

© 2008-2010, 2012-2013, 2015-2016, 2018-2019, 2020-2021, 2022-2023, 2024-2025, 2026-2027, 2028-2029, 2030-2031, 2032-2033, 2034-2035, 2036-2037, 2038-2039, 2040-2041, 2042-2043, 2044-2045, 2046-2047, 2048-2049, 2050-2051, 2052-2053, 2054-2055, 2056-2057, 2058-2059, 2060-2061, 2062-2063, 2064-2065, 2066-2067, 2068-2069, 2070-2071, 2072-2073, 2074-2075, 2076-2077, 2078-2079, 2080-2081, 2082-2083, 2084-2085, 2086-2087, 2088-2089, 2090-2091, 2092-2093, 2094-2095, 2096-2097, 2098-2099, 2100-2101, 2102-2103, 2104-2105, 2106-2107, 2108-2109, 2110-2111, 2112-2113, 2114-2115, 2116-2117, 2118-2119, 2120-2121, 2122-2123, 2124-2125, 2126-2127, 2128-2129, 2130-2131, 2132-2133, 2134-2135, 2136-2137, 2138-2139, 2140-2141, 2142-2143, 2144-2145, 2146-2147, 2148-2149, 2150-2151, 2152-2153, 2154-2155, 2156-2157, 2158-2159, 2160-2161, 2162-2163, 2164-2165, 2166-2167, 2168-2169, 2170-2171, 2172-2173, 2174-2175, 2176-2177, 2178-2179, 2180-2181, 2182-2183, 2184-2185, 2186-2187, 2188-2189, 2190-2191, 2192-2193, 2194-2195, 2196-2197, 2198-2199, 2200-2201, 2202-2203, 2204-2205, 2206-2207, 2208-2209, 2210-2211, 2212-2213, 2214-2215, 2216-2217, 2218-2219, 2220-2221, 2222-2223, 2224-2225, 2226-2227, 2228-2229, 2230-2231, 2232-2233, 2234-2235, 2236-2237, 2238-2239, 2240-2241, 2242-2243, 2244-2245, 2246-2247, 2248-2249, 2250-2251, 2252-2253, 2254-2255, 2256-2257, 2258-2259, 2260-2261, 2262-2263, 2264-2265, 2266-2267, 2268-2269, 2270-2271, 2272-2273, 2274-2275, 2276-2277, 2278-2279, 2280-2281, 2282-2283, 2284-2285, 2286-2287, 2288-2289, 2290-2291, 2292-2293, 2294-2295, 2296-2297, 2298-2299, 2300-2301, 2302-2303, 2304-2305, 2306-2307, 2308-2309, 2310-2311, 2312-2313, 2314-2315, 2316-2317, 2318-2319, 2320-2321, 2322-2323, 2324-2325, 2326-2327, 2328-2329, 2330-2331, 2332-2333, 2334-2335, 2336-2337, 2338-2339, 2340-2341, 2342-2343, 2344-2345, 2346-2347, 2348-2349, 2350-2351, 2352-2353, 2354-2355, 2356-2357, 2358-2359, 2360-2361, 2362-2363, 2364-2365, 2366-2367, 2368-2369, 2370-2371, 2372-2373, 2374-2375, 2376-2377, 2378-2379, 2380-2381, 2382-2383, 2384-2385, 2386-2387, 2388-2389, 2390-2391, 2392-2393, 2394-2395, 2396-2397, 2398-2399, 2400-2401, 2402-2403, 2404-2405, 2406-2407, 2408-2409, 2410-2411, 2412-2413, 2414-2415, 2416-2417, 2418-2419, 2420-2421, 2422-2423, 2424-2425, 2426-2427, 2428-2429, 2430-2431, 2432-2433, 2434-2435, 2436-2437, 2438-2439, 2440-2441, 2442-2443, 2444-2445, 2446-2447, 2448-2449, 2450-2451, 2452-2453, 2454-2455, 2456-2457, 2458-2459, 2460-2461, 2462-2463, 2464-2465, 2466-2467, 2468-2469, 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2478-2479, 2480-2481, 2482-2483, 2484-2485, 2486-2487, 2488-2489, 2490-2491, 2492-2493, 2494-2495, 2496-2497, 2498-2499, 2500-2501, 2502-2503, 2504-2505, 2506-2507, 2508-2509, 2510-2511, 2512-2513, 2514-2515, 2516-2517, 2518-2519, 2520-2521, 2522-2523, 2524-2525, 2526-2527, 2528-2529, 2530-2531, 2532-2533, 2534-2535, 2536-2537, 2538-2539, 2540-2541, 2542-2543, 2544-2545, 2546-2547, 2548-2549, 2550-2551, 2552-2553, 2554-2555, 2556-2557, 2558-2559, 2560-2561, 2562-2563, 2564-2565, 2566-2567, 2568-2569, 2570-2571, 2572-2573, 2574-2575, 2576-2577, 2578-2579, 2580-2581, 2582-2583, 2584-2585, 2586-2587, 2588-2589, 2590-2591, 2592-2593, 2594-2595, 2596-2597, 2598-2599, 2600-2601, 2602-2603, 2604-2605, 2606-2607, 2608-2609, 2610-2611, 2612-2613, 2614-2615, 2616-2617, 2618-2619, 2620-2621, 2622-2623, 2624-2625, 2626-2627, 2628-2629, 2630-2631, 2632-2633, 2634-2635, 2636-2637, 2638-2639, 2640-2641, 2642-2643, 2644-2645, 2646-2647, 2648-2649, 2650-2651, 2652-2653, 2654-2655, 2656-2657, 2658-2659, 2660-2661, 2662-2663, 2664-2665, 2666-2667, 2668-2669, 2670-2671, 2672-2673, 2674-2675, 2676-2677, 2678-2679, 2680-2681, 2682-2683, 2684-2685, 2686-2687, 2688-2689, 2690-2691, 2692-2693, 2694-2695, 2696-2697, 2698-2699, 2700-2701, 2702-2703, 2704-2705, 2706-2707, 2708-2709, 2710-2711, 2712-2713, 2714-2715, 2716-2717, 2718-2719, 2720-2721, 2722-2723, 2724-2725, 2726-2727, 2728-2729, 2730-2731, 2732-2733, 2734-2735, 2736-2737, 2738-2739, 2740-2741, 2742-2743, 2744-2745, 2746-2747, 2748-2749, 2750-2751, 2752-2753, 2754-2755,

)
)
,))
)
)
)) ,

Book, Ryland Merrill

HISTORY OF THE STATE CONSTITUTIONAL
CONVENTION OF 1889.

HISTORY OF THE STATE CONSTITUTIONAL CONVENTION OF 1889.

R. M. BLACK.

The twenty-first anniversary of the birth of our state seems to be a fitting occasion at which to write the history of the convention which secured our statehood. While there is much of similarity in the constitutional conventions of the different states, yet each one has some problems peculiar to itself. The twenty-one years of remarkable development of North Dakota is acceptable testimony to the fact that these problems were pretty well disposed of by the delegates that framed her organic law. The information has been gathered from the Journal and the Debates of the Convention, the Congressional records, the files of some of the newspapers of the time and other documents found at the capitol. But the most helpful information has come from the lips of men who were active participants in the events of the convention. The outline map of the delegate districts of 1889 is produced from maps and records found in the offices in the capitol.

SECURING THE ENABLING ACT.

The movement toward statehood began in the early history of Dakota Territory. For sixteen years the problem of division with the question of admission to the Union was constantly in the minds of her own politicians, and the ambitions of this territory engaged the attention of the statesmen at the national capitol for more or less time in each of fifteen sessions of congress.

As early as 1870 the people of the territory began to feel that the interests of all the people would be better served by dividing the territory on an east and west line near the center of its area. The territorial legislature of 1871 adopted a memorial to congress asking that the territory be divided into two parts on the forty-sixth parallel of north latitude, and similar acts were adopted December 31, 1872, December 19, 1874, and January 24, 1877.

On December 3, 1873, Senator Ramsey of Minnesota, introduced a bill to establish the territory of Pembina.¹ This bill was referred to the committee on territories, and was reported back March 23, 1874.² It received consideration in the senate May 28. An amendment was proposed to substitute "Algonquin" as its name. Stewart of Nevada, in the course of the debate said: "There is not sufficient good land in the whole of Dakota Territory to make more than one state. We are making too many small territories which could never

¹Congressional Record, 43rd Cong., 1st Sess., Vol. II. 29.

²Ib., II., 1331.

become states. It would be better to consolidate rather than divide." The bill was rejected.¹

The territorial delegate, Moses K. Armstrong, had introduced the same bill into the House on December 15, 1873.² On January 12, 1874, Armstrong presented a petition from citizens of northern Dakota praying for the organization of the new territory of Pembina.³ After waiting until March 14 for some action on the bill he obtained unanimous consent to have printed in the Congressional Record some remarks on this bill to organize this new territory out of the northern half of Dakota. He very forcibly set forth the claims of the citizens to consideration by the House.⁴

On February 15, 1875, Armstrong presented a petition from the legislature of Dakota Territory asking for division and the formation of a new territory from the northern part.⁵

The next attempt was to fare a little better only to die in the hands of the committee of the House. Senator Windom of Minnesota, on March 16, 1876, introduced a bill to establish the territory of Pembina and provide a temporary government for it.⁶ This was reported back from the committee on territories, April 10, without amendments, was considered and passed by the Senate, August 8, 1876.⁷ Kidder, the delegate from Dakota, introduced this bill into the House, but the bill came back from the committee with amendments, was recommitted, March 31, and no further action is reported.⁸

A memorial from the Legislature of Dakota Territory praying for division of the territory, and against its admission as a state with the present boundaries of the territory was presented to the next Congress.¹⁰ On January 7, 1879, Kidder, the delegate from Dakota Territory, introduced a bill to enable the people of Dakota to form a constitution and state government and for the admission of the state to the Union. This was read and referred to the committee on territories but no further action on the bill is reported.¹¹

On January 7, 1880, Bennett, the new delegate from Dakota Territory, introduced a bill to organize the territory of Pembina,¹² and on March 18th presented a petition from sixty-eight citizens of northern Dakota asking that the bill be amended by changing the name to North Dakota or Northern Dakota, and when so amended that the bill be passed, and at the same time he presented the petition of one hundred ten others of similar purport.¹³ On April 3rd there

¹Cong. Record, 43rd Cong., 1st Sess., I., 4345.

²Ib., II., 208.

³Ib., II., 602.

⁴Ib., I., 2164 and App., iii ff.

⁵Cong. Record, 43rd Cong., 2nd Sess., 1301.

⁶Cong. Record, 44th Cong., 1st Sess., 2128.

⁷Ib., 2340.

⁸Ib., 5274.

⁹Cong. Record, 44th Cong., 1st Sess., 245, 2128.

¹⁰Cong. Record, 45th Cong., 3rd Sess., Vol. VIII., 3.

¹¹Ib., VIII., 364.

¹²Cong. Record, 46th Cong., 3rd Sess., Vol. X., 223.

¹³Journal of the House of Rep., 46th Cong., 2nd Sess., 804.

was presented the petition of sixty-one citizens of Mapleton and another of one hundred twelve citizens of Grand Forks asking the change in name of the territory and the passage of the bill, and a petition from one hundred fourteen citizens of Pembina county urging the passage of the bill but making no requests as to change of the name of the new territory to be created. All were referred to the committee on territories.¹ On March 22, 1880, Senator Kirkwood, of Iowa, by request, introduced a bill to establish the Territory of Pembina.² On December 6, 1880, Bennett, the territorial delegate, introduced a bill to enable the people of Dakota Territory to form a constitution and state government and for the admission of the state to the Union on equal footing with the original states. This was read twice and referred to the committee on territories.³ Mr. Paddock, of Nebraska, introduced a similar bill, December 8, 1880.⁴ On February 3, 1881, Bennett presented a petition from citizens of Pembina county, Dakota Territory, for the division of the territory on the 46th parallel, and for the organization of the north half into a territory and the admission of the south half of the state.⁵

At the opening of the next Congress, Senator Windom, December 6, 1881, introduced a bill to admit the entire territory as a state. This was read twice and ordered to lie on the table to be referred to the committee on territories, when appointed. At the same time he introduced another bill to establish the territory of North Dakota.⁶ The same day Senator Saunders of Nebraska had introduced a bill for the admission of the entire territory,⁷ and Senator Davis of Illinois, had presented a petition from the citizens of Spink county, Dakota Territory, asking for admission.⁸ On December 19th, Pettigrew, the new delegate from Dakota Territory, introduced a bill for the admission of the entire territory, and on the same day a bill to establish the territory of North Dakota.⁹

On January 9, 1882, Senator Windom presented a memorial from citizens of the northern part of the territory in favor of a bill for dividing the territory and naming the northern part North Dakota.¹⁰ On the next day Senator McMillan presented a petition from Grand Forks asking for division and the passage of the bill creating a new territory and naming it North Dakota. The resolutions accompanying the petition were signed by W. T. Collins as president and B. D. Webster as secretary,¹¹ and on January 16, McMillan presented a similar petition from citizens of Grand Forks county, the proceed-

¹Cong. Record, 46th Cong., 2nd. Sess., Vol. X., 2115.

²Ib., 1769.

³Ib., Vol. XI., 11-12.

⁴Ib., 34.

⁵Ib., 1199.

⁶Ib., XIII., 21.

⁷Ib., XIII., 20.

⁸Ib., XIII., 18.

⁹Ib., XIII., 206.

¹⁰Ib., XIII., 264.

