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LEGISLATIVE ASSEMBLY THIRTEENTH SESSION.

Organization of the Council and House of Representatives.

George H. Walsh Elected President of the Council and J. R. Jackson Speaker of the House.

The Election of Other Necessary Officers Completes the Preliminaries.—Governor Howard's Message.

THE COUNCIL.

The council of the thirteenth session of the legislative assembly of Dakota territory met at twelve o'clock, m., January 14th, 1879, and was called to order by J. R. Hanson, secretary of the council of the twelfth general assembly, and upon calling the roll, all the members answered to their names as follows:

First district—Ira Ellis, Silas Rohr.
Second district—Nelson Miner.
Third district—Newton Edmunds, H. B. Wynn.
Fourth district—M. H. Day.
Fifth district—Wm. M. Cuppett, C. B. Valentine.
Sixth district—R. F. Pettigrew.
Seventh district—S. G. Roberts.
Eighth district—G. H. Walsh.
Ninth district—R. MacNider.
Thirteenth district—W. L. Kuykendall.

On motion of Mr. Edmunds the council proceeded to a temporary organization.

On motion of Mr. Walsh, Mr. Edmunds was chosen temporary chairman, and on motion of Mr. Roberts, Mr. Cuppett was chosen temporary secretary.

On taking the chair Mr. Edmunds briefly thanked the members for the honor conferred upon him.

Mr. Roberts moved that the council proceed to a permanent organization and nominated Geo. H. Walsh of Grand Forks county, for president, which motion was seconded by Mr. Miner.

Mr. Kuykendall asked if it would not be necessary to swear in the members before the organization was proceeded with, and the secretary of the territory being present stated that that was the usual custom, and that Judge Shannon was preparing an oath to be administered to the members, whereupon the motion to proceed to a permanent organization was withdrawn.

Chief Justice Shannon appeared, and administered the following oath, which was subscribed to by the members:

You and each of you, as members of the said council, do solemnly swear that you will support the constitution of the United States and the organic act of the territory of Dakota, and that as such member of this council you will not propose or assent to any bill, vote or resolution which shall appear to you injurious to the people, nor do or consent to any act or thing whatever that shall have a tendency to lessen or abridge their rights and privileges as declared by the constitution of the United States, and the organic act of this territory,

but will in all things conduct yourself as a faithful, honest representative and guardian of the people, according to the best of your judgment and abilities. So help you God.

PERMANENT ORGANIZATION.

On motion of Mr. Miner, the council then proceeded to a permanent organization.

Mr. Roberts nominated Geo. H. Walsh, for permanent president of the council, and the roll being called, those who voted for Mr. Walsh were Messrs. Cuppett, Day, Edmunds, Ellis, Kuykendall, Miner, MacNider, Pettigrew, Roberts, Rohr, Valentine and Wynn.

Mr. Walsh voted for Mr. Valentine.
On motion of Mr. Rohr, Messrs. Rohr and Valentine were appointed a committee to conduct the president elect to the chair.

On taking the chair the president stated that he would not occupy time in making a speech, and would simply say that he would use his best endeavors to discharge the duties of the position to which he had been chosen to the satisfaction of the council.

Hon. Geo. H. Walsh, on whom has been conferred the honorable position of president of the council hails from Grand Forks county, on the Red River of the North. Mr. Walsh has been identified with the interests of northern Dakota for several years, first as a journalist, in which avocation he was a pioneer of that section, and subsequently as a lawyer. His endorsement by the council is an appropriate second to the almost unanimous vote which was accorded him by the people of his county on the occasion of his election to represent them. He is a gentleman of liberal views, an earnest friend of the territory, and abundantly competent to discharge the important duties of presiding officer of the council.

The permanent organization of the council was completed by the election of the following:

Chief clerk—O. A. Hubbard, of Lincoln county.

Enrolling and engraving clerk—A. W. Heil, of Union county.

Sergeant-at-arms and doorkeeper—Jacob Brauch, of Yankton county.

Messenger—M. C. Lyons, of Minnehaha county.

Watchman—Thomas B. Buchanan, of Turner county.

Chaplain—Rev. J. A. Potter, of Yankton county.

Mr. Rohr offered a resolution directing the secretary to inform the house that the council is permanently organized.

A point was then made that the council could not proceed to business until the required oath was administered to the officers elect.

Mr. Ellis said that the members were not permitted to proceed to a permanent organization until they were sworn in, and he thought the officers were no more honest than the members, and should not enter upon the discharge of their duties, until the oath required by law was administered.

The point was sustained by the president, and Mr. Rohr withdrew his resolution.

Judge Shannon then appeared and administered the oath to the officers.

The resolution of Mr. Rohr was again presented and adopted.

On motion of Mr. Miner the rules of the last council were temporarily adopted.

Mr. Valentine offered a joint resolution providing for the election of an assistant clerk for each branch of this legislature, who shall each receive the sum of four dollars per day for services, and appropriating from the territorial treasury the sum of three hundred and twelve dollars for the payment of such clerks.

