roll was thereupon called

The President pro tem: The result of the motion to reconsider is 42 in favor and 16 against. The motion to reconsider prevails. What is the further pleasure of the Convention?

Mr. Wood, of Pennington: Now, Mr. President, I desire to call the attention of the Convention more particularly to the danger which we had—

Mr. Jolley, of Clay: Will the gentleman from Pennington allow me to ask a question of the Chair? Mr. President, what is the condition of the business of the Convention now? I understood the Chair to state that the vote by which those two Sections were adopted was reconsidered. The motion is therefore upon the adoption of those two Sections. That is the way I understand it.

Mr. Wood, of Pennington: I don't understand it so. I understand, Mr. Chairman, that the motion to reconsider reconsidered the whole proposition, and I understand that now the amendment to Section 19 is before the Convention.

Mr. Jolley, of Clay: You can't reconsider two questions in one motion.

Mr. Edgerton, of Davison: Mr. President; I think the gentleman from Clay is correct. I therefore move you, Mr. President, to reconsider the vote by which the Convention rejected the amendment.

A Delegate: I second the motion.

The President pro tem: The question is upon the motion of the gentleman from Davison to reconsider the vote by which the Convention rejected the amendment to Section 19. Is the Convention ready for the question?

(Cries of "Question, question".)

Mr. Hole, of Beadle: I think, as a point of order, that the mover of this motion voted against that amendment.

Mr. Edgerton, of Davison: That is correct, and that was the prevailing party. We succeeded; we beat the amendment! (Great laughter.)

The President pro tem: As many as are of the opinion that the motion to reconsider the vote by which the amendment was rejected, will say aye; contrary no. The ayes have it and the motion is carried.

Mr. Hole, of Beadle: Mr. Chairman; I do not wish to make a speech on this. I merely wish to read Section 20 of the Schedule and Ordinance, which provides:

"That the first general election under the provisions of this Constitution, shall be held on the first Tuesday after the first Monday in November, 1890, and every two years thereafter."

That is the first general election. I will read it again, because I think this settles the whole question, so far as the question has been raised by the gentleman from Pennington.

"That the first general election under the provisions of this Constitution, shall be held on the first Tuesday after the first Monday, in November, 1890, and every two years thereafter."

Now then, Article IX—

Mr. Edgerton, of Davison, resumed the chair.

The President of the Convention: Mr. Hole, if you will allow

an interruption, I understand the Senatorial Committee are now coming into the hall.

Mr. Hole, of Beadle: I waive, with pleasure.

The President of the Convention: According to the order of the Convention this morning, there will be a recess now, in order that the Committee that was appointed by the Convention this morning to present certain facts to the Senatorial Committee might have an opportunity and also that they might present the delegates of the Convention to the members of the Committee, and during the recess, the Chairman of the Committee will preside—Dr. McGillicuddy.

Mr. Gillicuddy, of Pennington, took the chair.

The Chairman of the Conference: Gentlemen, is it your pleasure to be presented to the Senators now, or after the Conference.

Mr. Peck, of Hamlin: I should say now, Mr. Chairman.

The members of the Convention were thereupon presented informally, to the Committee, consisting of United States Senators Stewart, of Nevada, and Reagan, of Texas.

Senator Stewart: Gentleman, the Committee is here to get information. We want to know how you farmers are situated with regard to supply of moisture for raising crops, what the deficiency is and what the means are of supplying that deficiency by artificial means, artesian wells, stored water, rivers, etc., and we would like to have you go through rapidly, from different sections of the State, giving a short statement of the situation there—whether there is sufficient rain-fall, and if not, where you get water, or can get water, to supply that defect. To collect that information as rapidly as possible, we will hear those of you who have been selected from different sections of the State, right now, and the shorthand reporter will take it down, and if we do not get through during your vacation here, why we won't interrupt the proceedings of the Convention, but will go in one of the side rooms and hear any further persons who have any information to give.

A large number of the members of the Convention here made statements to the Senatorial Committee with respect to the lack of rain-fall in their respective localities and the urgent need of irrigation as a means whereby to supply the needed moisture.

The President of the Convention: The Convention will re-

assemble at half-past seven o'clock this evening, and in the meantime the Senators will make an address to the citizens and members.

The Chairman of the Conference: Gentlemen, I will introduce to you Senator Stewart, of Nevada, who will make you an address regarding irrigation.

Senator Stewart addressed the Convention upon the subjects of Irrigation and the Demonetization of Silver, and was followed by Senator Reagan, who occupied the attention of the Convention, briefly, with remarks upon the same topics.

The Chairman of the Conference: Gentleman, if there is nothing more to come before us we will stand adjourned informally.

Mr. Hole of Beadle: Mr. Chairman, as an expression of this Convention, I would move you that a vote of thanks be tendered the Senatorial Committee, for the time, consideration and attention they have given to our State.

The motion received a second, and, upon being put to a vote, was declared unanimously carried.

The Chairman of the Conference: Gentlemen, if there is nothing further, we will stand adjourned.

The President of the Convention: The Convention will meet at half-past seven o'clock, promptly, this evening.

Recess taken until 7:30 o'clock P. M.

The Convention reassembled at 7:30 o'clock P. M., and was called to order, with President Edgerton in the chair.

The President of the Convention: I will state to the Convention that I telegraphed Governor Mellette with reference to the question of pay of the delegates, this forenoon, and have received the following answer:

"Richardson has sent his Chief Clerk to settle Convention claims. Has no disposition except to accommodate and do everything in business manner. Train was late, so Clerk may not reach there till tomorrow. He will make everything right."

So it is evident he will reach here tomorrow night from Bismarck and settle with the delegates to the amount of the appropriation, I suppose.

It is evident to my own mind, from what I have seen today, that we cannot get through with the business of the Convention before tomorrow afternoon sometime, and that then the Clerk will have to take some hours to complete the enrollment, and that the

Constitution will not be ready for the signatures of the delegates before Monday forenoon. It is my own opinion that there is no possibility of our getting away from here until Monday afternoon or Tuesday morning.