¹¹Ib., XIII., 303.

ings of the meeting in which this was adopted being attested by C. A. Burton as president, and Francis Knight, secretary.¹

On January 17 Speaker Kiefer presented to the House the petition which Senator Davis had presented to the Senate on December 6,² and on the 19th Senator Windom presented another petition from residents of the northern part of the territory asking for admission of the entire territory.³

On February 16 Burrows of Michigan, reported a substitute bill providing for the admission of Dakota as a state,⁴ and on February 25, Grout, of Vermont brought in a bill to divide the territory.⁵ This brought out a remonstrance from Reed of Maine, who, on March 5, 1882, presented a petition from citizens of Maine asking that the territory be not admitted on the ground that they had repudiated their bonded indebtedness.⁶ Senator Saunders, chairman of the committee on territories, on March 20, 1882, submitted a report of that committee, and presented a bill to enable the people of the territory to form a state constitution.⁷ The next day Senator Hale of Maine presented a remonstrance from creditors of a bond issue which was considered to have been repudiated and gave notice that he purported that the territory should not be admitted until its record was cleared of the repudiation. Senator McMillan of Minnesota took up the challenge warmly and asked the Senate to suspend judgment until the case was heard.⁸ The same day in the House a protest against the admission of the territory as a state unless the right of suffrage was extended to women was presented by Kelley of Pennsylvania.⁹ On March 22, in the House, a minority report against admission was presented and ordered printed.¹⁰ On March 27 the bill was recommitted on request of Senator Vest as he had not had an opportunity to consider the matter with the committee.¹¹ On April 5 Saunders brought in a majority report¹² and five days later Vest presented the minority report.¹³ On May 2nd another remonstrance in regard to woman suffrage was presented to Senator Ferry of Michigan,¹⁴ and on July 17 an attempt to suspend the rules and make the bill for the admission of the territory a special order was attempted by Burrows of Michigan, but the motion was lost as it failed to secure a two-thirds vote.¹⁵

On December 5, 1882, Senator Saunders gave notice that he would call up the bill for the admission of Dakota Territory stating

¹Cong. Record, 46th Cong., 3d Sess., XIII., 401.

²Ib., XIII., 460.

³Ib., XIII., 501.

⁴Ib., XIII., 1220.

⁵Ib., XIII., 1449.

⁶Ib., XIII., 1628.

⁷Ib., XIII., 2045.

⁸Ib., XIII., 2097-8.

⁹Ib., XIII., 2140.

¹⁰Ib., XIII., 2140.

¹¹Ib., XIII., 2277.

¹²Ib., XIII., 2598.

¹³Ib., XIII., 2725.

¹⁴Ib., XIII., 3493.

¹⁵Ib., XIII., 6156.

that the number of votes cast at the last election would relieve all doubts as to the sufficient population and that he would ask early action.¹ On December 7, Pettigrew, the delegate, presented a memorial from the citizens of the county which was charged with repudiation, explaining the condition of the bond issue, and asking authority to issue new bonds to liquidate all indebtedness of the county.² On January 5, 1883 Senator Ingalls presented a petition from citizens of Dakota praying for action on the bill to admit the territory and he asked the Senate to take early action.³ The statement of Senator Ingalls was challenged by Senator Vest and the challenge brought out sharp debate in which malignant and partisan opposition was charged and denied.⁴ On February 5, Representative Grout again moved the suspension of the rules in order to get the bill to establish a territory of North Dakota to an early hearing.⁵ A bill of 25 sections providing for complete territorial government of the new territory was read. The bill at this time met serious opposition in the House and the attempt to get it to an immediate hearing failed. In spite of the protests to the contrary political considerations in Congress were hindering favorable action on the bill to create the new territory.⁶ No definite action was taken on this bill at this session of Congress.

In June, 1883, a convention of one hundred eighty-eight delegates from thirty-four counties of the southern part of the territory met at Huron and resolved that the interests of the people of the territory (for all of whom they presumed to speak) demanded a division of the territory on the forty-sixth parallel, and they provided for a convention to be held at Sioux Falls to form a state constitution. This convention met at Sioux Falls in September, 1883, were in session fourteen days, and the results of their labors were submitted to the voters in forty-two counties of the southern half of the territory and carried by a vote of nearly two to one.⁷ But Congress never gave authority to this document.

On January 29, 1884 Senator Cameron introduced a bill to establish the Territory of North Dakota.⁸ On February 4, Maginnis, the delegate from Montana, introduced a bill to enable the people of North Dakota to form a constitution and be admitted to the Union.⁹ On the same day Senator Cameron introduced a similar bill into the Senate.¹⁰ On February 18, Senator Harrison presented a petition signed by Bartley Tripp and other citizens of Dakota Territory who represented a convention held at Sioux Falls on the 12 of the preceding September. This convention had framed a

¹Cong. Record, 46th Cong., 3d Sess., XIV., 23.

²Ib., XIV., 87. (The memorial explaining the bond issue is printed in full in the journal at the reference given).

³Ib., XIV., 870.

⁴Ib., XIV., 870-1.

⁵Ib., XIV., 2105.

⁶Ib., XIV., 2105-9.

⁷Ib., XVI., iii. Speech of Benjamin Harrison.

⁸Ib., XV., 713.

⁹Ib., XV., 866.

¹⁰Ib., XV., 844.

constitution for that part of the territory lying south of the 46th parallel. The constitution and other papers were submitted and Congress was asked to admit the southern part of the territory to statehood under the constitution. This was referred to the committee on territories.¹ The same day Senator Harrison introduced a bill to admit the entire territory of Dakota to the Union.² On February 29, Harrison, from the committee on territories reported a bill to enable the people of that part of the territory south of the 46th parallel to become a state.³ This bill was again reported with amendments from the committee on March 13, 1884.⁴ On April 1, Raymond, a delegate, presented a petition from outside parties asking that the territory should not be admitted and this seems to be the last action taken during this session of Congress.⁵

The bill to divide the territory on the 46th parallel and admit the southern half to the Union was considered in the Senate, December 9, 1884.⁶ Benjamin Harrison was chairman of the Senate committee on territories and he made an able plea in behalf of this bill. An interesting point in the series of debates upon this measure was the motion to change the name of the new territory to be organized out of the northern half of Dakota to Lincoln instead of North Dakota. This proposal came from Mr. Harrison, but seems to have received little consideration.⁷ In spite of opposition a bill to admit the southern half of the state passed the Senate December 16, 1884.⁸ This bill was referred to the House, January 28, 1885, but failed to pass in that body.⁹

The territorial legislature again passed a memorial to Congress, January 31, 1885, as follows:

"A joint resolution and memorial to the Congress of the United States, Praying for the Division of Dakota and for the admission of the southern portion of said territory as a state.

To the Honorable, the Congress of the United States:

"The Legislative Assembly of the Territory of Dakota respectfully represents:

"That the people of this territory earnestly desire the passage of the bill now pending in the House of Representatives, providing for the admission of the southern portion of Dakota as a state, and for the creation of a separate territory from the northern portion thereof, dividing the same on the seventh standard parallel, according to the government survey, or the forty-sixth parallel of north latitude in the discretion of Congress.

"The desire for division is so universal, and the reasons for it so

¹Cong. Record, 46th Cong., 3d Sess., XV., 1176.

²Ib., XV., 1177.

³Ib., XV., 1478.

⁴Ib., XV., 1824.

⁵Ib., XV., 2498.

⁶Ib., XVI., 109.

⁷Ib., XVI., 111.

⁸Ib., XVI., 282.

⁹Ib., XVI., 1038-1052.

apparent that the people of this territory have believed and still believe, that this measure of justice cannot be refused them.

"The probable division of the territory has been considered in the territorial conventions of both political parties at every meeting for the last thirteen years, and these conventions, in almost every instance without a dissenting voice, have invariably declared in favor of division.

"The Legislative Assembly of the territory has repeatedly memorialized your honorable body for division.

"Public institutions have been located and built with a view to division.

"Conventions have been held in each section to promote division, and delegations have been appointed to go to the capital of the United States to labor for division.

"The people of the territory have employed every possible form of respectful petition for division.

"The population and area of the territory justify division, and refusing it leaves both sections in an unsettled condition and operates to the serious disadvantage of both; the area of the territory is greater than the united area of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware and Maryland.

"The population of the territory shown by its vote, by the public lands occupied, by its postal and internal revenues, and by its banking and other business interests, is not less than 450,000, and there is good reason for believing it amounts to 500,000. The population of the southern portion, for which admission is asked, cannot fall much short of 300,000, and will soon exceed that figure.

"The climate, surface and soil of the territory are as well adapted to agricultural pursuits and the ordinary industries of the world as are the climate, surface and soil of Illinois or Iowa. The people of the territory have as great regard for the rights of others, and smart as keenly under a sense of injustice as those of any other state or territory.

"The revenue paid into the United States treasury by the people of Dakota, and all statistics obtainable prove that the population and material interests of the territory are sufficiently great to justify this consideration at your hands.

"No difficulty can arise as to the apportionment of the public debt of the territory, as it was created for the erection of public buildings, and the bonds clearly show for what purpose issued; those issued for public buildings in that part of the Territory south of the forty-sixth parallel should be paid by the southern division of the territory, and those issued for public buildings erected in the north should be paid by the northern division of the territory.

"The union of the two sections into one state would be unnatural, and would lead to endless difficulties.

"The division prayed for is wise. It will quiet, redress, prevent

difficulties and misunderstandings, which will arise if it is not granted, and will promote the interests of both sections.

"And although the people of all Dakota are earnestly in favor of the admission of the southern half as a state, still they will hail with joy the division of the territory.....and the admission prayed at the earliest possible date.

"And for your favorable consideration hereof your memorialists will ever pray.

"Resolved, That a copy of the above and foregoing memorial, signed by the president of the Council and speaker of the House, and attested by the chief clerks, be sent to the President of the United States Senate, the speaker of the House of Representatives of the United States, and to our delegate in Congress, the Honorable John B. Raymond."¹

A second constitutional convention within the proposed new state was held at Sioux Falls in September, 1885. This convention adopted a state constitution which was submitted to the people and carried by a vote of about four to one.²

This new constitution and a memorial from the convention was presented to the Senate by John Sherman, president pro tem, on December 15, 1885.³ On the same day Harrison introduced a bill to admit the state of Dakota and organize the territory of North Dakota.⁴ On December 18, Gifford, the delegate, had presented in the House the official papers from the convention held at Sioux Falls in the preceding September.⁵

The action of the Dakota people in forming a constitution and preparing for a state government without the authority of Congress brought out a sharp criticism from Senator Butler of South Carolina who offered resolutions instructing the committee on territories to inquire by what warrant or authority a so-called state legislature was organized in Dakota. This was on December 16 and on the two following days this resolution was debated in Congress but did not pass.⁶ On December 21, 1885, Frederick introduced a bill to enable the people of Dakota to form a state constitution.⁷ On January 11, 1886, Harrison, chairman of the committee on territories, reported a substitute bill in which he provided for the organization of the territory of Lincoln.⁸ This was debated for several days and was passed by the Senate, February 5, 1886.⁹ This bill was referred to the House committee on territories February 9,¹⁰ but was reported back adversely.¹¹

¹From a paper found in the collections of the State Historical Society of North Dakota.

²See speeches of Butler and Harrison, Cong. Record, 46th Cong., 3d Sess., Vol. 16, 213, 243-246, 301. (This constitution was amended in 1889 and adopted as the state constitution of South Dakota. R. M. B.)

³Cong. Record, 46th Cong., 3d Sess., XVII., 178.

⁴Ib., XVII., 179.

⁵Ib., XVII., 339.

⁶Ib., XVII., 213.

⁷Ib., XVII., 386.

⁸Ib., XVII., 948.

⁹Ib., XVII., 1171.

¹⁰Ib., XVII., 1295.

¹¹Ib., XVII., 4891.

On January 7, 1886, Gifford, the delegate, introduced a bill to admit the entire territory as a state.¹ On the 11, Joseph, the delegate from New Mexico, introduced a bill to divide the territory on the Missouri river and organize the Territory of Lincoln.² On February 8, Springer presented a bill to enable the people east of the Missouri to form a constitution and be admitted as a state.³ This was followed on March 29 by two bills introduced by Hill of Ohio; one to admit the entire state, the other to divide the territory and organize the territory of North Dakota.⁴ On April 26, Springer reported a bill to admit the entire territory as a state.⁵ Petitions to divide the territory on the 7th Standard Parallel were presented on April 12, 28, and May 5.⁶ And on May 3, Baker introduced a bill to establish the territory of North Dakota, but this was reported back adversely.⁷ On January 18, 1886, of this session, Harrison had introduced a resolution to admit Moody to the floor of the Senate for the present session. Moody had been elected senator in the movement which had created the provisional government at Sioux Falls. This resolution was strongly debated but finally passed.⁸

Soon after the opening of the next session of Congress, Springer (December 13, 1886) introduced a bill to enable the people of Dakota, Montana, Washington and New Mexico to form constitutions for admission into the Union.⁹ This did not receive consideration and an attempt on February 18, 1887, to fix a date for the hearing of this and other bills failed¹⁰ and no further congressional action was taken in regard to the admission of Dakota by that Congress.

In 1887 the constitution previously formed at Sioux Falls was submitted to the people of the entire territory by act of the territorial legislature.¹¹ An act to submit the question of the division of the territory to a vote of the people passed the Council March 7, 1887,¹² and the territorial House on March 11.¹³ This was submitted to the voters November 8, 1887, and carried by a good majority.¹⁴ The territorial legislature again sent a memorial to Congress asking for division and admission to statehood, but a great presidential campaign was approaching.¹⁵

On December 12, 1887, Manderson introduced a bill to admit the southern part to statehood and organize the northern part as the

¹Cong. Record, 46th Cong., 3d Sess., XVII., 527.

²Ib., XVII., 597.

³Ib., XVII., 1220.

⁴Ib., XVII., 2886.

⁵Ib., XVII., 3837-4891.

⁶Ib., XVII., 3416, 3955, 4222.

⁷Ib., XVII., 4105, 4891.

⁸Ib., XVII., 701, 741-6.

⁹Ib., XVIII., 121.

¹⁰Ib., XVIII., 1922-3.

¹¹Ib., XIX., 2803. See speech of Platt.

¹²Council Journal, Dakota, 1887, 617.

¹³House Journal, Dakota, 1887, 885.

¹⁴Cong. Record, 46th Cong., 3d Sess., XIX., 2807-8. Speech of Platt.

¹⁵Ib., XIX., 5111, and speech above cited.

territory of Lincoln,¹ and on the same day Senator Turpie introduced a bill to admit to statehood Washington, Dakota, Montana, and New Mexico.² January 4, 1888, Springer, introduced a bill to admit the entire territory of Dakota.³ Baker presented a bill to admit South Dakota and organize the territory of North Dakota, and Gifford, the delegate, a bill to admit North Dakota to statehood.⁴ The next day Platt introduced a bill to admit North Dakota to statehood.⁵ And on the 10, Voorhees, the delegate from Washington, introduced a bill to admit Washington, Dakota, Montana and New Mexico.⁶ On January 23, Manderson's bill was reported back with amendments and on January 25, Butler presented a substitute bill for the admission of the entire territory of Dakota.⁷ Mr. Springer, the chairman of the committee on territories of the House, reported, March 13, 1888, a bill to enable the people of Dakota, Montana, Washington and New Mexico to form state constitutions and be admitted.⁸ On April 9, to the 19, these bills were debated in the Senate.⁹ April 19, 1888, a bill to admit Dakota passed the Senate.¹⁰ On June 11th, Gifford, the delegate, presented a memorial for the division of the territory and the admission of both parts,¹¹ but no bill to admit the Dakotas was passed by the House at this session.