A motion to suspend the rules and pass the resolution was adopted by a vote of 9 to 4.

Mr. Roberts moved that the resolution be amended by inserting \$5 a day instead of \$4.

Mr. Pettigrew hoped the amendment would not be pressed to a vote at this time; that there was no immediate necessity for its passage, and that if called upon to vote now he would be compelled to vote against it.

Mr. Miner opposed the resolution; thought there was no necessity for an assistant clerk, and would oppose the setting up of an assistant clerk merely as a pigeon head to draw pay from the territorial treasury.

Mr. Valentine said he offered the resolution in good faith and in the belief that an assistant clerk was necessary to expedite the business of the council.

A vote being taken upon the amendment of Mr. Roberts it was defeated by a vote of 11 to 2.

The original resolution then adopted by a vote of 10 to 3.

On motion the council then took a recess until 3½ o'clock, p. m.

THE HOUSE.

At twelve o'clock, noon, to-day, the house of representatives was called to order by T. A. Kingsbury, clerk of the last house.

The roll call showed the following members in their seats:

Messrs. Brown, Burbank, Cross, Flick, Fockler, Gamble, Gray, Gunderson, Helvig, Hoyer, Hoelboe, Jackson, Johnson, Langness, Mauxsch, Peterson, Shely, Simonson, Stevens, Stewart, Trygstad, Walden, Webber, Weeks, Whitfield.

All present except Mr. Hoyt of Union county.

The clerk announced that Chief Justice Shannon would be in attendance as soon as he finished his duties in the council chamber, to swear in the members of the house.

After a delay of a few minutes the chief justice appeared and the oath was formally administered by him to the members of the house and their names subscribed thereto, in accordance with the provisions of the revised statutes.

Subsequent proceedings were precluded by a prayer from Rev. J. P. Coffman, who invoked the aid of the Almighty and constant watchfulness from the Heavenly throne over the proceedings of this legislative body.

Mr. Burbank moved that the house now proceed to permanent organization, which motion was adopted.

Mr. Langness of Minnehaha county, nominated Mr. Jackson, of Minnehaha county, for the position of speaker of the house.

The vote was put on this nomination and showed twenty-four in favor of the election of Mr. Jackson and none against. He was accordingly declared elected speaker of the house.

On motion of Mr. Gray the following gentlemen were appointed a committee to conduct the speaker to the chair: Messrs. Gray, Whitfield and Brown.

Speaker Jackson, on taking the chair spoke as follows:

GENTLEMEN OF THE HOUSE OF REPRESENTATIVES—I trust I am not wanting in grateful appreciation of the honor you have done me in placing me in the responsible position of presiding officer of your honorable body. I tender my warmest thanks to each and every one of you, for this very marked expression of your confidence and esteem. I enter upon the work you have so generously assigned me, with somewhat of distrust of my ability to discharge the important duties of my position in such a manner as to justify the choice you have made. But, gentlemen, the unanimity with which you have called me to preside over your deliberations, is, of itself, a sufficient guarantee that I shall have your generous support—your cordial co-operation, and your personal friendship. Conscious of my inability to make mistakes, and to err in matters of judgment, I bespeak for myself your patient and charitable forbearance which I shall strive to deserve. Although we now, as a legislative body, are few in numbers, yet let us remember that we are doing work for the years, and for the people that are yet to come. Let us see to it then, that our work is well done! Let us remember that what is now a vast territory, sparsely settled, comparatively little known and slightly developed will, in the very near future, become two magnificent states. Upon the azure field of the broad banner of our glorious country two more bright stars must soon have a place.

Gentlemen—I trust that in the consideration of all questions of a local character, the wishes of our several constituencies will be fairly considered. But in those great questions that involve the interests of all our people, I feel assured that each member of this honorable body, will justly and fairly represent every broad acre of our magnificent territory.

I cannot but feel that a spirit of harmony and conciliation will mark the proceedings of every day and hour of the session upon whose duties we are about to enter, and that all our relations will be of the most cordial and friendly character.

Thanking you again, gentlemen, for this token of your regard, we will now enter upon the business that calls us together.

At the conclusion of his brief remarks, the oath of office was administered to the newly elected speaker by Chief Justice Shannon.

—Mr. Jackson, the speaker of the house, is a resident of Valley Springs, in Minnehaha county and has been a permanent inhabitant.

ast of Dakota for two years. He is engaged in the lumber business at Valley Springs and, we are happy to state is doing well in a business way. He came to Dakota from New York, where he was a neighbor and intimate acquaintance of Vice President Wheeler. Mr. Jackson is a gentleman of fine personal appearance, with a sufficient sprinkling of gray in his beard to indicate that he is on the down hill side of life. He is a good parliamentarian and presides with dignity over the house proceedings. His election to this important position gives unbounded satisfaction and he will, without doubt, fulfill the most ardent hopes of all his friends.