The invitation that was extended to the Convention and accepted by the Convention to go to Spirit Lake tomorrow afternoon and return Monday morning probably will not interfere with our business here at all. Even if we finish our business by the middle of the afternoon tomorrow, it will take all of tomorrow afternoon and possibly Monday forenoon to complete the enrollment, so that we will be ready to sign the Constitution. It will therefore be possible for all the delegates that desire to, to be absent over Sunday.

The question before the Convention now is upon the motion of Mr. Hole that Sections 19 and 20 of the report of the Committee on Schedule, be adopted; to that Mr. Williams, of Bon Homme, has moved an amendment and the amendment is before the Convention. Is the Convention ready for the question?

Mr. Hole, of Beadle: Mr. President; I merely want to say this: It seems that this was reconsidered under a misapprehension of facts. The gentlemen from Pennington having conceived the idea, and having promulgated it after its conception, that there was a conflict and that the Schedule as adopted would compel an election of county officers this fall. By what process of reasoning, by what process of reading or by whatever process he may have reached this conclusion, I cannot guess, but I merely want to read the law as provided in the Schedule and I will call your attention to Section 20 as laid down in the Schedule.

That the first general election under the provisions of this Constitution, shall be held on the first Tuesday after the first Monday in November, 1890, and every two years thereafter.

And Section 5 of Article IX of the Constitution, reads as follows:

In each organized county, at the first general election held after the admission of the State of South Dakota into the Union and every two years thereafter, there shall be elected a Clerk of the Court,"—and then enumerating the county officers.

Now, the purpose of writing Section 20 was to leave that so there was no possibility of doubt, and if the English language can make it more clear, let us clear it up, but I don't think it is possible. I don't think it was in the mind of any member of the Convention

that such a thing was possible. I think this reconsideration was, not exactly what we call a lawyer's trick, because lawyers never know when they are beat, but it was putting it somewhat in this way: A delegate was acting the part of an attorney in the matter more than acting the part of a proper reconsideration, unless the reconsideration would cover all the grounds. Now, under the reconsideration, as made, I understand the only question before us is the question of Section 20 in the Schedule and Section 5 of Article IX in the Constitution. I understand from the mover of the question to reconsider, that that is the only question before the Convention.

Mr. Wood, of Pennington: Mr. President; I will say now that I hope each member of the Convention will turn to Section 20 of the Schedule and Ordinance report, and if any gentleman of this Convention can tell me where we get the power or authority to make the declarations contained in that Section, then I will say I am wholly unable to construe the English language at all. That is pure, straight, unadulterated legislation. There isn't anything else about Section 20, except the purest legislation; it is not at all necessary to carry into effect the provisions of the Omnibus Bill; not at all necessary to enact, to go into the Union under this Constitution, and we have no authority anywhere for enacting it. Then I say that Section 20 should not be enacted by this Constitutional Convention, and for myself, I will never put myself on record as supporting a measure of that kind. What is Section 20? It is this:

That the first general election under the provisions of this Constitution, shall be held on the first Tuesday after the first Monday, in November, 1890, and every two years thereafter."

What right have we to say when the first general election shall be? Are we given the power to legislate? I think not in any sense or to any extent; but that is a very important legislative provision. Where do we get power to act? What is our mandate of that nature good for? Perfectly void and nugatory.

As to the election of county officers in November, I will not take up much time. I will call attention first, however, to Section 4 of the report of the Committee on Schedule and Ordinance.

All officers, civil and military, now holding their offices and appointments in this Territory, under the authority of the United States, or under the authority of the Territory of Dakota, shall continue to hold and exercise their respective offices and appointments until superseded under this Constitution."

Now, of course that would be the effect, in the absence of any provision of that kind. However, the provision is here and has been adopted; a very salutary and beneficial one. They shall hold their offices until superseded under this Constitution. When do we become a State? I will read the latter part of Section 8, of the Omnibus Bill:

And if the Constitutions and governments of said proposed States are republican in form, and if all the provisions of this Act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed States which have adopted Constitutions and formed State governments as herein provided shall be deemed admitted by Congress into the Union under and by virtue of this Action an equal footing with the original States, from and after the date of said proclamation."

Now I say this, and in connection with that read, I want to see what the Convention may think of it, that if on the first day of October, the Constitution which we submit, and that is, the Constitution of 1885 as amended by us under the Omnibus Bill, receives a majority of all the votes cast in South Dakota, then we are a State from and after that date. That is an accomplished fact; we are a State and have existence as such from that date, as soon as the last vote is cast, if there is a majority for that Constitution. Then we become a State by operation of law, at that instant. That fact is declared later, by proclamation.

Mr. Wood: My position is this: The Constitution declares Section 4 of Article 7 that all general elections shall be biennial. General elections as defined by the statute are biennial elections, they are both provided for by law. Yet, when we come into the Union under the Constitution that will be the primary law. It will take the place of the statutes. Hence the statutes which declares the annual election must give way to the Constitution because that provides that all general elections are biennial or should be. These elections are either. Being general, then the Constitution and Article IX says what shall be done. If this is a general election then it will be known as a general election after we come into the Union. Being known as a general election we have got to elect county officers. I think that is sufficiently clear. I think I have defined the reason that I take this position. In conclusion I desire to say this: The Constitution fixes the term of office of the Gov-

ernor at two years. The people of this Territory by practically unanimous vote ratified the Constitution and must ratify it again before it becomes our organic law. We are not under this Constitution, but will be after the first of October next, now, and that is the primary law after the first of October next then the tenure of office of the Governor and these other political officers is two years. If we have the power to extend the term twenty-seven months we can, with the same propriety and with the same legal force extend it twenty-seven years. There is not a particle of difference in the principle. If there is any difference in the principle I think that some member of the Convention would explain the difference to me for I am not able to detect it. But, they say "how are you going to cut their tenure of office down—that is under the Constitution?" I say in answer, we are not now under the Constitution. We derive our powers from the Omnibus Bill, not from the Constitution. The Omnibus Bill says we can amend the Constitution. All the power we have got is contained in the Omnibus Bill and where there is any doubt of our position we must look to them and nothing else. It prevents our amending the Constitution except in certain particulars and parts. They say you will have two elections. I say this, that there is no way of preventing it that I know of.