In 1883 the territorial capital was removed from Yankton to Bismarck, and this added to the discontent of the different parts of the territory and hastened division.

Three conventions had been held under the leadership of men interested in the division of the territory and the admission of North Dakota. In September, 1883, a call was issued to the mayors of the cities of northern Dakota to meet in Fargo to take some concerted action looking towards the admission of the territory as a whole or its division. The delegates met over the electric light office in the city of Fargo, and resolutions were adopted in favor of admission or division.

The next convention of this character was the one held in Aberdeen in 1887. Major Edwards of Fargo was again one of the leading members. This convention is commonly known as the "Wind Convention." The north half of the territory and Brown county (now in South Dakota) sent delegates to this convention, where a resolution was passed that the territory should be divided into two states, the northern half to be called North Dakota.

Another convention was called at Jamestown (in 1888). A committee of five was appointed to memorialize Congress asking for ad-

¹Cong. Record, 46th Cong., 3d Sess., XIX., 22.

²Ib., XIX., 29.

³Ib., XIX., 209.

⁴Ib., XIX., 224-234.

⁵Ib., XIX., 258.

⁶Ib., XIX., 362.

⁷Ib., XIX., 615-91.

⁸Ib., XIX., 2021.

⁹Ib., XIX., 2802, 3124, 3140.

¹⁰Ib., XIX., 3140.

¹¹Ib., XIX., 5111.

mission to statehood and the passage of the Springer bill. This committee, of which M. N. Stevens of Lisbon, was chairman, met in Fargo and adopted a memorial and appointed Mr. Stevens as a committee of one to present the memorial to Congress. At Washington he met with the South Dakota committee and their efforts were successful in securing in the bill the provision for two states out of Dakota Territory.¹

Believing that the desired boon of statehood could be more easily secured by being well prepared the Legislative Assembly of 1889 provided for a constitutional convention for North Dakota. This bill was introduced into the Territorial Legislature on January 9, 1889,² and passed that body January 26th.³ It was reported to the Council and passed that body February 3, 1889.⁴

In January, 1889, the battle in Congress for the admission of the Dakotas began in earnest. Heretofore the Senate had been more willing to admit these territories and the bills had failed in the House. In this session of Congress, the House led in the consideration of bills to admit the territories. On January 15, 1889, Springer, the chairman of the committee on territories in the House called up the former bill and it was amended and debated the same day. It provided for the admission of Dakota, Washington, Montana, Idaho, and New Mexico, or "in lieu of the state of Dakota the states of North Dakota and South Dakota."⁵ This bill was debated on the next three days and on January 18 it was amended and passed by the House.⁶ On January 19 it was referred to the committee on territories in the Senate.⁷ On January 21, Gifford, the delegate, presented a joint resolution from the legislature of Dakota Territory urging the passage of the bill.⁸ Numerous petitions were being received all asking for the admission of the territories to statehood. On February 1, the House amendments were not concurred in by the Senate and a conference of the two Houses was asked, and conferees were at once appointed by the Senate.⁹ The House appointed its conferees on February 2,¹⁰ but the conference reported a disagreement and submitted its report to each house.¹¹ On February 14, the conference report was considered in the House and instructions were given to the conferees,¹² and a second conference was appointed.¹³ The report of this second conference was made to the Senate February 20, was debated and agreed to.¹⁴ On the same day (February 20) the House agreed to the report of the con-

¹From M. N. Stevens.

²House Journal, 18th Session, Dakota, 1889, 10.

³House Journal, 18th Session, Dakota, 1889, 229.

⁴Council Journal, 18th Session, Dakota, 1889, 256.

⁵Cong. Record, 46th Cong., 3d Sess., XX., 795, 798, 829.

⁶Ib., XX., 899, 934-5, 951.

⁷Ib., XX., 991.

⁸Ib., XX., 1062.

⁹Ib., XX., 1390.

¹⁰Ib., XX., 1425.

¹¹Ib., XX., 1640-1727.

¹²Ib., XX., 1904.

¹³Ib., XX., 1916.

¹⁴Ib., XX., 295, 2104.

ference and after a brief debate passed the bill.¹ The bill was sent to the president and his message of approval reached the Senate February 22, 1889.²

The debates in Congress were followed with much interest by the people of Dakota. One paper says, "Last Tuesday was the time fixed by Congress for the consideration of the bill for the admission of Dakota. At 1:30 Springer arose and merely opened the battle, then came Cox, followed by Gifford, the delegate. He was followed by Toole of Montana, who made an able effort and scored the administration in a scathing manner."³

An abstract of Springer's speech was given later: "The proposition calls for the admission of five states if Dakota divides, if not it will bring in four states. . . . South Dakota has no grounds to claim distinction although more populous. North Dakota, Montana, Washington and New Mexico each have a population above the ratio of representation. It is idle to speculate upon the future politics of these new states."⁴ Also a brief extract was given of Mr. Cox's speech: "Territorial organization is an alien system. Our fathers would have none of it in the Revolution, and our countrymen were prompt to get rid of it after our civil war."⁵ "The Washington correspondent writes that the Omnibus Bill passed the House on February 20. The report was agreed to in the Senate without division. Representatives Baker and Springer called on the president on the 21 and gave him a printed copy of the bill as finally adopted by both houses. The enrolled copy was taken to him later in the day. The representatives stated that it was the desire of the members on both sides of the house that the bill should be signed on Washington's Birthday as a matter of sentiment." The president, of course, did not say that he would comply with the request, but he seemed willing to take that sentimental view of the subject."

In describing the scenes in Congress for the Dakota people the correspondent says: "The Senate followed the action of the House in adopting the bill for the admission of the four northern territories. . . . Springer and the three territorial delegates followed the report over from the House and sat on the Senate sofas during the debate, while Judge Moody and several other Dakota visitors occupied seats in the galleries.

"It took an hour to read the bill. . . . There was a wild scene in the house when the bill passed. The more enthusiastic members took from their seats the great bundles of papers, congressional records, books, and anything in sight and hurled them high in the air. Then began a general handshaking which lasted for some ten minutes. The Minnesota delegation, headed by McDonald,

¹Cong. Record, 46th Cong., 3rd Sess., XX., 2112-2116.

²Ib., XX., 2195.

³Richland County Gazette of January 18, 1889. (Washington Correspondent.)

⁴Same, issue of February 8.

⁵Same, issue of March 1, 1889.

marched to Mr. Springer's desk, and each in turn shook the hand of the chairman of the territorial committee. The territorial delegates, headed by Mr. Gifford, Mr. Toole of Montana, and Mr. Voorhees of Washington were all recipients of the warmest congratulations. The delegation of visiting Dakotans, prominent among them Delegate Mathews, held an informal jollification meeting in the main corridor. They intercepted Springer on his way to the Senate and he had to run another gauntlet of congratulations. Springer was half sick with a cold, caught sitting up nights over the bill, but is as happy as a boy."

And again: "The residents of the territories of North Dakota, South Dakota, Montana and Washington were the happiest men in Washington on the 22. They were in a position to celebrate. President Cleveland signed the territorial bill. He seemed to recognize the poetry of signing an act to admit the territory of Washington to statehood with three big states on the anniversary of the birthday of the father of his country.

"There were a dozen Dakota men in the corridors at the time. Their faces shone like spring days when they heard the news, and each one hastened to telegraph to his friends in the northwest.

"There was great satisfaction expressed on both sides of the House of Representatives when it was generally known that the president has signed the territorial bill. Shortly after the House met, a special messenger from the White House brought the following autograph letter to Mr. Springer: 'Hon. Wm. Springer: My Dear Sir—I signed the bill for the admission of the new states at 11 o'clock this morning. Yours very truly, Grover Cleveland.'"¹

THE ENABLING ACT AND ELECTION OF DELEGATES.

So far as the Enabling Act applied to North Dakota, it provided that the area of the territory of Dakota should be divided on the line of the seventh standard parallel produced due west to the western boundary of the territory and that each part should elect delegates to a constitutional convention and that for North Dakota this convention should meet at Bismarck, the territorial capital, on July 4, 1889.²

The voters to elect these delegates were to be those qualified to vote for representatives to the legislative assembly, and the qualifications of a delegate were to be such as by the laws of the territory persons were required to possess to be eligible to the legislative assembly.

"There were to be seventy-five delegates, three from each of twenty-five districts, which districts were to be determined by the governor, the chief justice and the secretary of the territory, in proportion to the population in each district as near as could be as-

¹The Richland County Gazette of March 1, 1889.

²Official Report of Proceedings and Debates of the First Constitutional Convention of North Dakota, Bismarck, 1889, pp. 5-17.

certained at the time. It was also provided that no elector should vote for more than two persons for delegates.

Some conditions were imposed upon the new states which must be "irrevocable without the consent of the United States and the people of said states." There were four items: 1. The perfect toleration of religious sentiment. 2. The disclaiming of all title to Indian lands, that the lands of non-residents should never be taxed at a higher rate than lands belonging to residents, and that no taxes should be imposed by the states on lands or property of the United States. 3. That the debts and liabilities of the territories should be assumed and paid by the states respectively. 4. That provision should be made for a system of public schools, which should be open to all children and free from sectarian control.

A joint commission was to be appointed by the constitutional conventions of the Dakotas to assemble at Bismarck and agree upon an equitable division of the property belonging to the territory of Dakota, the disposition of the public records and the adjustment of territorial debts.

The names of the new states were given in the act and it was provided that if either constitution should be rejected the part rejecting should be continued under the territorial government to be known as the territory of North Dakota or South Dakota as the case might be, and the governor was to reconvene the delegates to form a new constitution or amend the rejected constitution and again submit it to the people. If both constitutions should fail the territorial government of Dakota was to continue the same as if this act had not been passed. The constitution was to be submitted to a vote of the people on the first Tuesday in October, 1889, and the voters were to vote directly for or against the proposed constitution and for or against any articles, or propositions, separately submitted. If the constitution was adopted it was to be certified by the governor to the president of the United States who, if all provisions had been met, would issue his proclamation admitting the state to the Union.

Each state was to receive sections sixteen and thirty-six of the public lands for the support of common schools, and 500,000 acres of other lands for state institutions, and none of this land was to be sold at a price less than ten dollars per acre.

The new state was to have one representative in the House of Representatives of the United States, was to constitute one judicial district and was to be attached to the Eighth Judicial Circuit, and provision was made to adjust present courts and judicial proceedings to the new courts to be established. The sum of \$20,000 was appropriated for defraying the expenses of the convention, and, the convention was empowered to provide for the election of officers for full state government including members of the legislature and a representative in Congress, such state government to remain in abeyance until the state should be admitted to the Union.

In accordance with the provisions of this act, Governor Mellette, the chief justice, Bartlett Tripp, and the secretary of the territory, L. B. Richardson, from the best information available, divided the part of the territory north of the seventh standard parallel into twenty-five districts,¹ and on April 15 the governor issued a proclamation calling for an election to be held on May 14, 1889. This call gave official announcement to the districts into which the territory of the future state had been divided.²

The prospect of statehood put the common good of all uppermost in the minds of the people. The first wish was to secure the best constitution that could be framed. A good indication of public sentiment is given in an editorial in the Bismarck Daily Tribune: "Judging from the tone of the press throughout North Dakota there is a tendency to lay aside factional feeling and send the very best men to the constitutional convention. If this spirit prevails on the day of election, the convention which convenes in Bismarck on July 4, will be a credit to the state. North Dakota has an abundance of ability and in the important work of forming her state constitution this is a fund she should draw upon."³

Throughout the different districts caucuses were held to choose delegates to the district conventions. This gave an opportunity to those places having "favorite sons." Lively contests occurred in Burleigh county to secure support for E. A. Williams, a popular resident of Bismarck.⁴ A heated contest on party lines was predicted in Grand Forks county.⁵ The Tribune called attention to the fact that the Enabling Act gave the Democrats one-third of the delegates but urged the Republicans of the Missouri Slope not to be lax in doing their duty for their party.⁶ The next day it suggested that Williams, Harris and Judge Carland would give the district representation second to none.⁷

The provision in the Enabling Act that each elector should vote for only two delegates was for the purpose of minority representation, but out of the twenty-five districts only twelve nominated two from each party, and nine of these twelve districts nominated two republicans and two democrats, one nominated two each of republicans, democrats, prohibitionists, and people's candidates, one had two each of republicans, democrats and prohibitionists, and one had two republicans, two independents and one democrat. Four districts nominated three republicans and one democrat, two districts nominated two republicans and one democrat, one district had three republicans, two democrats, and one independent; another district had three republicans and two democrats, another three republicans

¹See map of districts, p. 152.

²See appendix, p. 153.

³Bismarck Daily Tribune, April 17, 1889.

⁴Bismarck Daily Tribune, May 3, 1889.

⁵Bismarck Daily Tribune, May 3, 1889.

⁶Bismarck Daily Tribune, May 9, 1889.

⁷Bismarck Daily Tribune, May 5, 1889. Judge Carland was a very able Democrat and the three were elected.

one democrat and two prohibitionists; two districts had three republicans only, and two districts four republicans and no democrats. There were one hundred eight different people nominated, of whom sixty-three were republicans, thirty-four democrats, six prohibitionists, three independents and two people's candidates.¹ There was no contest in three of the districts, but the scattering of the minority gave the republicans a larger number of delegates than would be expected with minority representation.

Editorially the Tribune remarked that: "We do not want minority representation in the constitution of North Dakota. Let the majority rule." This was before the election, when one third of the convention was conceded to the democrats.² In Grand Forks county eight out of nine elected from the three districts were republicans.³

Many of the nominees were unknown in political life outside their part of the state. The Tribune said: "The reader is impressed with the lack of familiar names among the delegates nominated. A new crop of statesmen is springing up."⁴

Tuesday, May 11, 1889, was one of those days occasionally experienced in northern latitudes. It was a stormy day all over the territory and a light vote was polled.

"Going to the polls in sleighs on the 14 of May to elect delegates to the constitutional convention was a novelty never to be forgotten by those who participated."⁵ The election settled all contests, for the Bismarck Daily Tribune of May 18, gave the lists of successful candidates, and they are the same as the membership of the convention.