A message was received from the council announcing its organization.

Mr. Gamble nominated T. A. Kingsbury, of Yankton, as chief clerk of the house.

A vote being taken showed a majority for Mr. Kingsbury, who was declared elected chief clerk of the house, and was sworn in by Chief Justice Shannon.

Mr. Hoyt, of Clay county, came into the house and was sworn in by Chief Justice Shannon.

Mr. Stephens of Bon Homme, nominated W. C. Grant, of Bon Homme, for the position of enrolling and engrossing clerk. The vote was put and Mr. Grant declared elected.

Mr. Whitfield, of Pennington, nominated Julian Dix, of Lawrence, for the position of sergeant-at-arms, and he was duly elected.

Mr. Fockler, of Lincoln, presented the name of T. W. Clark, of Lincoln, for the position of messenger.

Mr. Cross, of Clay, presented the name of Erasmus Jensen, of Clay, for the position of messenger.

A vote was taken, which resulted in a majority for T. W. Clark, and he was declared elected messenger of the house.

Mr. Stephens, of Bon Homme, presented the name of A. Culbertson, of Bon Homme, for the position of watchman for the house, and the vote gave him a majority and he was declared elected.

Mr. Gamble, of Yankton, presented the name of Rev. J. P. Coffman for the position of chaplain of the house, and he was duly elected.

These officers were then sworn in by Chief Justice Shannon and the organization of the house was completed.

Mr. Gamble offered a resolution to the effect that the council be notified that the house had completed its organization and was ready for business. The resolution was adopted.

Mr. Gray presented a resolution calling for the appointment of a committee of three to act in conjunction with a like committee of the council, to wait upon the governor and inform him that the legislature was now fully organized and was ready to receive any communication he might be pleased to make. The resolution was adopted and Messrs Gray, Stewart and Stephens appointed as such committee.

On motion of Mr. Stephens, the house took a recess of one hour.

AFTER RECESS.

The house was called to order at three o'clock p. m.

Mr. Gamble offered a resolution instructing the clerk to inform the council that the house was ready to meet with council to receive any communication the governor might desire to make, and to invite the council to meet the house in the house chamber. The resolution was adopted.

Mr. Gamble offered a resolution calling for the appointment of a committee of five to revise the house rules of the last session and make such changes as may be necessary, and to act with a similar committee of the council on joint rules. Adopted, and Messrs. Gamble, Gray, Burbank, Langness and Trygstad appointed as such committee.

On motion of Mr. Langness the rules of the last house were adopted for use until new rules are adopted.

On motion of Mr. Burbank, a committee of three, consisting of Messrs. Burbank, Gamble and Whitfield, was appointed on joint rules.

Mr. Gamble presented a resolution inviting the federal officials to a seat within the bar of the house. Adopted.

The committee appointed to wait upon the governor reported that his excellency was ready to attend and deliver his message.

JOINT SESSION.

At four o'clock p. m. the two houses of the legislature convened in the house chamber to receive the governor. The gallery was filled with spectators, and every available seat upon the floor of the house was also occupied, a few ladies appearing in the audience. Most of the territorial officials and several ex-officials were also present.

Governor Howard appeared before the joint session, and read from printed sheets the following

MESSAGE:

Gentlemen of the Council and House of Representatives: In view of the greatly improved condition of the territory it is a pleasing duty to welcome you to your legislative labors and responsibilities. During the last two years our population has increased steadily and rapidly; probably three fold. Our taxable property has increased in a single year more than sixty per cent. The exceeding fertility of our soil has been demonstrated. The destructive power of the locust, heretofore overrated, has become less and less until it has been established that labor can be rewarded and a large measure of prosperity secured in spite of the ravages of the grasshopper, incurred in the past, or apprehended in the future. A rich gold and silver mining region has been opened within our borders which has already produced a large value of the precious metals, and the development of which will be a source of permanent and increasing wealth. Our educational interests are better cared for. Our laws are better enforced, and more generally respected. Our finances are improved and improving. Immigration has increased beyond all former precedent in the territory, with every indication of a still larger ratio of increase for the next year. In short all the materials are flowing in and clustering around us that must

soon form a great and prosperous state. Into what sort of a state these elements shall be moulded; as to what institutions shall characterize the future of Dakota, must largely depend upon the wisdom and dignity with which we meet our present greatly increased responsibilities.

The highest of all duties, the gravest of all responsibilities, that can come upon a legislative body, is the proper moulding of the institutions which are to give character to the new and growing commonwealth. With us the present is peculiarly a formative period. The quality of our acts at this very session may affect the interests of children yet unborn.

Our abundant and varied resources, developed and to be developed, show that Providence has placed here an exuberance of all those physical conditions necessary to the formation, growth, and maintenance, of a great and prosperous community. And whether these elements of statehood shall ultimately be formed into one or more states, their number and volume have greatly increased and are still increasing, and the process of crystallization has already begun. Some clear ideas of what should characterize an organized community or a free state would seem to be necessary and appropriate before we lay aside our territorial swaddling clothes.