A Voice: Have the Legislature amend it.

Mr. Wood: I say we do not want to treat ourselves and our constituents in that manner. We do not want to cut the Constitution in that manner. You can avoid it by saying that the Governor and those other State officers shall hold their office until the first day of January, 1891. That is the way to avoid it; then we will elect them in 1890 when these other officers can be elected at the same time. That is general election under the statutes.

Mr. Caldwell: I can state it as a fact that there is no law in this Territory fixing any particular significance to the expression "general election" or to the expression "annual election". The original law was for a particular purpose. It was in order to bridge over a scheme in reference to some county organization. It was enacted that an election held on the even numbered years should be called general election and those held on the odd numbered year should be called annual election. That particular provision of the law which has been enacted or amended, Chapter 27 of the political Code was repealed,—the entire Section was repealed taking along with it, of course, the amendment of 1881. But it so happens that

there are places throughout the statutes where the term is used with a significance given to it by that section which was repealed. There was certain things prescribed to be done on general election, so that the compilers of the law, in order to establish the use of the term where stated retained this particular provision which has been repealed. At the last session of the Legislature they undertook to get it enacted, because it ought to be enacted, but it is not enacted. And by reason of its being in the compiled laws it is not law therefore. Because of the appearance of the statute in that place cannot make it law. Because all the validity which the compiled laws is merely that they are to be accepted prima facie evidence of the law as it is. But in the case of conflict the compiled laws and the special laws of any particular legislative assembly those special laws are to control and the compiled laws stand for naught. I say it is a positive fact that this statute defining general election and annual election have actually been stricken from the statutes of the Territory. I simply would say to the gentleman that if it didn't cut any figure he ought to know what the state of the case is.

Mr. Wood: I will not dispute the existance of such a law. I will declare I have never seen it. Inasmuch as the old act has been carried forward in the compiled laws it is prima facie evidence at least of the law of the land and we will take the prima facie evidence until we get something besides the word of the gentleman from Minnehaha county, because in legal matters the statutes themselves are evidence. The gentleman asks if my position will be changed if I could be shown that the Legislature did repeal the law of 1881 defining the difference between general and annual elections. I stated then that it would make all the difference in the world. I did not get the idea as I do now. It will make no difference because the statutes still provides for an election each year. The even years under the statutes of the Territory we elect County Commissioners, Justice of the Peace, etc. On the odd numbered years we elect under the Constitution, we will be under the Constitution when these elections become material or important. That election then, under the Constitution is the general election because it is biennial. I believe that will define the position that I have taken so far as the gentleman from Minnehaha is concerned.

Mr. Humphrey: I understood you to say that for the election irrespective of whether the President sees fit to admit us or not by

proclamation. Oh no, I say that we shall be admitted by Congress—admitted into the Union. Does the proclamation create a State? We created it ourselves under the power given us by this Act of Congress. The President proclaims the fact; it is by virtue of proclamation of the fact. Then we are deemed admitted to equal footings with the original States. The President cannot by proclamation create a State. He can declare the fact simply.

A Voice: When are we deemed admitted into the Union?

Mr. Willis: We are deemed to be in the Union as a State, we are a State before we are admitted.

Mr. Humphrey: You deem then that we are a State of the Union?

Mr. Caldwell: I will make this distinction, if the gentleman wishes to make an answer he has the right to the floor when I get through. I will state this: The President by his proclamation does not create a state. This is nonsense of the very worst kind. If the gentleman prefers to take such a place I wish to make a statement on the floor of this body. I say that we, ourselves, form the state and make it; but we have got to have the people's authority so to do. Where is the source of power from which we derive that authority? The Congress of the United States. Here is our enumerated powers (indicating a copy of the Omnibus Bill). What is the last act that we can perform? It is the casting of the vote for the ratification of this Constitution. When the last poll is closed, if a majority of those ballots are in favor of this Constitution, if it is republican in form, we are a State. But we are not a State of the Federal Union until the fact is declared by the President.

Mr. Humphrey: We practically are overstepping our powers provided by the Omnibus Bill. To illustrate it: Suppose we change the term of office of the State officers and on that ground the President should refuse to issue a proclamation. Would we still be a State?

Mr. Wood: No, Sir; for this reason, we have transgressed the powers given us. We have not performed the act we have the legal right to perform. Therefore we have destroyed all that we did. But if we do comply with the provisions of this act, then the President of this United States cannot legally refuse to declare us a State of the Union. If he lawfully refuses it it is because we have transgressed our power.

Mr. Humphrey: Would we still be a State?

Mr. Wood: Most certainly; I think that when the gentleman understands fully the legal positions he will agree with me in this. I say if we comply with the provisions of the Constitution, we go to work and comply with that act, we are a State and if the President should fail—unlawfully fail—to declare that fact, to perform his lawful duty, it would not change the facts that we have, under the law, formed and created a sovereign State simply because public officers fail to perform their duty never changes the legal rights of anybody. If it did, then legal rights can be changed with great facility.

Mr. Willis: I want to rise to suggest as a mere piece of information that the supposition which the gentleman has made everybody knows, and nobody better than he and others here, it is an utterly idle supposition.. That any man would not do his formal duty after everything has been performed on our part under the Omnibus Bill; that the President would fail to perform his part of that contract; it is an utterly idle supposition.

A Voice: Who draws that supposition?

Mr. Wood: I never had any such supposition.

Mr. Willis: No Sir; I am defending the gentleman. (Laughter)

Mr. Dickinson: I wish to call attention to this fact: The whole strength of the argument that has been made lies upon a very violent supposition and that is the supposition that the election shall be completed, the returns made, and the Constitution properly forwarded to Washington to be acted upon by the legal authority there and recommended by the President as having been promulgated in accordance with the Enabling Act. In the face of all that the President may hesitate to make his proclamation, this is something which not one delegate on this floor doubts but that within a month, after all that process shall have been gone through and we shall have been fully admitted by proclamation of the President; otherwise there is no effect whatever to the argument made with reference to the contingency that county officers may have to be elected this fall. The Constitution provides that the County Auditor shall be elected at the first general election after we become a State. But the one argument advanced that we shall become a State before the President issues his proclamation is wasted argument. The gentleman admits that we are admitted when the President issues his proclamation; I say the whole argument relies upon a violent proposition. I do not think that propo-

sition has entered into the minds of any other gentleman upon the floor unless it is the gentleman himself; it certainly did not enter into the minds of any of the members of the Committee when the report was gotten up. This Article XX therefore was passed upon that understanding that the Committee believed that it was impossible for us before admission into the Union before the election in November and that therefore the first general election under the Constitution after our admission as a State into the Union would be in 1890; that is what we contemplated and nothing else. No one had any idea that the county officers were to be elected this fall.