THE MEMBERS OF THE CONVENTION

As provided in the Enabling Act the delegates from the northern part of the territory met at Bismarck on July 4 to organize the convention. The political composition of the convention is usually given as fifty-six republicans and nineteen democrats, but from the nominations of those elected, the numbers would be fifty-one republicans, nineteen democrats, two prohibitionists, two people's candidates and one independent.⁶ In the convention the five from the minor parties were considered republican delegates.

Fifty-two of the seventy-five delegates were born in the United States, of whom Wisconsin contributed 13, New York 10, Iowa 5, Ohio 4, Maine 3, Pennsylvania 3, Illinois, Indiana, Connecticut, Minnesota and Vermont each 2, Massachusetts, Michigan, New Hamp-

¹This analysis is made from the list of nominees in the Bismarck Daily Tribune of May 13, 1889, and the list of members elect as given in the same periodical of July 2, 1889.

²Bismarck Daily Tribune, May 10, 1889.

³Bismarck Daily Tribune, May 20, 1889.

⁴Bismarck Daily Tribune, May 14, 1889.

⁵Bismarck Daily Tribune, May 15, 1889.

⁶A. W. Hoyt of the sixth district was considered an independent, Messrs. Selby and Nowland of the nineteenth district were called people's candidates, and R. M. Pollock of the thirteenth and E. D. Wallace of the eighteenth were known as Prohibitionists. Bismarck Tribune, May 13, 1889.

shire and New Jersey each 1. Ten were born in Canada, five in Norway and Sweden, three in England, three in Scotland, and two in Ireland. In ancestry they were American 22, English 15, Irish 12, Scandinavian 10, Scotch 6, Scotch-Irish 3, Scotch-American 2, Scotch-Danish 1, German 2, Dutch 1, Welsh 1.¹

As might be expected in an agricultural state, the farmers outnumbered those of any other occupation. There were 29 farmers, 25 lawyers, 9 merchants, 5 bankers, 3 real estate dealers, 2 publishers,² 1 doctor, and one railroad man.³ While the lawyers were ever ready to lead the discussions, it is interesting to note that some of the keenest debaters came from the ranks of the farmers.⁴

It was a young men's convention. Sixty-five per cent of the delegates were under forty years of age, the average age being 39½ years. Four of the delegates were still in their twenties. Only nine were past fifty, four were sixty or over, the oldest being sixty-five and the youngest member in his twenty-seventh year.

One of the delegates, Mr. Stevens, in a presentation speech, characterizes the members from personal acquaintance: "In behalf of Messrs. Leach, Chaffee, Gray, Turner, Richardson, McKenzie, Wallace and Bartlett of Dickey, whose gray hairs and years of experience lent dignity to this convention; in behalf of Brothers Carothers, Sandager and Brown and Linwell and Glick, whose youth has lent fire to this convention; in behalf of Messrs. Miller, Williams, Lauder, Purcell, Moer, Bartlett of Griggs, Johnson, Rolfe, Flemington, McHugh, Fay, Carland, Camp, Spalding, O'Brien, Noble and Parsons of Morton, whose voices have been heard more times than those of all other members; in behalf of Messrs. Griggs, Marrinan and Budge, who have sat silent, but who have been industrious members."⁵

Of these delegates two since have been governor of North Dakota and three have represented their state in Congress.⁶ With the political complexion as it was, there was little of the petty partisan spirit shown in the work of the convention. On the election of the permanent president there was almost a strict party vote. F. B. Fancher, republican, received 52 republican and two democratic votes. John E. Carland, a democrat, received fifteen democratic votes and one republican vote.⁷ But this was simply an expression of loyalty as both candidates were popular men. The president of the convention gave to the democratic members representation on the permanent committees equal to their proportion of the whole num-

¹Biographies of the members are given in the Bismarck Daily Tribune of July 6, 1889.

²One of these, Chas. V. Brown, was a farmer as well as a publisher.

³Bismarck Daily Tribune, July 6, 1889. Official Report of Proceedings and Debates of the First Constitutional Convention of North Dakota, pp. 5-17.

⁴L. D. Bartlett, F. B. Fancher and E. D. Wallace were among the best debaters in the convention; by occupation they were farmers.

⁵Official Report of Proceedings and Debates, 648.

⁶Roger Allin, 1895-7, and F. B. Fancher, 1899-1901, have been governor. M. N. Johnson, 1891-9, and B. F. Spalding, 1899 to 1901, 1903 to 1905, were representatives in Congress. M. N. Johnson, 1909, and W. E. Purcell, 1910, U. S. Senators.

⁷Journal of the Constitutional Convention, 3-4.

ber of delegates and chairmanships were also distributed in the same proportion.¹

METHODS OF PROCEEDURE IN THE CONVENTION

On Thursday, July 4, at 12 o'clock, the delegates met in the hall of the House of Representatives at the capital of the territory, and were called to order by Hon. L. B. Richardson, the secretary of the territory, who called upon the Rev. Anderson, a pastor at Bismarck, to lead in prayer. After the prayer, Secretary Richardson briefly addressed the delegates and acted as chairman until a temporary chairman was elected by the delegates. A temporary secretary and stenographer were chosen, and the motion made to elect a permanent chairman. This motion was amended to elect a chairman pro tem and a call of the roll was asked, but no roll had been made up. F. B. Fancher of Jamestown, was elected temporary chairman. The chairman appointed a committee of three on credentials and a committee of ten on rules for permanent organization.²

The committee on credentials reported the second day, the oath of office was administered to the delegates by the Hon. Roderick Rose, an associate justice of the territorial supreme court, and the convention proceeded to the election of a permanent president. F. B. Fancher of Jamestown and John E. Carland of Bismarck, were nominated. Fancher was elected by fifty-four votes to sixteen for Judge Carland, five delegates being absent. Fancher's election was made unanimous.³ There seems to have been some question as to the legality of the committee on rules which had been appointed under the temporary organization, so a committee of seven was appointed on rules as the first official act of the permanent president.⁴

On Monday, July 8, other officers were elected from outside of the membership of the convention to complete the permanent organization as follows: chief clerk, enrolling and engrossing clerk, watchman, messenger, chaplain, sergeant-at-arms, stenographer, and four pages. The oath of office was administered to these by the president of the convention.⁵ Immediately after this the delegates declared the adoption of the constitution of the United States.

The rules reported by the committee were considered by the convention in committee of the whole and then adopted by the convention. These rules were forty-five in number and provided a complete code of parliamentary practice supplementing Robert's Rules of Order, which was declared to govern in the convention where applicable and not inconsistent with the standing rules.⁶ The rules provided for twenty-three standing committees as follows: on printing, reporting and publication, accounts and expenses, preamble and bill of rights, legislative department, executive de-

¹Official report of Proceedings and Debates, 348. Speech of Mr. Purcell.

²Ib. 20-21.

³Ib., 20-21.

⁴Journal of the Constitutional Convention, 3, 4.

⁵Ib., 6-7.

⁶Ib., 8ff.

partment, judicial department, elective franchise, education, public institutions and buildings, public debt and public works, militia, county and township organization, apportionment and representation, revenue and taxation, municipal corporations, corporations other than municipal, miscellaneous subjects, schedule, school and other public lands, temperance, revision and adjustment, impeachment and removal from office. These committees consisted of from five to fifteen members (always an odd number), except the committee on apportionment and representation which consisted of twenty-five members, one from each district.¹

The convention sat with open doors, and the gallery was occupied by an attentive and appreciative audience of men and women, whose presence frequently inspired the oratory of the delegates or reflected the sentiment of the public mind.

Several distinguished visitors were present in the session and addressed the convention. Governor Arthur C. Mellette on July 11, spoke, calling attention to two policies in constitution making; one to embody only fundamental principles in the organic law, leaving the details to be worked out in future legislation, the other a later policy, to embody all legislation in the fundamental law which can safely be placed there. "But if it is right and if you know what is the proper thing to embrace in your legislation, the more there is in the constitution the better for the people. One of the greatest evils is excessive legislation, the constant change every two years of the laws, and the squabbles and debates over the different questions that constantly arise. It is wise, in my judgment, after the people have decided in which direction their interests lie, to embody them in a fundamental law of the land and make it permanent." He also plead for the purity of the ballot, "If you can secure it, it will not be obtained at too high a cost,"² On the same day the Rev. R. C. Wiley of the National Reform Association addressed the convention urging legislation for Sabbath observance, for regulating marriage and divorce, for instruction in the principles of virtue, and Christianity and morality in the schools, and the recognition of God and Christ in the constitution.³ On July 17, Judge Cooley of Michigan addressed the convention stating that many new questions were vital today which were unknown to the constitution makers of a hundred years ago. He advised the delegates to remember that times change and the legislature should not be prevented from meeting those evils which are sure to come. "Don't in your constitution-making legislate too much. In your constitution you are tying the hands of the people. You have got to trust somebody in the future and it is right and proper that each department of government should be trusted to perform its legitimate function."⁴

¹Journal of the Constitutional Convention, 10.

²Official Report of Proceedings and Debates, 44-7.

³Ib., 49-52.

⁴Ib., 65-7.

On August 5, two members of the United States Senate committee on irrigation of arid lands were present. Senator Stuart, chairman of that committee, was introduced and spoke on irrigation and its benefits and possibilities in the Northwest.¹ He was followed by Senator Regan of Texas. Major Powell, the director of the geological survey, was also present and spoke on irrigation, advising the delegates to allow no capital or corporation to secure possession or right to the natural waterways of the state. "Hold the waters in the hands of the people."² On July 8, Mr. Henry B. Blackwell of Boston addressed the convention in behalf of woman suffrage urging the delegates to grant the ballot to women or at least to place a clause in the constitution empowering the legislature to extend the suffrage to women in the future.³ On July 30, Mr. Buell of Minneapolis spoke on the subject of the single tax.⁴

Several matters of interest beyond the territorial boundary were before the convention. An invitation to attend the waterways convention then in session in that city was received from the Chamber of Commerce of West Superior, Wisconsin. This was referred to a special committee of five.⁵ On the second day telegrams of greeting came from the constitutional conventions of South Dakota at Sioux Falls, and the one of Washington at Olympia.⁶ Pres. Fancher, then temporary chairman, replied to these and to the message from the convention of Montana. Idaho waited until its constitution was completed and on August 8 sent in its congratulations announcing its complete preparation to enter the sisterhood of states.⁷

A petition was received from the persident of the American Sabbath Union of New York, asking for a provision to protect and encourage Sabbath observance, and suggesting a clause for the constitution. Two weeks later its field secretary sent a communication of the same purport.⁸ The same day another communication was received from New York state in behalf of those who conscientiously observe the seventh day of the week as the Sabbath.⁹ On July 30, a message was received from the brigadier-general commanding the department of Dakota (at St. Paul, Minn.) asking that a clause be inserted in the constitution by which jurisdiction over the military reservations of the five forts in the territory of the new state should be reserved by the United States.¹⁰

At the time of this convention there was much rivalry among

¹Official Report of Proceedings and Debates, 397, 405.

²Ib., 410ff.

³Ib., 34ff. See section 122 of the Constitution where such a clause may be found in that instrument.

⁴Journal of the Constitutional Convention, 156. and Bismarck Daily Tribune of July 30, 1889. This speech is not printed in the volume of debates.

⁵Journal of the Constitutional Convention, 13.

⁶Official Report of Proceedings and Debates, 22.

⁷Bismarck Daily Tribune, July 5, 1889.

⁸Journal of the Constitutional Convention, 122, 189.

⁹Ib., 189.

¹⁰Ib., 155.

some half dozen cities for the location of the World's Fair. It was thought by the members of the convention that it would be building up the resources of their own state by having this exposition as near as they could get it, and as each state and territory was asked for an expression, it was considered that the new convention represented the new state of North Dakota. So a resolution was adopted endorsing Chicago as the site for the World's Fair.¹

The privilege of the floor had been extended to representatives of the press that editors and newspaper reporters might be admitted within the bar of the house,² and the representatives of the press had availed themselves of this privilege and had placed copies of their papers on the desks of the members. The Devils Lake Capital had editorially cast a slur on the persident of the convention which was thought to be a blow at the dignity and respect which the convention should maintain.³ A resolution was offered withdrawing the privilege of the floor from the editor of this paper, but the resolution was tabled.⁴

By the provisions of the enabling act Bismarck was the place of meeting of the delegates and the regular sessions of the convention were held in the hall of the house of representatives. Rooms for the work of committees had to be secured, so a committee of three was appointed to ascertain the needs of the convention and to find necessary rooms, and to learn whether the expenses could be paid out of the congressional appropriation.⁵ The next day this committee reported that there were five rooms in the capital building and six rooms in the First National Bank block which could be rented. The territorial secretary was of the opinion that the congressional appropriation did not cover the rent of rooms outside the capitol building. This report of the committee was placed on file.⁶ The committees made use of the rooms in the capitol, and some of them held frequent meetings at the hotel. The Joint Commission met in the governor's office.⁷

On July 24, a memorial was presented from the mayor of Jamestown, B. W. Fuller, inviting the convention to adjourn to that city for the remainder of the time required to complete the constitution. The mayor guaranteed rooms for the work of the convention free of expense, and entertainment for members of the convention.⁸ This at the time it was presented caused no comment and no action was taken. The next day, Camp, a delegate from Jamestown, moved that the memorial be referred to a special committee of three

¹Journal of the Constitutional Convention, 303; Official Report of Proceedings and Debates, 599, 600.

²Journal of the Constitutional Convention, 303.

³Official Report of Proceedings and Debates, 27. Speech of M. N. Johnson.

⁴Journal of the Constitutional Convention, 5.

⁵Ib., 15.

⁶Ib., 18.

⁷Bismarck Daily Tribune of July 17, July 19, July 24, 1889, and Official Report of Proceedings and Debates, 678.

⁸Journal of the Constitutional Convention, 126.

to be appointed by the president.¹ Whatever may have been the expectation of the mayor and citizens of Jamestown, this committee the next day reported recommending that the convention "do not accept the invitation, and that the clerk be instructed to inform the Hon. B. W. Fuller of the decision of the convention."² This report was adopted and Bismarck, the place chosen by Congress, remained the seat of the convention.

The convention completed its work on the forty-fifth day of its session. Of these forty-five days, six were Sundays, and of the remaining thirty-nine days, seven were passed in adjournment, leaving thirty-two days on which the convention were actually in session.