What, then, is a state? What is a free state? What institutions should characterize a free state? What are its legitimate functions? What its duties and powers? A free government is simply the organized power of the good, consolidated and wielded to restrain the bad, and to protect the weak from the encroachments of the strong; or, in other words, to establish justice and secure the blessings of liberty to all the people. All courts interpret its will and all officers execute its decrees. The sheriff goes forth with its process, and even when supported by the *posse comitatus*, or the whole military power, he is only the minister of its will. Such a government is right in its conception and organization, and so far must receive the approbation of heaven. "Order is heaven's first law," and such a government, existing for, and securing the good of the governed, is the "creature of God." We can hardly conceive of the existence of such a government, without admitting the truth of the fundamental axioms of the declaration of independence; for such a government can only rightfully exist by the consent of the governed, and for the good of the governed.

A state is the people in a given territory and their institutions.

A free state consists of the people and such institutions as they make for themselves.

A despotic state consists of the people and such institutions as are imposed upon them.

A free state lives in the will of its people! Public sentiment shapes its course and controls its action! We judge of a state by the same rules as of an individual. "By their fruits ye shall know them." Their character must be determined by what they do; but if they do what public opinion demands, it is essential that public opinion should be enlightened and virtuous. Hence it has come to be an axiom, that the only true basis of a republic is the intelligence and morality of its people. Experience goes far towards proving that the more closely the public morality is allied to, and springs from, the personal religion of the individual citizens, the better it endures the trial. The basis of public morality is the enlightened consciences of individual citizens.

The first duty of every free state, commanded by the highest of all laws, the instinct of self preservation,—is to foster institutions for the promotion of the intelligence and virtue of its people. The "liberty of a people cannot be forced beyond its intelligence," nor can it long survive the decay of public morality. Governments rise and fall, and nations decay and pass away, but the great principles that pertain to rightful government remain unchanged and unchangeable. The Creator seems to have impressed his own immutability upon the true principles of rightful government, such as justice, and truth, and equality of right.

Another important function of a state, is to provide for the unfortunate,—the deaf and dumb, the blind, and the insane. Humanity requires this at the hands of the state, since a kind of treatment is often required, that friends and relatives could not furnish; nor could any system of voluntary charity meet the case so well; and since all are liable to these terrible calamities, it is proper that all should aid, under the control of the state, in making suitable provision for the unfortunate of this class.

To guard well the public health, to provide for the common defense; to preserve the public peace; to secure to every man the reward of his own toil; to secure freedom to worship according to the dictates of one's own conscience, and to distribute equally the public burdens, are among the proper functions of the state.

THE INSANE.

When the legislature completed the labors of the last session only seven persons in the territory were confined as lunatics. The law made it the duty of the governor to contract with the authorities of one or more of the three states of Minnesota, Iowa and Nebraska, for the care and confinement of our insane in the state asylums of said states. A contract was made with the authorities of Minnesota to confine and care for our insane for \$5.00 per week for each patient, with the cost of clothing, &c., to be added. But in June of the past year we received official notice that the asylum of Minnesota was full of patients of their own, and we must send no more there after the 1st of July, and we take away all we had there before the 1st of October. Meanwhile the number of territorial patients had increased to above the number of 20, and new cases were calling for admission. As Iowa and Nebraska were the only states where we could legally send them after Minnesota refused, attention was immediately turned to those two states. But the asylums of both were found full of their own. Application was made to several states east, but no place could be found in any public asylum where they could be sent even after the legislature should meet and legalize their removal.

The best terms upon which they could be kept in any asylum built by private enterprise was \$400 per annum each, which would amount to at least \$15,000 per year, including transportation from the remote parts of the territory to the extreme southern part of Illinois. In view of the extreme difficulties of the case, and the interests of humanity involved, the authorities of the Minnesota asylum so far modified their order as to extend the time for removing our insane from there until the 1st of February, 1879, thus giving the legislature time to legalize some proper disposition of this most unfortunate class. While Nebraska has not room for a single male patient in their regular wards, the authorities of that state consented to receive a limited number of patients, on condition of our making such improvements in certain unfinished rooms as were necessary to confine them in the night time. As there was no law therefore I paid this out of means of my own. The expense thus incurred is much less than the extra cost of moving them to St. Peter, instead of stopping at Lincoln on the way from the Black Hills.

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[Continued from Fourth Page.]

In this way provision was made for the proper care of the insane until the 1st of February, and no longer.

The question as to what could be done with these unfortunate people after the first of February demanded immediate attention. I could find no law for calling an extra session of the legislature. There was no building in the territory at all suitable for the confinement and proper treatment of so large a number—probably thirty—and no law (except the law of necessity) for expending any money or incurring any debt to provide buildings. They must be provided, or at least in such a state of forwardness that the legislature could complete them in time to receive the patients. To do this, a portion of the work must be done before cold weather. This has been done. The work so far has been paid for from my private funds. It now remains for you to complete the work, or reject it, as in your wisdom, you may deem proper. I had no power to incur a debt, or create any legal obligation against the territory; nor do I wish to coerce you into the adoption of any particular plan.