Then in 1890 there would be an election of all State and county officers. While I have the floor I wish to call attention to the fact—

A Voice: Did not the gentleman from Pennington who has supported this amendment used that as his strongest argument for shortening the tenure of office of the county and State officers.

Mr. Dickinson: The argument brought before this Convention was, that we were going to precipitate an election of the county officers upon the State this fall.

Mr. Neill: How does this shorten their term?

Mr. Dickinson: A year.

Mr. Wood: Where do they get the power to make the tenure of office of the Governor twenty-seven months?

Mr. Dickinson: Where do we get the power to make the tenure of office of the Governor seventeen months?

Mr. Wood: From the Omnibus Bill.

Mr. Dickinson: We get it from the Constitution, the people of South Dakota formally adopted. The Constitution of 1885 which we have no power to change, provides for two years; there's where we get our power. It seems to me a strange thing that anyone should raise the question on this floor; the Enabling Act cannot go before the time it would have life under the Constitution and before the time which the Constitution would make it legal to say, submit the question of the election of Senators to your Legislature. It cuts right to the lien at least two months until the time came when they could regularly take their places under the Constitution. There is the difficulty to be met which ever way you view the question, and the Enabling Act provides for these two months. We are to get the Legislature before the time which the Constitution has provided for. It gives a life to the government for these two months, until the time comes when the officers would

regularly take their places under the Constitution. There is that difficulty to be met. The authority of the Enabling Act is unquestioned. I can't see where the authority comes in for making the change as proposed by the gentleman and those who are with him at this time. We have endeavored as closely as possible to go by the provisions of the Enabling Act and have the officers in their places for the term for which the Constitution, made in 1885, provides, and we believe there is a great risk in making any change. I was about to say, however, no sufficient answer has been given to the question which I raised this morning. If by the framers of the Constitution of 1885 it was intended that the general elections should be on even years, why did they in that section say: "All general election shall be biennial"? The elections on even years could not be less than that. Was it not intended to apply to the elections that came on the odd years?

Mr. Wood, of Pennington: Which does the Constitution refer to?

Mr. Dickinson, of Day: It refers to both.

Mr. Wood, of Pennington: That is what I contend.

Mr. Dickinson, of Day: It also seems to me that sufficient attention has not been given to the question whether or not this amendment is not an actual amendment to the Constitution, under the guise of the Schedule and Ordinance. It is a virtual amendment to traffic in that or meddle with it or infringe upon it. Let us go within the bounds of our powers and leave that for the Legislature. I have been surprised in talking with members, in discussing here, to find the prevalence of this spirit—"We are going to have this any way, whatever the provisions of the Constitutions may be; whatever is Constitutional and legal in this matter, we ought to have an election only once in two years, and we are going to have it any way." I will not yield to anyone upon this floor in the desire that there shall be only one election each two years, but I believe this is the right and the only constitutional way, though I can make allowance for that spirit which says, "We are going to have it any way, because the people want it". What we have a right to do here is that which will be perfectly safe—that does not run the risk of leading us into litigation if we adopt it and recommend it.

Mr. Sterling, of Spink: Mr. President; the argument of the

gentleman last upon the floor is largely upon the same line as his argument upon the previous question, when the evidence of the fact is brought home to the notice of the President. The President has what? He has judicial discretion in that? Not at all. His act is in the nature of a ministerial act; he proclaims an existing fact; then we are to be deemed ADMITTED into the Union as a State. We are a State before. The fact exists, and the proclamation of that fact then places us into the Union on an equal footing with all the other States, and we are not into the Union on an equal footing until that proclamation is made by the President. We declare ourselves a State by our vote. There are two provisions of the Constitution that we cannot change. One is that the Governor shall hold his office for two years. That don't mean twenty-seven long months. It means two years or less; it don't mean more. Another provision is that all general elections shall be biennial—once in two years. What is the effect of those provisions? Simply this, in my judgment: A general election and an annual election are each defined by our law—the law under which we were all living and paying our allegiance when the Convention of 1885 framed this Constitution. The statute provides for two elections, and did then, to-wit: An annual election on odd-numbered years, a general election on even-numbered years. Then we have an election, and these elections occur in November—the first Tuesday after the first Monday of that month. Now, the Constitution declaring that general elections are biennial, the statute declaring that there are two kinds of elections, "annual" and "general", you will all agree with me that the statute must give way to the Constitution, if the two cannot stand together. Now, if all general elections must be biennial, and if there is an election each year, then these elections I do not contend are annual. They are all biennial hence it follows that they must be all general elections, and they are general elections, too, under the Constitution. Then, being general elections, what shape do we find ourselves in?

Section 5 of Article IX: In each organized county, at the first general election held after the admission of the State of South Dakota into the Union and every two years thereafter, there shall be elected a Clerk of the Court, Sheriff, County Auditor, Register of Deeds, Treasurer, State's Attorney, Surveyor, Coroner and Superintendent of Schools, whose terms of office respectively shall be two years, and except Clerk of the Court no person shall be eligible.

for more than four years in succession to any of the above named offices.

There are all the county officers. We see by necessary construction that the November election of 1889 provided by the statutes of this Territory, is a general election, because by the time this Constitution, if ever in force, will then be in force. We will be a State by that date and that election will be a general election. Now, it may be urged that it will not be proclaimed sufficiently early for the election notices to be posted. Whoever heard of an election being invalidated for any purpose by a failure to post notices? No such doctrine was ever pronounced by any court of respectability, so far as I can learn. The failure then to post notices will not invalidate an election—will not necessarily void an election if held. Then I say you will get into a mess of difficulties that can be just as well avoided as not by keeping ourselves within the limits circumscribed and laid down before we came here. What is that? Simply this: We are electing what? We are only electing Governor, Lieutenant-Governor and other State officers—this amendment has nothing to do with the Judges. What tenure are we giving them? The Constitution provides that the tenure of the Governor shall be two years. Let's read it:

The executive power shall be vested in a Governor, who shall hold his office two years, a Lieutenant-Governor, who shall be elected at the same time and for the same term.