The rules provided for a single session each day, "except Sunday, until otherwise ordered." This session was to be opened at 2 p. m.³ (and was always opened with prayer). This gave the evening and forenoon for committee work and was the regular order up to July 31, the twenty-eight day of the convention. By this time the work of many of the committees was pretty well completed, and the debates were taking more of the time and attention of the delegates.⁴ It was felt that the convention needed more time for discussions and less for committee work, so two daily sessions were considered. A motion was made that when the convention adjourn it reassemble at 10 o'clock a. m., August 1. A substitute resolution was adopted, "That this convention hold two sessions daily, commencing Thursday, August 1, one to commence at 2 p. m. and one to commence at 8 p. m." This was made operative on July 31, by a motion fixing the time to which to adjourn "at 8 o'clock p. m. tonight."⁵

For three days near the close of the convention three daily sessions were held by adjourning to meet at a fixed time in the morning.⁶

The convention adjourned twice for a few days, the first time being on July 8, and adjournment from Monday to Thursday, (July 8 to 11). This was just after the election of officers and the adoption of the rules, and was taken largely to allow the president time for making up the committee.⁷ The other adjournment was on August 8, from Thursday to the following Tuesday. At this time the subject matter of the constitution was in the hands of the committee an revision and adjustment, and time was needed for them to put this material into a complete form, for final action of the convention. An extra day at this time was wanted by some of the delegates but was not secured.⁸ Two other attempts were made to

¹Journal of the Constitutional Convention, 131.

²Ib., 151.

³Ib., 11. Rule 40.

⁴The clerks of many of the committees were discharged Aug. 1, Ib., 166, and Official Report of Proceedings and Debates, 246.

⁵Journal of the Constitutional Convention, 162.

⁶Ib., 270, 285, 307. This was done August 14, 15 and 16.

⁷Ib., 12; Official Report of Proceedings and Debates, 34. (There were 217 places to be filled on the standing committees.)

⁸Journal of the Constitutional Convention, 205.

secure adjournment of three days. On Friday, July 19, it was moved, "that when the convention adjourn it take a recess until Tuesday, 2 o'clock p. m." Nine members were excused at this time, and the motion made to adjourn to Tuesday next, which also was lost.¹ On the following Friday, a motion by request, was made to take a recess until the following Tuesday. On a vote by yeas and nays this was lost. It was moved "that members desiring to leave of absence, make the request in writing." This was amended to "no member who voted in the negative be granted a leave of absence."²

The motion for a recess was made in the interest of the many farmers in the convention. It was near the time for harvesting the crops and preparation for this farm work should be made. One delegate believed it would expedite business to adjourn, as that would give them all time to consider the questions to be voted upon, and he for himself would be glad to consult his constituents. It was also argued that hasty voting on the measures was dangerous, and that although the attempt to adjourn the week before from Friday to Tuesday had failed, so many delegates did go home that very little business was done.

On the other hand it was urged that business had been too much delayed in the convention already, that there were reports of committees awaiting the action of the convention, that stopping work for two days was too expensive on the appropriation, and if private business must be done those who had to go could be excused.³

Later in the day a motion was passed reconsidering the vote by which the motion to take a recess until Tuesday was lost. The motion for a recess was again made and an amendment offered substituting "adjourn for recess." This amendment was amended that the convention adjourn until October 1, but a motion simply to adjourn was passed before a vote was taken on these amendments.⁴

Many of the delegates must have interpreted the motion for a recess as expressing the will of the majority, for there was no quorum present on Saturday or Monday, and no business could be done.⁵ It was felt and charged that the private business of the delegates interfered with the work of the convention, particularly on the Tuesday after the first failure to secure a three days' adjournment.⁶

The rules of the convention outlined the general methods of work, prescribing three readings for all portions of the proposed constitution, the second and third readings not to occur on the same day. On the tenth day a resolution was introduced fixing the method by which material was to reach the constitution. All matter was to be

¹Journal of the Constitutional Convention, 62.

²Ib., 151-152.

³Official Report of Proceedings and Debates, 149ff.

⁴Journal of the Constitutional Convention, 153.

⁵Ib., 154. (The president himself was absent both these days but he had appointed a president pro tempore to act during his absence.)

⁶Official Report of Proceedings and Debates, 114. The Bismarck Tribune, July 28,

introduced by resolution and read the first time, on second reading it was to be referred to the appropriate committee without debate, and to be incorporated into the constitution it must have been considered and reported upon by the committee of the whole. The report of the committee on printing provided for the printing of the daily journal and extra copies of each article after the first reading, for the use of the members of the convention.¹

The material was introduced as files and numbered consecutively on first reading in the order of their introduction, then on second reading they were referred to the proper committee, and the reports of standing committees were considered in the committee of the whole, then passed upon in the convention and referred to the committee on revision and adjustment.²

Any delegate was at liberty to introduce as many files as he wished, and of the seventy-five delegates forty-eight introduced a total of one hundred forty files, of which one hundred eighteen were original matter, twenty-four were reports, two were complete constitutions, and one was for the equitable division of the territorial property. Eleven of these files were on material relating to the liquor traffic, seven of which were on prohibition, two for license, one to reimburse brewery companies for property rendered useless, and one on regulation of the traffic.

G. H. Fay of McIntosh county has the distinction of having introduced the highest number of files. He introduced eight, and A. S. Parsons of Morton County and Andrew Sandager of Ransom county each introduced six files. Six others introduced four each; fourteen introduced three each; eight two each; and seventeen introduced one each.³ In order to reserve as much time as possible for the consideration of reports it was voted on July 16, that no proposed article be received unless by unanimous consent after July 22, but this provision was not in any way to limit the reports of committees.⁴

SOURCES OF THE CONSTITUTION.

A few of the members of the convention had been in political life before and all had watched with interest the attempts of the territory to secure statehood, so they had no difficulty in finding material from which to draw up a constitution. Many well defined issues were already before the people.

In the Bismarck Tribune of April are to be found the following suggestions: "Shall it be prohibition or high license? Local sub-

said: "In spite of the refusal to adjourn from Friday to Monday, two thirds of the delegates went home." There was a little complaint in the papers that the members were politicians and had neglected business for politics. Several had gone home to take part in the primaries, but the Tribune thought this was commendable. Bismarck Daily Tribune of August 3, 1889.

¹Journal of the Constitutional Convention, 19-20.

²For example, see Journal, 41, File No. 59; second reading, 52; reported, 187; considered 200; report of committee on revision and adjustment, 256.

³Ib., 16. (The first article was introduced by M. N. Johnson.)

⁴Ib., 38.

sidies to new railroads allowed or prohibited? Minority representation in the lower house, one democrat to two republicans, or the majority principle that prevails in every state of the union except Illinois? Limitations of the length of the legislative sessions to 60 or 90 days? Sessions annual or biennial? A majority of two-thirds to over-ride the governor's veto? The right of the executive to veto separate items of an appropriation bill? Shall the governor have from 3 to 30 days after the legislature adjourns within which to approve or veto bills? The governor to be elected for four years? The legislature for two years? No act to be amended by title, but full text must be quoted? Shall both parties be represented on the supreme bench, making it non-partisan? Salary schedule to be incorporated or omitted? No new bills to be introduced after thirty, forty, or fifty days of the session? Questions and systems of revenue to be left to the legislature? Shall the debt of any city, county, town or school district exceed 5 per cent of the assessed value of taxable property? Shall all appropriations except current expenses be made by separate bills and require a two-thirds vote in both houses? Shall the Australian or Kindred system of voting be required by the constitution?"¹

Copies of the constitutions of other states were at the capitol and free use of these was expected.² The Enabling Act had been printed in pamphlet form and placed on the desks of the members.³ One hundred copies of the territorial Council Bill No. 60, providing for the Australian ballot system were distributed.⁴

The constitution of South Dakota was on the desk of each member.⁵ In the debates some of the sources of the articles are given. There was some material from laws of California relating to the taxing of railroads.⁶ Some material for the clause on amendments was taken from the constitution of New Hampshire.⁷ The words of the legend on the Great Seal were taken from the territorial statutes.⁸ A part of the provision to safeguard the school fund was taken from the constitution of Minnesota.⁹ One provision for the pardoning power of the governor was taken from the Pennsylvania plan.¹⁰

For the convenience of the delegates, Mr. Williams, one of the Bismarck delegates, had prepared abstracts of topics from Hough's American Constitution, and placed on the desk of each member.¹¹ These abstracts were prepared on twenty topics, in fifteen folios,

¹Bismarck Daily Tribune, April 28, 1889.

²Official Rep. of Proc. and Deb., 59. Speech of M. N. Johnson.

³Ib., 67.

⁴Journal of the Constitutional Convention, 27.

⁵Ib., 114.

⁶Official Rep. of Proc. and Deb., 475.

⁷Ib., 501.

⁸Ib., 505. See also Section 207 of the state constitution.

⁹Ib., 529.

¹⁰Ib., 318.

¹¹E. A. Williams is authority for this statement.

typewritten and stapled at the top into twelve booklets, like legal briefs, and were on subjects as follows:

- Book 1. Folio 1. Preamble.
- Folio II. Relation of the United States to the several states.
- Folio III. Boundaries of the State.
- Declaration of Rights.
- Folio V. Distributing of the Powers of the Government.
- Book 2. Folio VI. The Legislative Department.
- Folio VII. The Executive Department.
- Folio VIII. The Judicial Department.
- Folio IX. The Secretary of State.
- Book 3. Folio X. The Treasury Department.
- Folio X.a The chief auditing offices of the state.
- Folio X.b The State Treasurer.
- Folio X.c Public debts, revenues and expenditures.
- Book 4. Folio XI. Elections.
- Book 5. Folio XII. General provisions relating to public officers.
- Book 6. Folio XII. (a) Education and Science.
- Book 7. Folio XII. (b) Public Schools.
- Book 8. Folio XII. (c) Penal and Charitable Institutions.
- Book 9. Folio XIII. Corporations.
- Book 10. Folio XIV. County Seats, Cities, Townships and Villages.
- Book 11. Folio XV. (a) Public Lands.
- (b) Industrial Resources.
- (c) Public Works, Railroads, etc.
- Book 12. Folio XVI. The Militia.
- Folio XVII. Amendments and Revision of the Constitution.

The constitutions (with the dates of their adoption) from which the abstracts for these folios were taken were: Alabama, 1875; Arkansas, 1874; Colorado, 1876; Missouri, 1875; Nebraska, 1875; North Carolina, 1876; West Virginia, 1872; Texas, 1876; Pennsylvania, 1873; and amendments to these adopted since 1872.¹

The complete constitution introduced July 20, by Mr. Williams, of Bismarck, was a document of excellent arrangement and provided for every need of a state government which might be anticipated.² It consisted of a preamble and five parts, viz: The State; The People; The Government; Alteration of the Constitution; and Schedule.

It was subdivided into twenty-seven articles and three hundred eighty-two sections. The document attracted much attention at the time, and it had great influence upon the work of the convention.³

"The Williams document shows that it has been prepared with

¹A set of these booklets is now in the custody of the State Historical Society at Bismarck.

²It is given in full in the journal of the Constitutional Convention, 65-113.

³Mr. Stevens, one of the delegates, says it was generally drawn upon to complete the constitution.

great care. Doubtless some changes will be necessary to make it fit North Dakota, but it will prove of great assistance. The document should be read carefully by every member."¹

However, the question of its authorship has received more consideration than the document itself.² Mr. Williams has never claimed the authorship but, gratified with the aid it afforded the convention and preferring to leave the question to those who wish to investigate it, he says that it came from an eastern lawyer and was handed to him by a Bismarck lawyer to be presented to the convention.³

Some newspaper reports at the time may be worth noting: "Some searching newspaper correspondent has found out that Hon. Wm. M. Evarts is the real author of the Williams' Constitution introduced a few days ago. As Mr. Williams never claimed the authorship of the document it may be set down as a fact that Mr. Evarts is the real author, and that Mr. Williams' work on the document has simply been of a revisory character. The Grand Forks Plaindealer of the 30th, contains the following Bismarck dispatch:

'The secret of the authorship of the complete constitution introduced in the convention by Judge Williams of this place, is out at last. No less a master mind than Wm. M. Evarts, of New York, planned this frame-work for the new state. A number of wealthy non-resident property owners, who hold considerable land near Bismarck, wrote to Senator Evarts before the convention assembled, and asked how much he wanted for drawing up a model constitution for North Dakota.

Senator Evarts replied that he would do it for \$500. Accordingly ten men "chipped in" \$50 apiece, and engaged the great lawyer's services. He went promptly to work and with the assistance of some of the best constitutional lawyers in the country, soon had a constitution which was a marvel of strength, sense and diction. This constitution he sent to Judge Williams on strict conditions that he would keep it in the dark. Williams introduced it and accepted the authorship, saying never a word. But today it leaked out and I give the story here straight away for the benefit of the Plaindealer readers.'

A Pioneer Press special from Grand Forks reads substantially as the above and adds: 'The clause which is supposed to have been inserted at the instance of the land owners, is supposed to be the one allowing an appeal from the state board of equalization to the supreme court. This would afford non-residents some protection, and, as one of the property holders said, "We had better put in \$50.00 apiece and get a good constitution than to leave it to the mercies of a lot of men who have special hobbies to look out for.'" The

¹Bismarck Daily Tribune, July 21, 1889.

²A Boston paper on the death of Prof. Thayer gave him credit for writing the constitution of North Dakota. See quotation at the end of Chapter. (R. M. B.)