But the honor of this territory—every consideration of patriotic duty—every tie that binds the good man to his country—every bond of social duty—every claim of humanity, demands that you make immediate and suitable provision for the care of this most unfortunate class. When all these utter their claims with united voice, what is it but the very voice of God?

It is believed that by promptly completing the arrangements, and securing an efficient organization, and by an economical management, the insane of the territory can be well cared for and a saving made in a single year of more than the entire cost of the building, and the necessary furniture and fixtures. Even if this should prove an over-estimate, the statistics collected from the various asylums in the country, show that of all the persons received and properly treated during the first year, fifty per cent are cured; while of those received during the second year, only ten per cent recover. These statistics show that prompt and proper treatment is demanded on the score of economy no less than by the imperative claims of humanity.

A full statement of the amount expended therefor with carefully prepared estimates of the cost of completing, furnishing and managing, will be the subject of another communication to be submitted at an early day.

PRISON.

One of the most important subjects that should, I think, demand your early attention, is the mode and the expense of keeping our convicts. It appears by the auditor's report that the cost of keeping our convicts for the two years ending the 30th of November, 1878, was \$7,391.67, while the cost of their transportation for the same time was \$12,863.33. The number is increasing, and, with our largely increased population, it will continue to increase. Unless some other arrangement can be adopted the cost of transportation alone will soon reach ten thousand dollars a year. So long as no steps are taken towards providing a prison of our own this large expenditure must prove an increasing burden upon the tax payers and an entire loss; for at the last a prison or prisons of some kind must and will be built.

The convicts are well cared for, and kept at a cheap rate at Detroit. The prison itself is all that could be desired, but the cost of transportation is a burden too great to be long endured. In view of the extent of our territory and of the remoteness of the different settlements from each other, and the difficulties and expense of inter-communication, it would be perhaps unwise to locate and build an expensive prison at the present time, even if we had the means at our command. For, locate it where we would, a heavy expense for transportation must continue until increased immigration shall blend our settlements, and increased railroad and other facilities shall have cheapened the cost of inter-communication. While I am not prepared to make, at this time, any very definite or distinct recommendations, I venture to suggest that cheap prisons or work houses might be commenced, say one located in each judicial district, where convicts sentenced to hard labor for short terms, say one or two years, might be confined and their labor utilized, with little, if any cost, for transportation.

The large amount thus saved and the value of the convict labor, with only trifling additions, would furnish means of confinement as fast as required; while each would become the nucleus of such prison as would ultimately be required in the Black Hills, in northern Dakota and in southeastern Dakota. The question is, why of consideration whether short sentences, endured near the place of the commission of the crime, would not be more salutary than punishment inflicted a thousand miles away and among entire strangers.

Should any of these suggestions be deemed of sufficient importance to receive any action within the next two years, some modification of the laws would be necessary at the present session.

Should congress divide our territory, these prisons would be none the less useful and necessary. But in no event should any debt be created without making provision for its early liquidation. Half a dozen cells and a stockade would be enough to begin upon in each of the judicial districts, constructed so they could be enlarged as required. Meanwhile convicts for long periods could be sent as now, where they are kept at cheap rates, and the comparative cost of transportation per year would be lessened in proportion to the number of years. At present the average cost of transportation from the different counties to the territorial prison at Detroit is equivalent to their keeping for three and one-half years.

Should the plan above suggested be deemed objectionable, and it should be thought better to confine our efforts to the construction of one large and substantial prison in some central locality, and with due regard to cheapness of material, even then prudence would dictate that the work proceed very slowly, carefully avoiding the contraction of any large debt, even if we were obliged to build in small sections and no faster than required for actual use.

Should we show a disposition to begin, it is possible congress might see the justice and the wisdom of giving us substantial aid in the construction of such a prison as would be suitable for prisoners of the United States

as well as of the territory. If we do nothing toward providing for our future and increasing necessities, our taxes will have been absorbed and we will have nothing to show for them. I commend this whole subject to your thoughtful consideration.

FINANCES.

The amount of warrants issued during the two years, ending the 30th of November, 1878, was \$48,483.98, of which amount \$30,167.32 was for the year ending 30th of November, 1877; and \$18,316.66 was for the year ending 30th of November, 1878. Of the amount drawn in 1877, \$10,015 may be regarded as extraordinary unusual expenses. The most, if not all, of this amount, it is believed, congress should have refunded. This amount embraces the following items:

Table with 2 columns: Description and Amount. Items include: For locating roads from the Missouri river to the Black Hills, required by treaty and approved by the secretary of war (\$3,000); Codifying the laws (2,094); For printing the codes (4,921); Total \$10,015.