Does that mean twenty-seven months? We are a State if the Constitution receives a majority of all the votes cast, from and after the first of October, although that fact may not be declared for some time after—yet we cannot presume that this proclamation will be delayed for many days. It seems to me it is not a rash presumption that the fact will be declared of our admission before the twentieth day of October. The President's duty is to do it. That being his duty he will proclaim that fact of our admission as early as possible. Then if we are a State from the first day of October and that fact is proclaimed as early as the twentieth of October and we are into the Union on an equal footing with the other States on the twentieth of October, I don't see why that won't give us time to post notices. I will say this: My recollection of the statute is this that it only requires ten days before the election in each precinct to post these notices of election. If that is true then there will be no excuse why this election should not be held and all the county officers elected. Some may contend that there is nothing

in the proposition. Well I am very often in error—wide of the mark—but I am sometimes right, and in this matter I think I see my way sufficiently clear to declare without the fear of successful contradiction, that under this Constitution, it is a biennial election and therefore general. Then again—

Mr. Neill, of Grant: How does that amendment obviate it?

Mr. Wood, of Pennington: I will tell you. Fix this tenure of office so that it will expire on the first day of January, 1891. We have got to elect all the county officers; it brings everything together. In the absence of this, and under Section 20 of the Schedule, if that section is good for anything, we will have to elect county officers on even numbered years and other officers on odd-numbered years.

The supporters of the report contend that there is one way to get out of the difficulty, and that is, for the Legislature to propose an amendment to the Constitution. Now, gentlemen of the Convention, which is the best—if that is the way out of it—which I very much doubt? But suppose we could do that and get out of this scrape in that way, I submit this to you, as the representatives of a sovereign people, forming in part and submitting in whole, the organic law, is it better to make the tenure of office for the first term, which we have got the power to fix, at a little over one year, and thus obviate the difficulty and the early amending of our organic law? You amend our Constitution as early as that and people will say "We sent men down there to frame a Constitution that did not understand their duties".

Mr. Dickinson, of Day, called to the chair.

Mr. Edgerton, of Davison: Mr. President: Do I understand the gentleman from Pennington to claim that we are to have an election on the first of November, 1889, by virtue of the Territorial law?

Mr. Wood, of Pennington: There is an election provided for, yes.

Mr. Edgerton, of Davison: I understand you to claim then that this provision in the Schedule that we will have no election after our admission until the fall of 1890, is inoperative?

Mr. Wood, of Pennington: No, I say it is legislation.

Mr. Edgerton of Davison: Why is that any more legislation than it is to provide that the term of office shall expire before the two years are out?

Mr. Wood, of Pennington: For this reason: We are not holding this election under the Constitution. We are empowered by the Omnibus Bill to provide for the election of these officers, and by necessary implication we can fix the tenure of their office, if we do not extend it beyond the limit fixed by the Constitution itself.

Mr. Edgerton, of Davison: I understand you to say that this provision in the Schedule prohibiting an election after the first of October, 1889, before the first of November, 1890, is inoperative because it is legislation? Now, I ask why is there any more legislation in that than in the provision in the same Schedule, which you propose, that their term of office shall expire for the first time, within the two years?

Mr. Wood, of Pennington: Just this: We have the power under the Omnibus Bill to provide for the election of these State officers, but we have no power to declare when and what kind of an election shall be held in the future. We are legislating now for the year 1890. We have no such power anywhere.

Mr. Edgerton, of Davison: As I understand you, we have power then to shorten their term of office under the Omnibus Bill?

Mr. Wood, of Pennington: I contend that this first term of office is in our hands, if we do not extend the tenure beyond the maximum limit fixed in the Constitution.

Mr. Edgerton, of Davison: Do I understand you to say that that provision that provides that these officers shall be superseded is synonymous with the declaration that the State shall be admitted on the proclamation of the President?

Mr. Wood, of Pennington: No, indeed, I did not say synonymous at all. I read that provision for the purpose of showing that if this election this fall is a general election—if the Constitution makes it a general election, it will be in force by that time. I read that section for the purpose of showing what became of the county officers—that they will be superseded by the State government—

Mr. Edgerton, of Davison: I understand you to say that they are necessarily superseded because the Governor and Lieutenant-Governor are elected.

Mr. Wood, of Pennington: Not at all. I am speaking of this now independently of the tenure of office—as an independent proposition.

Mr. Edgerton, of Davison: You and I do not differ upon this,

that they may hold until the first of January, 1891, unless there is a direct provision that they shall be superseded—

Mr. Wood, of Pennington: Well, I am contending that we cannot allow them to hold beyond January, 1891.

Mr. Edgerton, of Davison: I meant that unless their term is cut short expressly by the Constitution, that the admission of the State won't shorten their term of office.

Mr. Wood, of Pennington: Yes, Sir, that is the position I take.

Mr. Edgerton, of Davison: The word "supersede" here means that they may hold until their term expires unless there is an express provision.

(EDITORIAL NOTE—There is clearly an omission of some matter in the official copy at this point.—DOANE ROBINSON.)

* * * * * this morning, and it is a powerful argument in the way in which it is presented. When a man expresses his strong desire as being upon the one side of the question, and makes the strongest possible argument upon directly the opposite side, it has a kind of a double-back-action force,—a great deal more force than if his desire and his argument were in the same direction; but I can give the gentleman credit for perfect candor in the argument, although he has expressed the strongest desire that these elections should come every two years and has argued strongly against the power to hold the elections every two years.