³From a personal interview with E. A. Williams.

constitution was introduced by Judge Williams, who assumed all responsibility and agreed to keep secret the authorship."¹

"New York, Aug. 1.—A reporter called yesterday on Senator Evarts and read to him a dispatch from Grand Forks, No. Dak., which stated that Judge Williams, who presented a complete constitution to the Dakota convention, admitted the senator was the author of the document, and that he had written it to protect the interests of non-resident land owners in Burleigh county, Dak. 'That's quite remarkable; it is very astonishing,' said the senator, rubbing his hands. 'In the course of my remarking on the astonishing nature of this information about the Dakota constitution,' said he at length, 'which, by the way, is a most excellent one as far as I have looked into it, and reflects credit on the deliberate sense of Dakota; it is a fact that I have had nothing whatever to do with it. I was not consulted about it and, of course, know nothing about its authorship, and in connection you may say I would not regard the writing of a state constitution as a professional matter, but would esteem it an honor to be invited to assist in such work.'"²

"Some newspaper correspondent in New York seems to have the Hon. E. A. Williams, his constitution, and Hon. W. M. Evarts badly mixed. Of course, Mr. Evarts would deny that he wrote the document for alien land owners and Williams has never said that it was written for him. The fact remains that the constitution was written by some one, and a very good document it is, too. The Tribune has received enough light on the subject, however, to suspect that the Grand Forks dispatch was not far from right."³

"HOW THE CONSTITUTION OF N. D. WAS WRITTEN."⁴

Grand Forks Herald: John E. Blair, secretary of the College of Law of the University of North Dakota, who is now located at Spokane, in a letter to the Herald, calls attention to a speech delivered on the occasion of the presentation to the Harvard law school of a portrait of the late Prof. James Bradley Thayer. The speaker was Henry W. Haddon, and he said:

"Some fifteen years ago Professor Thayer performed a piece of work by no means unimportant, for which, so far as I know, he has not yet received public credit. In 1889 the territory of Dakota was about to be admitted to the union as two states. Mr. Henry Villard was at that time chairman of the finance committee of the Northern Pacific Railway. The most important corporation operated in that territory. He was sincerely desirous that the two new states should have the best constitution which could be framed for them, and with this purpose in mind he consulted Charles B. Beaman, then one of the leaders of the New York Bar. Mr. Beaman advised him that if he could get Professor Thayer to draft a constitution for the new states, they would have the benefit of all that expert knowledge and

¹Bismarck Daily Tribune, August 1, 1889.

²Ib., August 2, 1889.

³Ib., August 2, 1889.

⁴Grand Forks Herald, March 21, 1905.

sound judgment could accomplish in that respect. Prof. Thayer undertook the task. His draft constitution was submitted to the two conventions and was in large part adopted by them. The legislative article in the constitution of North Dakota, for example, was substantially word for word the language of Prof. Thayer's draft.

'You may think it is singular that the authorship of a work of this character should wait until this time for public disclosure. The fact is, that it seemed prudent when the work was doing to conceal its authorship. Though Mr. Villard was moved only by a single hearted desire to promote the welfare of the two states, it was feared that a draft constitution prepared by an eastern college professor, under the direction of a Wall Street lawyer, and at the instance of the head of the largest corporation in the territory, might fail of adoption if its authorship were known; that the people whom it was designed to benefit might entertain the suspicion that a constitution, so prepared, however fair on its face, concealed some sinister attack upon their property rights. The two constitutions have been in force some fifteen years. Their merits have been proved in that time. But two amendments have been made to the North Dakota constitution, and one of these incorporates a clause from Professor Thayer's draft omitted by the constitutional convention. The principal actors in this scheme to help the people of the Dakotas are now all dead, and I am the only survivor of the two men who were engaged in the preliminary work under Professor Thayer's direction. The occasion for concealment of the origin of these constitutions has now passed and the facts I have narrated should not be lost for lack of a record.'

Mr. Blair, in closing his record says that he had a most valued acquaintance with Professor Thayer. He had a lack of self-consciousness, which made him the most delightful of friends. Mr. Blair says that his admiration for the 'man makes it a pleasant task for him to bring his services to North Dakota to general notice.'

THE PROCESS OF ELIMINATION.

On July 22, the last day for new matter other than committee reports and files except by unanimous consent, a motion was passed that all standing committees be required to make reports by Thursday next.¹ This allowed but three days, so on the 25th an attempt to reconsider this motion having been lost, several committees had to ask for more time, which request was granted and the time for final report was extended to the 27.² When this day came there was no quorum and the reports were not all in until July 31.

The first committee to report was that on County and Township Organization, July 16. But their report was not acceptable and seemed to contain too much legislation, so it was recommitted and reported back the second time on August 3.

¹Journal of the Constitutional Convention, 113.

²Ib., 132.

The committee on Preamble and Bill of Rights had five different preambles submitted to them and on July 31 reported the preamble submitted by R. N. Stevens as file No. 57, of about seventy-five words. In the consideration of this report the preamble of the Williams constitution was substituted, consisting of twenty-four words considered as complete, terse, and expressive as the preamble of any state constitution of the Union.¹

The files relating to School and Public Lands came back in a report from the committee in a form largely due to the influence of the Williams constitution. An important point gained was the obligation of the state to make good all losses of any portion of the principal which may in any manner occur.² Beyond the expected amount of differences of opinion, the reports of the committees on Education, Revenue and Taxation, Municipal Corporations, Public Debt, and the Militia were readily put in satisfactory terms. The committee on corporations other than municipal brought in a majority report (signed by five members) and a minority report signed by four members. In the consideration of the reports the committee of the whole used a part of each report.³ A provision to enforce arbitration of differences between a corporation and its employees was lost.⁴ In the bill of rights every citizen was given freedom to obtain employment anywhere but an attempt to prohibit keeping a black list of employees was lost.⁵

The committee on the Executive Department presented a report which was quite easily passed on in the committee of the whole. The committee on Schedule waited until all adjustments necessary to transform the government from that of a territory to a state government was made and then were requested to hand in their report to the committee on Revision and Adjustment.⁶ The committee on Temperance from the eleven files referred to them, reported in a single article of six lines, which prohibited the manufacture or importation of intoxicating liquor or keeping or offering the same for sale, gift, barter or trade as a beverage.⁷ In committee of the whole it was attempted to incorporate this article directly into the constitution, but many of the delegates feared it would imperil the entire constitution and were in favor of submitting it to the voters as a separate article.⁸ When this article was reported by the committee on Revision and Adjustment it was with the understanding that it would be submitted to a separate vote, and this recommendation was accepted on final adoption.⁹

The committee on Judicial Department was not unanimous in their report. The majority report was made on July 24. Two days

¹Official Rep. of Proc. and Deb., 357; Journal of the Constitutional Convention, 184.

²Journal of the Constitutional Convention, 143-75.

³Ib., 162, 172-3; Official Report of Proceedings and Debates, 414, 418.

⁴Official Rep. of Proc. and Deb., 418, 424.

⁵Ib., 365-371 (and constitution, section 23.)

⁶Journal of the Constitutional Convention, 206.

⁷Ib., 138.

⁸Ib., 145; Official Report of Proceedings and Debates, 145.

⁹Ib., 261, 333.

later a minority report signed by seven out of the fifteen members was presented. The chief difference of opinion was on the question of making the county court of concurrent jurisdiction with the district court in cases involving not more than \$1,000, or crimes below the grade of felony.¹ This feature advocated by the minority was incorporated as a substitute when the reports were considered in the committee of the whole.²

There were two much debated questions in the consideration of the report on the Judiciary. A very sharp debate centered around the plan of obliging the supreme court judges to give their opinions upon important questions of law when required by the governor, senate or house of representatives.³ This provision was contained in the Williams' constitution,⁴ but was not included in either the majority or minority reports of the committee. When the reports were under consideration by the committee of the whole, Mr. Williams again introduced this and three other sections.⁵

When this was under consideration Judge Carland read at length from decisions of two courts in states whose laws had similar provisions to show that it was practically impossible for the courts in the limited time of the legislative session and with the large volume of business before the court at all times to give adequate consideration to more than one question at each legislative session, and one court recommended that the attorney general, as the natural advisor, be consulted on legislative matters.⁶ The entire clause was stricken out after a sharp debate.⁷

The other question was that of the place or places of holding the sessions of the supreme court. The committee had reported as a section the provision that "at least three terms of the supreme court shall be held each year at the seat of government."⁸ When this was considered, on July 31, a substitute was offered that one term be held at the seat of government, one at Grand Forks, and one at Fargo. The members of the committee on judicial department had been unanimous in making it read "at the seat of government," and did not believe that the court should be migratory, on account of the library and rooms. The substitute at this time was lost,⁹ but the next day it was adopted,¹⁰ with the words "Until otherwise provided by law," at the beginning of the clause.¹¹

The committee on Legislative Department had twenty-two files referred to it besides the complete article of the Williams constitution. The file which attracted most attention was one which pro-

¹Journal of the Constitutional Convention, 127, 150.

²Ib., 184.

³Ib., 60; this was file 96, introduced by Mr. Lohnes.

⁴Ib., 97.

⁵Official Rep. of Proc. and Deb., 228.

⁶Ib., 252-8.

⁷Ib., 275.

⁸Journal of the Constitutional Convention, 127.

⁹Official Rep. of Proc. and Deb., 212-214.

¹⁰Ib., 270.

¹¹Journal of the Constitutional Convention, 167.

vided for a single house in the state legislature.¹ It was probably taken from the Illinois Constitutional Convention of 1872 or 1873.

Before the convention had assembled M. H. Jewell, editor of the Bismarck Tribune, advocated a legislature of a single house.² Two weeks later this paper says, "it is not alone in advocating a single house. The Minneapolis Tribune sees merit in the scheme."³ The editor calls attention to the speech of R. N. Stevens (July 22) on his resolution for a single house, calling it the event of the day,⁴ and stating that Editor Warnock of the Jamestown Capital, the official organ of the Farmers' Alliance, favors one house.⁵

The resolution favoring a single house was referred on second reading to the committee of the whole⁶ and it was considered on July 23. R. N. Stevens, in his speech urging a single house, said: "A single house is not an experiment; that great examples are: Athenian democracy, the Phoenician republic, the Swiss Confederation, the Kingdoms of Norway and Sweden of the present day, our own congress of the Confederation; that the cities of New York and Chicago are governed by single councils; that one and only argument today in favor of the perpetuation of our National Senate is the protection it affords to independent sovereignties which compose our federal Union. "There is no such argument in favor of a senate for North Dakota. Every county is not a sovereignty. The members elected to the upper house would vote the same as those to the lower house."⁷

Ezra Turner, in seconding the resolution, spoke in favor of the plan: "The English House of Commons is the real governing body. The Canadian provinces (except Quebec) have a single house, and their legislation stands the tests of the highest courts."⁸

A. S. Parsons suggested that the one house plan might help solve the problem of the trusts. A house of members directly from the people might be less liable to corruption by the trusts.⁹

On the next day John E. Carland spoke against the plan: "It has been said that it is a dangerous thing for a nation to forget its past. . . . One house. . . . has been tried and found utterly inadequate." He called attention to the fact that all the American colonies had a single house—that Vermont, Pennsylvania, Georgia and South Carolina when they became states all tried a single house, but they had all changed, that the articles of federation vested a legislative power in a single house and this was a prominent defect, that the examples from foreign countries were not to the point, the circumstances differ, and there is no check on hasty legislation in a single house.

¹Journal of the Constitutional Convention, 30; this was file No. 25.

²Bismarck Daily Tribune, June 28 and 30, 1889.

³Ib., July 10, 1889.

⁴Ib., July 3, 1889.

⁵Ib., July 3, 1889.

⁶Journal of the Constitutional Convention, 42.

⁷Official Rep. of Proc. and Deb., 103-108.

⁸Ib., 108.

⁹Ib., 110-112.

M. N. Johnson, in favor of the plan, stated that argument for two houses was largely one of precedent. Rome had a single house; also Carthage; the National Assembly of France was an example; Norway was prosperous with a single house, and the Canadian provinces were examples of prosperous states with a single house.

W. S. Lauder stated that the burden of proof was on the two-house advocates, because a single house was simpler and less expensive; that the two houses in our national government were not a check on each other, but were the legitimate offspring of states rights to guard the sovereign power of the states; that the House of Lords were representative of a distinct class in the nation; that there were no class or interests especially to be guarded or promoted in this state, and that the county or integer would elect the total number of members with no idea of a check."

Harvey Harris believed in the survival of the fittest; the states of the nation prove the two-house plan the practicable one.¹

The resolution asking for a single house was reported back with the recommendation that it be postponed.² A plan for two houses was recommended and passed.³ File No. 20 introduced July 15, included a plan for twenty-eight senatorial districts and thirty-five representative districts.⁴ The committee's report contained a plan for dividing the state into two representative districts, but this plan was changed to divide only into senatorial districts, in a report made by the committee six days later.⁵

On consideration of the matter in committee of the whole an attempt was made to substitute representative districts, and was warmly debated.⁶ Many thought that representatives and senators elected from the same districts would make rather an inconsistent plan. The Bismarck Tribune said: "A two-house legislature with the senatorial and representative districts identical is a roaring farce. There would have been more one-house advocates if that had been foreseen."⁷ Another attempt was made to secure separate representative districts after the committee on revision reported, but the resolution was lost,⁸ and the senatorial district is also the representative district. There seems to have been very little trouble in agreeing upon the legislative apportionment after the single district plan was adopted.⁹

A file on amendments to the constitution was presented by G. H. Fay, was recommended by the committee on miscellaneous subjects, and with slight changes was adopted as a part of the constitution. It provides that an amendment must pass two consecutive legisla-

¹Abstract of Debates of July 23, Official Rep. of Proc. and Deb., 108-127.

²Official Rep. of Proc. and Deb., 127-8.

³Journal of the Constitutional Convention, 138-9 and 271.

⁴Ib., 27-28.

⁵Ib., 139, 164.

⁶Official Rep. of Proc. and Deb., 323ff.

⁷Bismarck Daily Tribune, August 3, 1889.

⁸Official Rep. of Proc. and Deb., 541, 551.

⁹Journal of the Constitutional Convention, 202, 327.

tures and then receive an affirmative vote from the people to be incorporated in the constitution.¹

The committee on Revision and Adjustment was an important one, and the members appreciated this. It was felt that this committee might make the constitution if their powers were not limited.² The committee was made up of five good men. They were frequently instructed,³ and at least once severely criticised for reporting back an article that was supposed to have been thrown out.⁴ Their duty was to pick up the remnants of the reports after debates and piece them together into a harmonious whole to be considered again in the convention for final adoption. On August eighth they were given authority to have their report printed so that each member could have a copy.⁵ They were given four days in which to bring their work into final form, and they made their report on August 13, giving a complete constitution out of the reports of the committees of the whole. Recommended changes were indicated that each member might see what had been done.⁶

From this report the articles were taken up section by section and adopted or rejected in part or in whole. The delegates found that their own work in committee of the whole was not always satisfactory on review. The Bismarck Tribune says: "The convention yesterday in undoing what it had done the day before performed the most commendable day's work of the session. The compelling of the supreme court to give opinions when called upon, and the legislature to extend but not restrict the right of suffrage was a pair of very ridiculous propositions. Mr. Williams' preposterous supreme court proposition was knocked out by Judge Carland's substitute."⁷

The delegates themselves felt that they were legislating almost too much in their work, but some were disposed to legislate rather than have their favorite measures defeated.⁸

As fast as the articles were adopted on final vote, they were sent to the engrossing clerks. The schedule embraced all necessary provisions to transfer this part of the territory to statehood, and such articles were of temporary application in their nature. It contained the agreement of the Joint Commission on the division of the territorial records, made arrangements for the election to adopt the constitution and to elect state officers, and provided for the taking effect of the constitution.