If we deduct this amount from the total of warrants issued it will leave \$38,468.98 as the amount of ordinary current expenses for the two years, or \$19,234.49 as the average ordinary yearly expenses, exclusive of interest on the outstanding warrants. This amount may be slightly increased (perhaps \$1,000) by some unadjusted claims. It appears by the auditor's report that warrants to the amount of \$29,140.87 have been cancelled and are now on file in his office:

Table with 2 columns: Description and Amount. Items include: Of these, there were redeemed of the issue of 1874 (\$167.83); Of the issue of 1875 (1,770.44); Of the issue of 1876 (9,767.32); Of the issue of 1877 (16,292.79); Of the issue of 1878 (1,332.99).

Warrants redeemed in two years, on file with auditor \$92,140.87. Deducting the amount paid on warrants issued in the years 1874 and 1875, \$1,937.77, and it would leave \$27,203.10 applicable to the cancellation of warrants issued during the two years ending the 30th of November, 1878. This amount deducted from the whole issue of the two years, leaves \$21,280.88 as the amount of outstanding warrants, exclusive of interest, on the 30th of November, 1878.

The treasurer reports warrants paid (now on file in his office) and notified to be paid, to the amount of \$6,100.58, also \$3,049.89 paid by him for interest, for which he has taken credit, making a total of \$9,150.47. Assuming this to be correct, and deducting the \$6,100.58, it should reduce the amount of outstanding warrants to \$15,180.30, exclusive of accrued interest on the same, estimated by him at \$1,500.

This should make our entire indebtedness upon outstanding warrants for principal and interest on the 30th of November, 17,280.30, instead of \$23,233.47 as by the statement of the treasurer.

The error of the treasurer seems to arise by his reporting warrants redeemed and in his office to the amount of \$2,463.08, and the further sum of \$3,637.50 as notified for redemption, amounting to \$6,100.58, and taking credit for having paid this aggregate amount, and using it to account for the money he has received, and then reporting them as outstanding warrants.

Table with 2 columns: Description and Amount. Items include: On the item of \$2,463.08 he has charged interest (\$328.58); And on the item of \$3,637.50, accrued interest, he has charged (\$51.45).

Total of interest on the two items and used in accounting for the money received \$440.03.

The treasurer reports the total amount of receipts from all sources for the two years ending November 30th, 1878, as amounting to \$35,895.55, and he gives the amount received from each county, but he does not give the date of the receipt of any portion of it. The full amount of interest claimed to have been paid is \$3,049.49, but no dates are given when any portion of this interest was paid. To test the accuracy of such an interest account, it would seem to be essential to know when the interest on each warrant commenced, and when it was paid. I recommend that your honorable body take such action as will secure a full report from the territorial treasurer and a settlement of his account.

A large portion of our expenses has been for the care and confinement of our convicts and lunatics and the expenses of transportation to prisons and insane asylums outside of the territory; and, as our warrants were at a heavy discount, it was found impossible to use the warrants except with the understanding that, when certified, they should draw ten per cent interest until paid. This rate has been regularly paid on all warrants duly certified. The general law makes the rate of interest 7 per cent, except by special contract, when it may be increased to any rate not exceeding 12 per cent. But it is equitable and just that the outstanding certified warrants should be paid as agreed upon, and that the treasurer be allowed the 10 per cent which he has paid. I recommend that you legalize the payment of 10 per cent interest on all certified warrants now outstanding.

The heavy discount on our warrants has heretofore proved a heavy burden upon our tax payers. Our warrants have ruled from 80 to 90 cents. If they float on the average one year before payment, and we sell one for 85 cents, or make all contracts 15 per cent higher than we would for cash, we pay interest on one dollar for every 85 cents, and pay principal and interest in full at the end of the year. In this way we pay what is equivalent to 29.41 per cent interest on all outstanding warrants. With our greatly increased and increasing resources, and in the present state of the money market, all our warrants can be cashed at par, and at a rate of interest not exceeding 10 per cent, with the privilege of paying as fast as our funds will permit; so that no funds need lie idle, but may be applied as fast as realized from our taxes. In this way, without increasing our indebtedness, we may be able to save to the tax payers at least \$5,000 per annum.

Forced loans are of the most expensive kind. And warrants that float below par are among the worst specimens. I recommend that you authorize and direct the board of equalization to take such action as will, without increasing the debt, bring our warrants to par and maintain them, provided the means can be had at a rate of interest not exceeding ten per cent.

EDUCATIONAL INTERESTS—SCHOOLS.