Now, Mr. President, and gentlemen, it seems to me—and I can't look at it in any other way—that there is here a great excess of caution in this matter. This fear of doing something unconstitutional; this fear of making an amendment to the Constitution. If there was any attempt of that kind—any attempt to introduce anything in the way of an amendment to the Constitution, then there might be some fears, but I say this can't be construed in any such light; that it is a provisional way of carrying this State government into effect and that it is quite customary in the adoption of new Constitutions to provide that the first term of the State officers elected under the Constitution or elected as provided for in the Constitution, shall be for a shorter term than the regular term as fixed in the Constitution.

Now then, I say with reference to this matter of safety that these gentlemen proclaim so largely, that they are willing to forego every question of what is sound policy for us to adopt in our new State; they are willing to forego every item of expense there is in

it; they are willing to forego what the people almost universally desire in regard to the time of these elections, all for the question of "safety", in which I can see nothing whatever. I say in the face of the precedents that we have in the framing of other Constitutions, in the face of the reasonableness of this thing, that this matter is provisional and we can surely provide that this election may occur in the fall of 1890.

Mr. Dickinson, of Day: Has any other Constitutional Convention ever been tied down as we are?

Mr. Sterling, of Spink: I think so. I don't see in what particular limits we are tied down, as far as that is concerned. I made allusion to the Nevada Constitution this morning. I have it here. I do not think any trouble ever arose over it from the fact that it provided that the terms of the State officers should be four years, and then provided that the term of the officers first elected under the Constitution should be two years—just half that which was prescribed as the term generally for those officers.

Mr. Hole, of Beadle: In that case, Mr. Sterling, it had not been submitted and voted on?

Mr. Sterling, of Spink: I don't think it had, but as to that, there is where the gentlemen this forenoon laid great stress, from the fact that the Constitutional Convention of 1885 elected State officers for two years, making an election come again in 1887, and I admit that were elected for that. But suppose they did? As I said this morning, there is no question as to the interpretation by them as to their power under that Constitution for an election to come at any other time, and all the circumstances under which they adopted that Constitution and that Schedule and Ordinance show that they never considered the question of their power to fix any other time. The Constitution was framed, as we all know, without any Enabling Act back of us; it was not known when we would be admitted, but it was thought we might be admitted within two years, and if we were, then we would have the officers for State government, and that is all they thought about it. There was an evident desire, so far as county officers were concerned, to provide that they should hold their offices until the next general election after the admission into the Union of the State. They wanted all parties and all factions organized to secure a large vote upon that Constitution and thereby the admission of the State into the Union. I can't see, Mr. President, any great danger in this at all. I think

gentlemen magnify the danger. This very same thing has been done before, and I say, when the gentlemen talk about what elections they had in mind when they spoke of general elections, that they had in mind the general election as it was provided and understood then, and I don't know by what fiction the gentleman from Minnehaha can say that the general election is not in the even numbered years. It has never been heard of, that I know of, until he proclaimed it upon this floor, and I am satisfied that the members of the Constitutional Convention in 1885, had no other idea than that it was in the even-numbered years, and that they provided that the county officers should be elected at the first general election after the admission of the State into the Union. That is when they used the words "general election" or "general elections" with reference to a particular year. They said again that all general elections should be biennial, and I don't believe in that other fiction, that they used the words "general election" then with reference to annual elections.

Mr. Humphrey, of Faulk: Mr. President; just one word. First, as a question of privilege, I would like to assure the gentleman from Aurora, that it was not with the intention of asking a fictitious question that I asked the question I did, but to bring out in as bold a manner as possible the difference in the positions taken here.

Now, as to the power of this Convention to extend the term of these officers to twenty-seven months. The wording of the Committee on Schedule may have been unfortunate. Their manifest intention was to provide that he should hold his office until his successor had qualified. They had the power to do as they pleased at that Convention; we have not. It certainly would be the safe thing for us as long as it is in our power to follow in their footsteps and follow in the same line.

Mr. Wood, of Pennington: Where did this Convention get the power to make the term of office of the Governor twenty-seven months?

Mr. Humphrey, of Faulk: I don't say they had the power to do that. The other way might have been the better way to put it. Technically they might not have the power to extend their term one month, any more than to extend it one year, but the manifest purpose was simply to provide for the office not becoming vacant a month before or a month after, but simply to hold their

offices until their successors had qualified. We can be but safe in following the footsteps of our predecessors in doing what they did, when they had full power to do what they did, while we have not.

Mr. Williams, of Bon Homme: Mr. President; as this is my amendment, I would like to say a word. The argument of the gentleman from Day is such that, while my friend Mr. Sterling, I will admit, shows a spirit of great candor, and we can all certainly give him credit for it, I think he is mistaken, for he agreed with me upon this proposition for the same thing, and that is, unless we are transcending the provisions of this Constitution, that it is not a virtual amendment to the Constitution. It in no manner infringes upon one solitary section or phrase of the Constitution. The position taken by myself in framing that amendment was that this is only a provisional measure and that it in no manner governed or controlled under the Constitution, further than that the Constitution points out the officer, and that is that this Convention, by this Ordinance, follows the Constitution in the officers to be elected, but it is not bound by the provisions of the Constitution as to the terms of office, and having the power to act provisionally we have the power to fix the term of these provisional officers so that their successors will be elected under that Constitution at the time we elect the other officers. I cannot agree with the position that we must elect county officers this fall. I say we must let them hold over, but I think we have the power to elect them. It is as we please about that. Hence, the purpose of the amendment was not to permit the officers to hold over until their successors were elected, but the intent is that the new officers may take their offices at the same time that the terms of these county officers expire, and that then we will have an election and elect a full set of State officers and a Legislature. I wish now, once more, to explain that in 1890 we will have to elect a full set of county officers. The provisions of the report are that the State officers, and the legislators' terms shall expire in January, 1892. Then we are necessarily compelled to have an election for the State officers and the Legislature in January, 1891; then in January, 1892, we will be compelled to have an election for county officers again, and then in January, 1893, another election for the Legislature and the State officers; so that the bill as it comes from the Committee virtually provides and coerces the Legislature into providing for an election every year, and that is the thing the amend-

ment is intended to obviate—to provide for these provisional officers to hold their terms for only such a time that they will expire with the county officers, in 1891.

As to the amendment to the bill forcing an amendment to the Constitution, I can't see where the gentleman gets his idea.