The committee on enrolling and engrossing obtained consent to make some typographical changes in the copy furnished them and

¹Journal of the Constitutional Convention, 33, 187, 322.

²Official Rep. of Proc. and Deb., (speech of Moer), 648.

³Journal of the Constitutional Convention, 204, 206; Official Rep. of Proc. and Deb., 523, 528.

⁴Official Rep. of Proc. and Deb., 539.

⁵Ib., 529.

⁶Journal of the Constitutional Convention, 218ff.

⁷The Bismarck Daily Tribune, August 2, 1889.

⁸Official Rep. of Proc. and Deb., 90, 92, 93, 132, 396.

in the evening session of Saturday, August 17, brought in the engrossed copy.¹

The motion to adopt the constitution as a whole was carried by a viva voce vote, but on the ayes and nays it received forty votes in favor of its adoption and twenty-three against its adoption. A motion to erase the names that the delegates might sign in alphabetical order was lost, but the chief clerk was empowered to renumber the sections.²

Many of the delegates were anxious to get home, and some were disappointed with the outcome of their plans and were ready to adjourn. A few matters might have been adjusted more satisfactorily had the convention remained in session a little longer, but this would also have afforded the opportunity to undo much that had been done. It yet remained to be seen what the people would do with their work.

Closing speeches seem always in order in great conventions and this one was no exception to the rule. On the day before adjournment resolutions were passed presenting Mr. Fancher, the president, with the chair and gavel.³ On the last day the president was presented a framed group picture of the delegates,⁴ and the chief clerk was the recipient of a beautiful picture as an appreciation of his services.⁵

Later in the evening of Saturday, August 17, the gavel dropped for the last time and the convention to frame the organic law of a great new commonwealth passed into history.

LOCATING THE PUBLIC INSTITUTIONS.

Both the contest precipitated in the convention and the excitement provoked throughout the state by the report of the committee on Public Institutions and Buildings justify a separate chapter for its consideration.

But two files on this subject were referred to this committee. One of them provided for locating the temporary capital at Bismarck and for the submission of the question of permanent capital to the voters of the state, forbidding the expenditure of money on capitol buildings or grounds until the capital should be permanently located.⁶ The other file, submitted four days later, contained about the same provisions.⁷ The Williams constitution had no article on public institutions.

On August 6, the committee submitted a report locating thirteen state institutions in character and location substantially as later adopted into the constitution.⁸ These institutions were: the capitol, the state university and school of mines, the agricultural college, two

¹Journal of the Constitutional Convention, 353.

²Ib., 399-400.

³Ib., 337.

⁴Official Rep. of Proc. and Deb., 648.

⁵Ib., 656.

⁶Journal of the Constitutional Convention, 23.

⁷Ib., 50.

⁸Ib., 190.

state normal schools, a deaf and dumb asylum, a hospital for the insane, an institution for the feeble minded, a soldiers' home, an asylum for the blind, an industrial school, a school of forestry and a scientific school.

An attempt was made to take up the consideration of this report at the evening session of the same day, but the motion was lost.¹ On the next day it was considered in committee of the whole. A minority of three had just reported in favor of locating the temporary seat of government, submitting the question of the permanent capital to the voters, and leaving the location of the public institutions to the legislative assembly.²

H. F. Miller, the chairman of the committee, moved, "that we adopt as a whole the majority report." David Bartlett (of Griggs) offered as the first section of the report the following: "The following article shall be submitted to the vote of the people as a separate article as provided by the schedule," and in explanation made the following speech: "The unusual manner in which this question has been brought up was unexpected by me. I am well aware that I represent the opinion of the minority on this floor this afternoon, and as far as I am concerned I bow to the majority. However you may have obtained that majority, you have it. Now I ask in behalf of at least thirty members, and I think more, I ask in all fairness that you adopt this section, and that this matter be submitted separately, that the people may have, if they wish to locate these institutions, that they may have a right to do so. Refuse this section and you compel at least thirty members that sit in this convention today to refuse to sign your constitution—you compel at least thirty who have sat here from the Fourth of July until now, trying to do their duty, to go home and say to their people that they have been unable to accomplish it, and to ask their people to refuse to endorse their work. I don't believe that this convention can afford to do this. Refuse this section—refuse to submit this matter separately, and you forever bar all compromise with the minority here, which I think is a respectable minority. Refuse it, as I say, and you compel us to take the steps that we here and now state that we do not wish to take, and would rather not take. Refuse this, and the republicans in this convention endanger the success of the republican party in the new state this fall. You may smile, but it is a fact. We know that not only have the votes of the majority been obtained by every means known to the power of corporations, by promising and farming out so far as that influence could go, every office and position on the state ticket this fall—we know that and are satisfied of it. Refuse this section, and you compel at least thirty members of this convention to join with any party—to join with any alliance that will forever and forever sit down and permanently sit

¹Journal of the Constitutional Convention, 192.

²Ib., 197.

down on the rule of corporations in this state. Gentlemen, I ask in all humanity—I ask, I plead it, that you accept this provision.”¹

R. M. Pollock followed, stating that the people had not expected it * * * “It may endanger the adoption of the constitution.” M. N. Johnson said (in part): “This is an interesting moment, and I fear a sad day in the history of North Dakota. * * * The people are in no mood to be whipped into voting for this constitution.” W. E. Purcell called their attention to the fact that they had no precedent for such action; that the delegates were not sent there to farm out the public institutions of this great state; that four prominent cities were candidates for the seat of government but they were working as a unit for this measure. He urged the question: “Was it an issue in the election of delegates?” He said that an address to the people had been ordered to give them the reasons why the constitution was framed as it is, and thought that the mover of that motion should explain to the people why they are imposed upon. He said that men confess that influences have been brought to bear which it was impossible to withstand.

R. N. Stevens gave the reasons for locating the public institutions. They were: To locate the institutions before there was any excuse for lobbying, to give the different parts of the state fair treatment, Bismarck as the capital would help in building up the western portion of the state; the other institutions were located as they were because the population of the state demanded it; locations were all properly made, located them to keep them out of the hands of the lobbyists.

Richard Bennett in his speech said that the capital was located at Bismarck in the interests of the two great railroads of the state, and that if necessary he could bring a gentleman to prove it. James Bell believed that the people had a right to be heard and the delegates who yesterday were afraid to legislate too much would do well not to deny to the people the right to vote on matters that concern themselves, and stated that the men from Walsh county would not go into the dirty scheme.² The amendment to submit the article to a separate vote of the people was lost by a vote of 31 to 43.³

M. N. Johnson at this point created a diversion by moving to substitute Jamestown for Bismarck. In his remarks he said: “Now, Mr. President, and four or five of the gentlemen living in and near Jamestown, it is your ears that I wish to reach. Let me tell you that we of the minority are willing now, and we have got the power to give you the capital for all time to come in Jamestown. We will do it in good faith, and you now take the responsibility of choosing whom you will serve. Five votes is enough to do it, and you have got it right there.”⁴ This amendment was lost by a vote of 19 to

¹Official Rep. of Proc. and Deb., 478-9.

²Extract from speeches in Official Rep. of Proc. and Deb., 478-490.

³Official Rep. of Proc. and Deb., 490; Journal, 197.

⁴Ib., 492.

56.¹ On final vote this article was adopted (44 to 30) and referred to the committee on revision and adjustment.²

The next day, August 8, the convention adjourned to the 13. When they reassembled the protests and endorsements in regard to locating the institutions began to pour in. The first memorial came from Grand Forks and ended by saying: "We believe that the territory will prefer that the birth of the new state be indefinitely postponed rather than it be born under and by virtue of a constitution reeking with jobbery. Grand Forks county has forty-five hundred votes, fifty public speakers and \$25,000 to assist in maintaining the rights of the people and the fair name of the new state. If we cannot start right we prefer not to start at all."³

Another memorial commending the action of the convention, came from Jamestown, congratulating the president upon the location of a state institution at that place, and closed with the words: "time will prove the wise judgment of her delegates in this selection."⁴

Twenty-four other communications about equally divided between censure and approval, were read on August 13.⁵ On a motion that all the communications read be referred to a committee of five to be appointed by the chair, the ayes and nays were demanded and the votes stood only 40 to 24 in favor of the motion. The chairman of the committee on public institutions was appointed chairman of this committee of five.⁶ On the next day eight more communications of approval were read in the convention.⁷ On the next day after this five more resolutions of censure were presented. Four of these were series of resolutions which had been adopted in mass conventions representing the citizens of Hope, Wahpeton, St. Thomas, and Grafton. The meeting at Grafton represented Walsh County and their resolutions pledged themselves to "use every endeavor to secure the defeat of the constitution at the polls, firmly believing it to be the less of two evils."⁸ The next morning five more messages, three of approval and two condemning the action were read. One of the expressions of approval came from outside the state:

"Baltimore, Md., Aug. 13, 1889.

To the President of the Constitutional Convention:

Capitalists of Baltimore, who have \$250,000 invested in North Dakota, congratulate you and the members on the good Constitution you have prepared and the judicious location of public institutions. Regards to Harvey Harris.

G. LANE TANEHILL,
For the Syndicate."⁹

¹Official Report of Proceedings and Debates, 493.

²Journal of the Constitutional Convention, 199.

³Ib., 208.

⁴Ib., 209.

⁵Ib., 208-215.

⁶Ib., 215-216.

⁷Ib., 270-1.

⁸Ib., 293.

⁹Ib., 271.

Also the Minneapolis Tribune in an editorial endorsed the action of locating the public institutions.¹

On the last morning another protest was presented, making a total of forty-three sent to the convention.

On the afternoon of August 14 (the second day of the telegrams) President Fancher took the floor to repudiate a charge made in the Grand Forks Herald that he had refused to have certain telegrams (from Grand Forks) read, and called upon the Grand Forks delegate responsible for the charge to correct the statement. It was shown by several members that the chief clerk had attempted to read the telegrams, but had been prevented from doing so by persistent motions to adjourn.² The president was exonerated by a unanimous vote of 71.

The final consideration of the article to locate the public institutions was reached in the evening session of August 16. A motion was made to substitute for it the minority report locating only the temporary capital, and another motion was later made to have it submitted to the voters as a separate article, but both these amendments were laid on the table, and with slight change the article was adopted.³ Personal feeling still ran high and some sharp speeches were made, and the minority maintained a solid front of opposition to the last, although they knew they were beaten. While the vote was being taken nine members explained their votes that they might not be misunderstood.⁴ The adoption of the article was fixed by moving to reconsider and then laying that motion on the table.⁵

On August 17, the last day of the session, the committee of five to whom the petitions and remonstrances had been referred made their report. Three of the committee made a majority report in which they approved the views of those who were opposed to the measure, and set forth the reasons why the institutions should not be located by the convention. The minority report was signed by the chairman, H. F. Miller, and presented the reasons for locating the institutions by the convention, showing that the locations were well chosen to accommodate the people of the state and that it was for the best interests of the state to have them located by the convention.⁶

A motion to dispense with the reading of the reports was lost by a vote of 24 to 42. The motion to adopt the majority report was tabled by a vote of 38 to 31, and the minority report was adopted by a vote of 41 to 28.⁷

¹Bismarck Daily Tribune of August 13, 1889.

²Official Rep. of Proc. and Deb., 548-550.

³Journal of the Constitutional Convention, 328-333; Official Rep. of Proc. and Debates, 629.

⁴Ib., 333.

⁵Ib., 333.

⁶Ib., 340.

⁷Ib., 343-5.

THE JOINT COMMISSION FOR THE DIVISION OF TERRITORIAL PROPERTY.

There was one feature in connection with the constitutional conventions of the Dakotas that was original and unique. No other states had entered the Union under circumstances which required an equitable division of territorial property. This property belonged to all parts of the territory, although the larger number of public institutions were in the southern half, because both in population and in voting strength in the legislature this part outclassed the northern end.

The Enabling Act provided that the two constitutional conventions should appoint a joint commission to be composed of not less than three members of each convention, to meet at Bismarck to agree upon an equitable division of the property, the disposition of the public records and the adjustments of the liabilities. The agreement reached was to be incorporated in the respective constitutions, and each state was to obligate itself to pay its share of the indebtedness.¹

By resolution it was agreed in the convention that the president should appoint seven members to this commission, and E. W. Camp, W. E. Purcell, B. F. Spalding, Harvey Harris, Alexander Griggs, J. W. Scott, and Andrew Sandager were duly appointed.²

The South Dakota convention had already appointed its seven members, who arrived in Bismarck, July 13.

This commission of fourteen members met in the governor's office on July 16. For organization it was decided that the chairmanship of the commission should alternate from day to day between the chairmen of the committees from the two states. Two secretaries, one from the membership of each committee, were chosen, and on the second day two assistant secretaries, not members of the commission. It was also agreed that all votes in the commission should be taken by roll-call, and that a majority of the members from each state delegation should be necessary for the transaction of all important business.³

An agreement as to the interpretation of the powers of the commission was reached at the first session, and 3 o'clock in the afternoon was fixed as the regular hour of meeting. The South Dakota members urged the earliest convenient completion of the work as their convention was awaiting their return to finish its work.⁴ The commission met the next day at 2:30 p. m. by common consent, and on the third day the convention gave permission to its members of the commission to sit during the session of the convention.⁵

The commission met continuously from the 16th to the 31st of July. On five days two sessions were held and on the last day an evening session was necessary to complete the work.

¹Enabling Act, section 6.

²Journal of the Constitutional Convention, 7, 13.

³Journal of the Joint Commission, 7.

⁴Official Rep. of Proc. and Deb., 678-9.

⁵Journal of the Joint Commission, 54.