In view of our increased population and the increased demand for educational facilities, and in view of the certainty that the liberal provisions made by congress for the future support of common schools within our present boundaries will soon begin to

be available, no more important subject can command our attention than the thorough organization and efficient working of our school system. The grant of land made by congress for school purposes, two sections in each township, or more than five million (5,000,000) acres, if carefully preserved and wisely applied, will at no very distant day make Dakota a model community for the general intelligence of its people, whether it shall be organized into one or more states. The limited time given to those who modified our laws, at the last session, did not permit the thorough revision of the school law which it might otherwise have received. Our school laws are made up to some extent of old statutes. A thorough revision made by skillful educators would perhaps make them practical and harmonious and better adapted to meet our increasing wants and responsibilities. I fear our present laws on this most important subject have not commanded that zeal and exclusive devotion on the part of some of our officers which it was their duty to bestow upon this important subject. Chapter 40, section 3, of the political code makes it the duty of the superintendent of public instruction "to keep a record of his official acts, and to exert himself constantly and faithfully to promote the interest of education of the territory." * * * * * "He shall prepare and present to the governor, before the 15th day of December in each year, a report of his official acts for the preceding year, with a full statement of the condition of the common schools in the territory and the expenditure of the public school money; and shall make such suggestions for the improvement and support of the common schools as he may deem proper." No such report has been furnished for December, 1878, nor is there any evidence on file in this office showing the expenditure of the public school money; nor indeed of any other acts of the superintendent of public instruction, except as appears from the auditor's report, and the items mentioned therein relate mainly to salary, mileage and institutes.

I greatly regret that the failure to furnish the reports required by law renders it impossible to communicate to your honorable body, at this time, the detailed information contemplated in the law; but, nevertheless evidence is not wanting that our citizens in various localities of the territory have manifested a lively interest in the maintenance and improvement of our public schools.

RAILROADS.

Our present railroad legislation has not, as yet, received any fair test; no railroad has been built under it as the law now stands. It is a great subject and is to have an important bearing upon the interests of our territory; but in the absence of the test of practical experience as applied to its particular provisions, I am not prepared at this time to enter upon any recommendations in detail, by way of modification or enlargement. But I content myself with the suggestion that the legislation on this subject, if any, should have two objects in view; the protection of the rights of our citizens on the one hand; and on the other such full and just security of capital, fairly invested, as shall develop the great railroad interests of the territory, so intimately connected with the prosperity of

Dakota. Indications are not wanting at the present time that this subject will assume vast importance and require very careful attention at no distant day.

IMMIGRATION.

The subject of immigration will deserve your consideration. The increase of settlement and the development of our resources should be continuous and as rapid as the welfare of the new citizens will allow. Growth in population and wealth is the natural law of our territorial life, the necessity of our condition. With a denser population and greater wealth, all public advantages are increased and the welfare of all citizens is improved. With returning prosperity in the nation and the more buoyant feeling of enterprise among the people, an increased attention is drawn toward this territory, which is now augmented by the railroad enterprises within and near our borders. The favorable land laws of the United States have here their most complete and perfect application; and there remain large areas upon the borders of our settlements which offer permanent advantages to the immigrant.

It would, perhaps, be impossible to adopt any general system, under a superintendent, without involving heavy expense, and which would be otherwise satisfactory to all sections. Our settlements are separated and hold different relations to the neighboring states and to the markets, while there is now little except official inter-communication. The several judicial districts represent the three great communities comprising our population; and it seems better to have three authorized agents of immigration, one for each of these districts, instead of a single superintendent. This arrangement would also save much in traveling and other expenses, while each would thus be able to organize efficiently the harmonious interests of his district and secure the co-operation of many other agencies. The expenditure of \$1,000 would give \$333 to each district, of which say \$100 could apply as salary and the remainder be expended for printing and other necessary expenses. There is now an increasing demand for accurate and reliable information concerning Dakota, and some economical method of supplying it would doubtless result in the general advantage.

THE CARE OF THE POOR.

The law requires that the paupers shall be supported at the expense of the several counties, and defines their residence or legal settlement, with a view to fixing the responsibility of each county for the support of its own; and it makes the probate court of each county the tribunal for determining the insanity of such persons as are to be transported and cared for from the territorial treasury. The practical execution of these laws has led to grave abuses. There is a constant temptation on the part of the county officers to send their paupers, at a heavy expense to the territory, to be supported as lunatics. In several instances those who should have been considered as mere paupers, to be supported by the county, have been sent to the asylum at a heavy expense for transportation and care. With the law in its present form, the want of skill on the part of some probate judges and a deplorable want of integrity on the part of others, has led to great confusion and injustice. In some instances men have

been sent long distances and lodged in the insane asylum at a heavy public charge, who were just simply paupers—drunken paupers or criminals. In these cases fraudulent affidavits have been certified by the probate judges, for transportation in which the judge himself is alleged to have been interested.

To avoid the danger of such abuses I recommend that the law be so modified that any county sending an alleged insane person to the asylum be required to pay for the transportation thereto and for his return to his own county when he shall have been discharged from the asylum. When any person without estate has been received and treated as an insane patient at the expense of the territory and has been discharged from the asylum, all the expense of his return, and of his support, should then rest upon the county from which he was sent, since while a lunatic he can neither gain nor lose a residence.