I will say this, further, that the sentiment of the people now and the sentiment of the people in 1885, was that we have only a general election once in two years; and I say further, whatever the sentiment of the people at large, if you elect a convention of delegates, that the Convention carries with it the sentiment of the people. There can be no question of a doubt but what that sentiment was carried into the Convention and operated upon by the members of the Convention, and ought to be in this case.

Mr. Van Buskirk, of Codington: Mr. President; I wish the Convention would bear with me just one moment. I had hoped that some member of the Convention would reach one of the propositions that is troubling me. The question occurs to me, if it had not been for the provisions of the Omnibus Bill, under and by virtue of what law or authority would we have elected these State officers at all? I am a little at sea as to what we would have to do except for that bill, in the election of State officers at this time. I would ask gentlemen of the Convention to point out under what law they would hold the election for Governor, except for the provisions of this Omnibus Bill? When would you have held that election? I am unable to find out from anything that has been said here. By virtue of what authority would we have elected these officers, or at what time would we have elected them? I apprehend that Congress when it passed that act understood very well that there was a statute in this Territory that provided that we should hold our election at a given time, and when they came in and said that this Convention might provide for the election of State officers, they enacted that statute with the view that we might bridge over this period between the time we should adopt this Constitution and the time we should hold the election in the State of South Dakota. If any gentleman on this floor can point me to a statute under which we could have elected State officers this fall, I would like to have him do it. Our power to elect officers exists by virtue of the terms of that Omnibus Bill. They did not, of course, say at what particular time their term shall expire, but they knew we had a statute in this Territory by which every even year

we held general elections, and that said that these officers were going to hold over until such a time as the people of this new State of South Dakota should hold an election and elect the new State officers; and therefore they stepped in here and provided what otherwise would have been a perfect blank, and we should have had the means to elect them at all. Suppose we should not have been admitted until some time after the first of January, if you please. These gentlemen, according to the argument that has been offered here, would have been elected and held two years, and they would have been away over somewhere—depending upon the circumstance of the period when we might be admitted by proclamation of the President or act of Congress and recognized as a State. Now it seems to me that the gentlemen who drew that Bill were men who understood the history and something of the situation here. They step in here and say: "In order that they may reach that time when they hold their State elections, this Convention may provide for the election of officers until such time as the officers elected under the Constitution can qualify".

It is a good deal for the gentlemen to speculate upon what the Constitutional Convention of 1885 meant. They said, however, that the elections in this State, when it became one, should be biennial, and that all elections should be general, and they used those terms understandingly. They said that those elections should be biennial. I would give a good deal more for, and I have a great deal more confidence in undertaking to get at what they meant, by what they said, than to rely upon the speculations of what others here think they might have meant.

Mr. Dickinson, of Day: Isn't it fair to get at what they meant, by what they did?

Mr. Van Buskirk, of Codington: Well, so far as that question is concerned, I remember some years ago that a gentleman was arguing a question before the Court of Appeals as to what they meant in the Legislature in New York, and the Court said: "I don't know anything about what you meant, but I do know what you said;" and that is the condition of things that we are in here. I say we could not have any provision for the election of State officers except for the terms of this Omnibus Bill. Unquestionably they intended we should fix the terms of their offices so they should expire exactly at such a time as under the laws of this Territory we are authorized to hold a general election, and as provided by

statute. It seems to me that was the reasonable intendment of that body. That is the reason I have stood upon this question as I have. We have got no time provided for the election of these officers except by that bill, and it seems to me it is fair to presume that Congress meant we should bridge this time over until such time as our State officers could be regularly elected.

(Cries of "Question, question, question.")

The President of the Convention: The gentleman from Beadle moves the adoption of Sections 19 and 20 of the Schedule and Ordinance, and the gentleman from Bon Homme moves an amendment. As many as are of the opinion that the amendment be adopted, say aye as your name is called; those that are opposed, say no.

Mr. Sherwood, of Clark: I ask that the particular amendment be restated. Part of it has been withdrawn.

The President of the Convention: You will find it on page 3 of the proceedings of the Twenty-ninth day, except that "1894" is stricken out.

Mr. Williams, of Bon Homme: The amendment is that where the dates "1892" occur in that section, they be stricken out and the date "1891" be inserted—not affecting the term of office of the judges, as provided in the report.

The President of the Convention: If this is not the correct amendment, you had better send it up to the Clerk.

Mr. Willis, of Aurora: Mr. President; it was understood verbally that the other part of the amendment was withdrawn, and I think the gentleman has proceeded with that understanding, although perhaps the written amendment was not sent to the Clerk.

The President of the Convention: "Understandings" will not appear in the Journal. If it is different from this, you had better send it up in writing, Mr. Williams. The record here shows, as I have stated, on page 3. Now, the Clerk has this: Mr. Williams withdraws so much of his motion as refers to 1894". That is the way the record stands. Consequently it stands just as I stated before—to amend Section 19 by striking out the date "1892" where it occurs in said section and inserting in lieu thereof the date "1891".

Mr. Jolley, of Clay: If the amendment stands by striking out the word "1892" and inserting in lieu thereof the word "1891",

why, putting the whole amendment in and then following it by that entry on the part of the Clerk of that part of it which is withdrawn, it will make a very damaging and bungling record.

(Cries of "Question, question, question".)

The President of the Convention: The amendment that is before the Convention is as I have stated it. The first amendment was in yesterday's proceedings, as printed; the offer to withdraw is in today's proceedings. It stands disconnectedly.

As many as are of the opinion that the amendment be adopted say aye as their names are called; all those of a contrary opinion, no.

The roll was called (Page 148, bound Journal)

Mr. Neill, of Grant: Mr. President, I wish to explain my vote. On the last roll-call on this question I voted no, being somewhat unacquainted with the phase of the argument at that time and supposing that the whole question rested upon the provision of the Constitution of 1885, but on further study it comes to my mind that this election is governed entirely by the Omnibus Bill, and consequently I vote on this question, aye.

The President of the Convention: There are 40 ayes and 32 noes. So the amendment is adopted, and the question now recurs upon the adoption of Section 19, as amended.