The second and third sessions were devoted to an informal discussion of the amount of investments in the different territorial institutions in order to reach some conclusions in regard to a just division. It was suggested that each state should take the public institutions in its own territory with all the funds and all the indebtedness belonging to each institution.¹ The assistant clerks were instructed to prepare and present a detailed statement of the amount of bonds issued for each public institution.²

A committee examined the public records to determine what records should be transcribed. Another examined the public library and reported an estimate of its value. A committee was appointed to ascertain the amount and location of the military property, and another reported upon the condition and value of any other property not hitherto specified.³ A committee to gather information about the claims against the territory reported that they could find none.⁴

The committee on public library recommended that each section of the commission submit sealed bids for the library.⁵ The South Dakota commission bid \$4,000, and received the library, as North Dakota's bid was \$750.⁶

The books and records were divided into two groups, those from the offices of the governor and secretary in one, and those of all other offices in the other. The privilege of making first choice was decided by lot. North Dakota won in the drawing and chose the group made up of the books and records of the governor and secretary.⁷ The expense of all copies made of the records was to be borne equally by the two states.⁸

For the disposition of all other matters except the public records it was agreed that the members of the commission from each state should submit a proposition in writing as a basis for settlement.⁹ The two propositions agreed fairly well on public institutions and on the division of property not before disposed of. The South Dakota plan was to divide the assets and the liabilities between the states according to the counties concerned. The North Dakota committee asked South Dakota to pay the state of North Dakota \$60,000 as a settlement of unbalanced accounts and of claims arising out of unlawful taxation of Northern Pacific railroad lands in consideration of which North Dakota would assume these claims. They also claimed the sum of \$40,000 due from South Dakota if North Dakota assumed the ownership of the capitol, including the claims against the territory arising from the acceptance of lands granted for capitol purposes.¹⁰

¹Official Rep. of Proc. and Deb., 685-6.

²Journal of the Joint Commission, 9.

³Ib., 11.

⁴Ib., 13.

⁵Ib., 13.

⁶Ib., 19.

⁷Ib., 21, and Bismarck Daily Tribune of July 31, 1889.

⁸Agreement of division in Journal of the Joint Commission, 28.

⁹Journal of the Joint Commission, 13.

¹⁰Ib., 15; Official Rep. of Proc. and Deb., 794-5.

This item of unbalanced accounts and of claims for unlawful taxation was not well understood and both the morning and afternoon sessions of one day were devoted to its discussion. On the next day the chairmen of the two committees were requested to confer and report a plan of settlement.¹ The following day a general plan of agreement was presented. This recommended a division of public property and the payment of \$42,500 from South Dakota to North Dakota in settlement of all unbalanced accounts. After some debate this was accepted and the chairmen were appointed a committee to draw up a final agreement in accordance with this proposition.²

A committee of two, one from each delegation, was appointed to prepare an article to be presented to the respective conventions to be inserted in the constitutions they were framing.³ The final agreement of twenty-four articles covering all the points in question was presented and was unanimously adopted.⁴ The committee to draft an article for the constitutions reported such an article of seven sections, and a mutual agreement obligating the respective state to pay the part of the debts and liabilities as agreed upon in this article. This was adopted by unanimous vote, and all members signed the articles of agreement.⁵

After some congratulatory speeches the commission adjourned subject to the call of the chairman.⁶ This call was never made as their work was eminently satisfactory to both state conventions.

By the division of taxes and other moneys North Dakota received much more than the amount specifically stated in the foregoing agreement.⁷

The article for the constitution was reported to the convention, considered in committee of the whole, and adopted without amendment, and became a part of the constitution in article 16.⁸

In the report of the committee of the whole which had considered this article of adjustment the following recommendation was made, and it shows the members' appreciation of this new feature in constitution making: "We further recommend that the shorthand notes of the proceedings of the said Joint Commission be transcribed and printed with the debates of the convention, inasmuch as, so far as the committee is informed, said Joint Commission is the first body of its kind ever convened."⁹

¹Official Rep. of Proc. and Deb., 829; Journal of the Joint Commission, 15.

²The amount to be paid was \$46,500, but this included the \$4,000 for the library. Journal of the Joint Commission, 16.

³Ib., 22.

⁴Ib., 28.

⁵Official Rep. of Proc. and Deb., 932.

⁶Ib., 933.

⁷Bismarck Daily Tribune of August 1, 1889. The Bismarck Tribune says: "By a settlement agreed upon by the committees South Dakota pays to North Dakota \$46,500 in cash. Added to this may be counted \$24,588.42, the excess in proportion of the gross earnings tax for 1888 due North Dakota over South Dakota, and \$10,000, the difference in our favor on unexpended bond balances, and \$1,000 for safe and testing scales and weights in the treasurer's office, making a grand total in North Dakota's favor on settlement of \$82,100."

⁸Journal of the Constitutional Convention, 202, 386ff.

⁹Ib., 203.

THE COMPLETION OF THE CONVENTION'S WORK.

The debates of a convention are always serviceable in determining the intent of the members. In fixing the pay of the stenographer additional compensation was granted in return for a transcribed and legible printer's copy of the notes.¹ A resolution was introduced and referred to the committee of the whole to print 500 copies of the debates in bound volumes for distribution and exchange. When this was reported back the number was changed to 1,000, and that report was adopted.²

Another resolution obligated the chief clerk to have the work completed and the bound volumes ready within sixty days of the close of the convention.³ Some time after this an amendment was adopted to exclude the debates of the committee of the whole. It was thought that the expense would be great as several volumes were expected. Important debates were occurring in the committee of the whole, and a number of delegates wanted the people to know what had been done, and to have the benefit of what had been said, and wished it all printed if any were to be made public, but the majority were willing to save expense.³

Near the close of the session it was learned that the debates would make only an ordinary volume, and the original plan of publishing the complete debates was adopted and 1,000 copies were ordered printed⁴

It was voted to publish the constitution in each of the newspapers of the state, and an allowance of \$10 each for such publication was made, to be provided by the legislature at its first session.⁵ The last section of the schedule provides for the publication of the constitution and some other historic documents in a book form. An election was held on October 1, 1889, at which the constitution was adopted by a vote of 27,441 to 8,107. The article on prohibition was submitted separately and received an affirmative vote of 18,552 to a vote of 17,393 in the negative, or a majority of 1,159.⁶

The constitution was sent to the president of the United States, and President Harrison issued a proclamation of admission on November 2, 1889.⁷

APPENDIX.

DELEGATE DISTRICTS, CONSTITUTIONAL CONVENTION OF 1889.

For the purpose of electing the delegates hereinbefore mentioned the following districts have been duly established in pursuance of

Note: The journal of the Joint Commission was printed as Appendix B of the journal of the constitutional convention. The debates of the commission named, "Journal of the Proceedings of the Joint Commission," were printed as the last part of the Debates of the Constitutional Convention.

¹Journal of the Constitutional Convention, 26, 53.

²Ib., 58.

³Ib., 125; Official Rep. of Proc. and Deb., 134-138.

⁴Ib., 352.

⁵Ib., 126, 340.

⁶Legislative Manual of 1909, p. xxx.

⁷Richardson, Messages and Papers of the Presidents, Washington, 1889, IX., 22-23.

law, each of which districts shall elect three delegates to said convention at Bismarck, to form a constitution for the state of North Dakota:

1. The townships of Dayton, Lincoln, Jolliette, Pembina, Carlisle, Midland, Hamilton, Bathgate, Neche, St. Joseph, Walhalla in the county of Pembina shall constitute the first district.

2. The townships of Akra, Cavalier, Thingvalla, Park, Lodema, Beaulieu, Gardar, Crystal, Elora, and St. Thomas in the county of Pembina, and the townships of Montrose, Alma, and Osnabrock in the county of Cavalier shall constitute the second district.

3. The townships of Olga, Fremont, Loam, Harvey, Hope, Langdon, Linden, Grant school and Cypress, together with all the remaining portion of Cavalier county not hereinbefore specified, and the counties of Towner and Rolette shall constitute the third district.

4. The counties of Bottineau, McHenry, Ward, Pierce, Church and Renville shall constitute the fourth district.

5. The counties of Burleigh, McLean, Mercer, Sheridan, Stevens, Garfield, Mountraile, Williams, Dunn, McKenzie, Wallace, Alfred, Buford, Flannery, Hettinger and Bowman shall constitute the fifth district.

6. The counties of Morton, Oliver, Stark and Billings shall constitute the sixth district.

7. The counties of Emmons, Logan, McIntosh, Kidder, Wells, and all that portion of the county of LaMoure lying west of the west line of range 63 west, shall constitute the seventh district.

8. The county of Dickey and voting precincts numbered three, four, six, seven, eight, twelve, thirteen, fourteen, nineteen and twenty in the county of LaMoure shall constitute the eighth district.

9. The county of Ransom and all the remaining portion of the county of LaMoure not included in districts seven and eight above described, shall constitute the ninth district.

10. The county of Sargent and the townships of Ellendale, Shevenne, West End, Dexter and Park, in the county of Richland, shall constitute the tenth district.

11. All the remaining portion of the country of Richland not included in the tenth district above described, shall constitute the eleventh district.

12. The city of Fargo and the townships of Fargo, Barnes, Reed and Harwood in the county of Cass, shall constitute the twelfth district.

13. The townships of Pleasant, Stanly, Norman, Warren, Mapleton, Raymond, Berlin, Gardner, Wiser, Noble, Kinyon, Elm River, Francis, Rush River, Harmony, Casselton in the county of Cass, shall constitute the thirteenth district.

14. All that portion of the county of Cass not contained in the twelfth and thirteenth districts as above defined, shall constitute the fourteenth district.

15. The county of Barnes shall constitute the fifteenth district.
16. The county of Stutsman shall constitute the sixteenth district.
17. The counties of Benson, Eddy, Foster, and all that portion of Griggs county west of the west line of range fifty-nine, shall constitute the seventeenth district.
18. All that portion of the county of Griggs not described in said district number seventeen above described, the county of Steele, and the township of Roseville, including the city of Portland and the township of Mayville, including the city of Mayville, in the county of Traill, shall constitute the eighteenth district.
19. All the remaining portion of the county of Traill not described in the said district number eighteen, shall constitute the nineteenth district.
20. The city of Grand Forks and the townships of Grand Forks, Brenna, Rye, Falconer, Harvey, Ferry, Lakeville, Levant and Turtle River, in the county of Grand Forks, shall constitute the twentieth district.
21. The townships of Strabane, Johnstown, Milan, Gilby, Wheatfield, Hegton, Mekinock, Blooming, Arvilla, Chester, Oakville, Avon, Pleasant View, Fairfield, Washington, Union, Allendale, Walle, Michigan, Americus and Bentrue, and the city of Larimore, in the county of Grand Forks, shall constitute the twenty-first district.
22. The townships of Elkmount, Inkster, Oakwood, Agnes, Niagara, Elm Grove, Moraine, Larimore, Logan, Grace, Lovetta, Lind, and Northwood, in the county of Grand Forks, and the county of Nelson shall constitute the twenty-second district.
23. The county of Ramsey shall constitute the twenty-third district.
24. All that portion of the county of Walsh east of the east line of range fifty-four, shall constitute the twenty-fourth district.
25. All the remaining portion of the county of Walsh, not described in the said district number twenty-four, above designated shall constitute the twenty-fifth district.¹

LIST OF DELEGATES TO THE CONSTITUTIONAL CONVENTION OF 1889.

First District:

H. L. Holmes, Neche.
R. B. Richardson, Drayton,
W. B. Best, Bay Centre.

Second District:

Joseph Powles, Milton,
John McBride, Alma,
A. F. Appleton, Crystal.

¹Published in Bismarck Tribune, official paper of the territory, The Daily Tribune of April 16, the Weekly Tribune of April 19, 1889.

Third District :

C. P. Parsons, Rolla,
P. McHugh, Langdon,
R. B. Glick, Langdon.

Fourth District :

V. B. Noble, Bottineau,
J. L. Colton, Burlington,
Ezra Turner, Bottineau.

Fifth District :

E. A. Williams, Bismarck,
Harvey Harris, Bismarck,
John E. Carland, Bismarck.

Sixth District :

A. W. Hoyt, Mandan,
A. S. Parsons, Mandan,
Wm. Ray, Dickinson.

Seventh District :

J. B. Gayton, Hampton.
G. H. Fay, Ashley,
C. V. Brown, Sykeston.

Eighth District :

W. H. Rowe, Monango,
A. D. Flemington, Ellendale,
L. D. Bartlett, Ellendale.

Ninth District,

S. H. Moer, La Moure,
R. N. Stevens, Lisbon,
Andrew Sandager, Lisbon.

Tenth District :

John Shuman, Rutland,
J. D. McKenzie, Milnor,
John Powers, Havana.

Eleventh District :

W. S. Lauder, Wahpeton,
Andrew Slotten, Wahpeton,
W. E. Purcell, Wahpeton.

Twelfth District :

H. F. Miller, Fargo,
B. F. Spalding, Fargo,
J. Lowell, Fargo.

Thirteenth District :

Addison Leach, Davenport,
R. M. Pollock, Casselton,
H. M. Peterson, Horace.

Fourteenth District :

E. W. Chaffee, Amenia,
Wm. J. Clapp, Tower City,
Enos. Gray, Embden.

Fifteenth District :

Elmer Elliott, Sanborn,
J. W. Scott, Valley City,
J. Wellwood, Minnie Lake.

Sixteenth District :

E. W. Camp, Jamestown,
F. B. Fancher, Jamestown,
Andrew Blewett, Jamestown.

Seventeenth District :

E. S. Rolfe, Minnewaukan,
H. M. Clark, New Rockford,
O. G. Meachem, Carrington.

Eighteenth District :

David Bartlett, Cooperstown,
E. D. Wallace, Hope,
E. M. Paulson, Mayville.

Nineteenth District,

J. F. Selby, Hillsboro,
M. F. Hegge, Hegge,
Knud J. Nomland, Caledonia.

Twentieth District :

Wm. Budge, Grand Forks,
Richard Bennett, Grand Forks,
Alexander Griggs, Grand Forks.

Twenty-first District :

A. P. Haugen, Reynolds,
J. H. Matthews, Larimore,
Chas. Carothers, Emerado.

Twenty-second District :

M. N. Johnson, Lakota,
M. V. Linwell, Northwood,
T. W. Bean, Michigan City.

Twenty-third District :

A. O. Whipple, Devils Lake,
Edward Lohnes, Devils Lake,
J. F. O'Brien, Devils Lake.

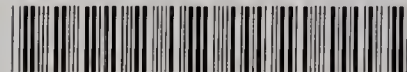
Twenty-fourth District,

A. D. Robertson, Minto,
M. K. Marrinan, Grafton,
James Bell, Minto.

Twenty-fifth District,

Roger Allin, Grafton,
John Almen, Grafton,
James Douglas, Park River.

LIBRARY OF CONGRESS



0 033 239 154 9