THE PARDONING POWER.

The power to pardon offenses against the territorial laws is conferred by the organic act upon the governor. In its terms the power is absolute, perhaps necessarily so. Upon him rests the responsibility of its judicious exercise. I have introduced the subject here, not for the purpose of asking legislation, for you scarcely have the power to make any laws of binding force on the subject; but we have reached that point in the development and execution of our criminal laws when its proper exercise assumes great importance to our people, without regard to the question as to where the power is placed. And as this is the first opportunity that I have had to express my views of the proper limitation, and the extent, of its exercise, I avail myself of this occasion to state briefly the principles which I believe should control the action of the executive branch of the government on this important subject.

In early times, and among many nations at the present day, the doctrine of the divine right of kings, has been and is maintained, and as a necessary result all crimes are against the king.

The power to pardon was a personal prerogative of the king, not only absolute in form, but its exercise depended only upon his pleasure or caprice. The crime was against him, and he was the party in whose name all writs and prosecutions ran. To pardon was an act of personal grace and forgiveness, as much as to give of his own property to relieve the necessities of the poor.

But our system of government rests upon a different theory. With us the people are the source of power, and every crime, great or small, is a crime against the people. And while the pardoning power may remain absolute in form so far as it relates to the legal subjects of its exercise, in reality the whole thing is changed. The executive is simply the agent of the supreme power, and he cannot rightfully exercise clemency in any given case, except upon the ground of good and sufficient public reasons. Its exercise should be limited mainly to the discovery of new evidence which would have changed or modified the result, could all the facts have been known before judgment.

In my view the executive has no right to use this high prerogative in a way that can weaken the power of the law to restrain

crime. Neither sympathy nor prejudice should be permitted to break the force of a just judgment, except upon the strongest claims of humanity, or in some case where the practical working of the law could not have been foreseen. The unerring certainty with which punishment, although not excessive, must and will follow conviction, is what restrains crime. It is believed fidelity to the public in the exercise of this high prerogative will diminish crime, and thus prove on a grand scale to be humane and merciful.

REWARDS FOR ARRESTS.

The law authorizes the governor to offer a reward for the arrest of criminals in two cases only, and these the least likely to occur; and a wider scope for that power might prove advantageous toward the more certain punishment of crime.

APPORTIONMENT.

Congress at its last session passed a law reducing the number of the territorial council to twelve, and the number of representatives to twenty-four. This action of congress imposes upon you the duty of making a new apportionment of council and representative districts at the present session. A just apportionment even under the most favorable circumstances, is a difficult thing to make. But in view of the fact that our population has more than doubled since any census has been taken; that the settlements are in remote parts of the territory, each having interests and prejudices of its own, I trust you will all feel the importance of approaching this subject with such a spirit of candor and fairness as will secure just and satisfactory results.

LIBRARY.

Congress has made provision for a law library for the territory, and as the territory owns no building where it can be kept and cared for, an appropriation should be made by which the librarian can pay the rent and such other incidental expenses as may be necessary for its use and proper care, including insurance.

Many valuable volumes, such as law reports and the reports of state officers, have been donated to, and have greatly increased the value of the library, while heretofore there has been no provision of law for reciprocating these favors; and if we continue to neglect this, these valuable acquisitions will soon cease. And as the first volume of the reports of the supreme court decisions of the territory is soon to be published by private enterprise, I recommend that the librarian be authorized and directed to purchase a sufficient number of copies, not exceeding sixty in all, to furnish the libraries of the several states and territories with one copy each, and to supply the library with such additional copies as may be necessary for its use.

TERRITORIAL EXPENSES.

There is a necessity that the expenses of the territory should be kept at the lowest point consistent with our condition and the strict requirements of public interests. Economy is most valuable in every stage of a commonwealth's growth, and this habit should especially be cultivated in the period of our formation and development, that it may become the characteristic of our institutions and the public faith be kept as an honorable heritage of our citizens. I have confidence that a constant regard will be

given to this necessity in all your acts. With the increased resources of our territory it is earnestly hoped we may not be compelled to increase the rate of the territorial tax beyond three mills upon the dollar of valuation, and it is believed such tax will produce revenue sufficient for all territorial expenses, including adequate provisions for the outstanding unpaid warrants.

REPORTS.

The reports of the territorial auditor and the territorial treasurer for the fiscal years ending November 30th, 1877, and November 30th, 1878, and the report of the custodian of the territorial library, being all the reports required by law to be made to the governor, which have been received, are herewith transmitted to your honorable body.

CONCLUSION.

I have purposely avoided any allusion to national affairs, that during the limited session allowed by law for your deliberations, we may devote ourselves more exclusively to that class of duties that legitimately pertain to us. You are assured that all your efforts, intended to advance the interests of the territory, will command my earnest attention and receive my co-operation.

After the applause which followed the delivery of the governor's message had subsided, the joint session was adjourned and immediately following this the house adjourned to ten o'clock to-morrow morning.