Those of the opinion that Section 19 be adopted, say aye; those of the contrary opinion say no. The ayes have it.

Mr. Wood, of Pennington: Mr. President; I move you that the action of the Convention in adopting Section 19 be reconsidered, and I move to lay that motion on the table.

A Delegate: I second the motion.

The President of the Convention: It has been moved that the action of the Convention in adopting Section 19 be reconsidered and that the motion to reconsider be laid upon the table. Is the Convention ready for the question? As many as are of the opinion that the motion prevail, say aye; those opposed, no. The ayes have it and the motion prevails.

Mr. Kellam, of Brule: Mr. President; I think I was misunderstood last evening in presenting the agreement which formed a part of the report which the Committee composing the Joint Commission from South Dakota offered, and I only did that at that time, as I thought it then fully explained, to forestall the newspapers in the printing of the report. I thought it would be im-

proper to have it appear in the papers before it was formally presented to the Convention.

The Committee named by this Convention to form a part of the Joint Commission as provided by the Act of Congress under which this Convention is assembled ask leave to submit the following report:

First; the agreement that was presented last evening. That agreement is attached to this report and marked "A".

Second; the recommendation of said Committee of an Article to be incorporated into the Constitution to be submitted, respecting Territorial debts and liabilities, as provided in said Act of Congress, hereto attached, marked "B".

Your Committee also recommend the adoption as an Article of the Schedule of the Constitution, the Agreement of said Joint Commission concerning the records, books and archives of the Territory, the same to be preceded by the following words, to-wit:

"The agreement made by the Joint Commission of the Constitutional Conventions of North and South Dakota concerning the records, books and archives of the Territory of Dakota, is hereby ratified and confirmed, which is in the words and figures following, that is to say;"

Then follows the agreement, which is a part of the agreement reported. I ought perhaps to say in explanation of this report that the duty devolved upon this Commission, as the Commission interpreted it, was to deal with three different and independent items; first, the debts and liabilities of the Territory; second, the property of the Territory; third, the records and books of the Territory. As I stated to the Convention last night, upon the assembling of the Commission there soon developed a very radical difference in the views of the members of both Commissions as to the authority of the Commission in the disposition of the books and records. If the gentlemen will look at Sections 5 and 6 of the Omnibus Bill, they will see an apparent want of harmony between the two sections. One view was that the words "by the State" in Section 5 were used deliberately and with the evident meaning that the records should remain at Bismarck until after the organization of the different States and through their legislatures an arrangement was made for them. The other view was that this

disposition of the records was a part of the duty imposed upon this Commission, as recited in the next section of the Enabling Act, which says that this Commission shall also make disposition of the records and books of the Territory; and under these circumstances it was determined by a resolution adopted by the Commission early in their deliberations, that whatever agreement we did reach concerning the disposition of the books and records of the Territory, in order to bring it within the apparent terms of Section 5, should be reported to the Convention of each State, with a recommendation that that agreement be incorporated into the Schedule of the Constitutional Convention, and thus submitted, if ratified, it became the agreement of the States respectively.

I think that is all, Mr. President, that I have to say on the report. While we understood perfectly well that it was no part of the legitimate duty of this Commission to frame an article to be incorporated into the Constitution, as provided by the Enabling Act in reference to the debts and liabilities of the Territory, still, that act absolutely requiring the agreement reached to be incorporated into the Constitution, we agreed between ourselves that we would frame such an article and that it should be signed by all the members of the Commission and should be reported to each Convention, so that the article adopted by the North Dakota Convention and the article adopted by this Convention should be the same. It was thought better that they should be uniform; and so this Committee has gratuitously recommended an article, setting forth substantially this agreement, as an article which answers to the requirements of the Enabling Act. I might say further, as there may be no other opportunity, that under this agreement the Territorial library becomes, upon the taking effect of the agreement, the property of South Dakota. After the agreement was reached we caused a very accurate catalogue of all the books to be made, and this Committee has that catalogue, and, while it is no part of the duty imposed upon us, it perhaps ought to be returned to this Convention and taken care of until the books are taken possession of. I think there are about eight thousand volumes in the library.

In behalf of the Commission I will add that if in the examination of this agreement there should be anything that appears unintelligible, or anything in the agreement that gentlemen are dis-

posed to criticise, we would like to have an opportunity of explaining the circumstances under which that particular item was disposed of.

The President of the Convention: Do I understand you to move the adoption of this as a separate article of the Constitution?

Mr. Kellam, of Brule: I move the adoption of that part of the report which is marked "B" and referred to in the formal report, as a part of the Constitution, to be referred to the Committee on State Indebtedness, so that they may put it into its proper order in the article of the Constitution which they have the management of.

The President of the Convention: It is moved by the gentleman from Brule, that this be referred to the Committee on Municipal and State Indebtedness. Is the Convention ready for the question? As many as are of the opinion that the motion prevail, will say aye; those opposed, no. The ayes have it and the resolution is adopted.

Mr. Kellam, of Brule: I move that the second part of the report, which covers the agreement with reference to the books and records, be referred to the Schedule Committee.

The President of the Convention: It is moved by the gentleman from Brule that the second part of this report, that with reference to the books and records, be referred to the Committee on Schedule. Is the Convention ready for the question? All those of opinion that the motion prevail, say aye; opposed, no. The ayes have it and it is so referred.

Mr. Price, of Hyde: Mr. President, I move we adjourn.

Mr. Jolley, of Clay: Mr. President, I move we adjourn until nine o'clock tomorrow morning.

A Delegate: I second the motion.

Mr. Brott, of Brown: Mr. President, I have received a call from home that requires my presence there tomorrow, and as our duties are nearly over, I would ask to be excused from further attendance here, and I would ask that Mr. Stoddard be allowed to sign my name to the Constitution.

The President of the Convention: The gentleman from Brown asks that he be excused from further attendance upon the Convention and that Mr. Stoddard be allowed to sign his name to the

Constitution. If there is no objection, it is so ordered. There being no objection, it is so ordered.

It has been moved that the Convention now adjourn until nine o'clock tomorrow morning. As many as are of the opinion that the motion prevail, say aye; those opposed no. The ayes have it and the Convention stands adjourned.