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DAKOTA LEGISLATURE.

Thirtieth Session—Daily Report of the Proceedings of the Council and House of Representatives.

TWENTY-THIRD DAY.

GENERAL COMMENTS.

Council bill No. 19, which was vetoed by Gov. Howard, changed the justice code so as to give an accused person the right to a change of venue in a preliminary examination. The governor did not object to a provision of that kind, but based his opposition to the bill upon the ground that in his opinion the legislature had amended the wrong law to effect its purpose. In this opinion, the council, in which body the bill originated, disagreed with the governor. When the veto message came up for consideration and the question being "shall the bill pass, the objections of the governor to the contrary," the vote stood: Ayes—Messrs. Cuppett, Day, Kuykendall, Miner, MacNider, Pettigrew, Roberts, Rohr, Valentine and Mr. President—10. Noes—Messrs. Edmunds, Ellis and Wynn—3. The necessary two-thirds voting in the affirmative, the bill was declared passed, notwithstanding the veto. The message has yet to be acted on in the house.

Mr. Walton has introduced a substitute for his ten per cent interest bill which remedies a defect in the original without affecting the main point within the bill. This measure will pass the house by a good majority, unless indications are all misconstrued.

Telegrams were received by various members last night from the managers of the Chicago Milwaukee & Northwestern railroad companies saying, that their companies cannot build a mile of road in Dakota under the existing laws. As the building of railroads is a matter in which all of Dakota is interested, this announcement should induce our legislators to do all in their power towards giving for the benefit of companies a law which will encourage them to push forward contemplated extensions.

The house to-day lost much valuable time under call, because of the absence of Mr. Flick, of Pennington county. It was the intention to bring up the railroad bill in committee of the whole at an early hour this morning, but Mr. Flick's absence prevented any such action and nothing was done.

The "local option" bill met a quiet death in the council this morning. A motion to postpone action on it until the day before the probable final adjournment, when it might die of old age, met with no favor, and it met its fate without eliciting a groan or a shout. Capt. Miner was the only member who evinced any sorrow. When the motion to reconsider the vote and lay the motion on the table was before the council, he said, with

a small tear in his voice, that he didn't want to see the motion prevail, as he thought the majority might yet see the error of their ways, and pass the bill. But his appeal was in vain; the obsequies were completed, and now "local option" peacefully sleeps with the valiant captain's woman's suffrage bill.

THE COUNCIL.

Wednesday, Feb. 5—The council met at 10 o'clock a. m. and was called to order by the president.

Prayer by the chaplain.

Roll call showed all members present.

The minutes of yesterday's proceedings were read and approved.

MESSAGE FROM THE HOUSE.

A message from the house announced the passage of council bill 25, amending the act creating a board of education for the city of Vermillion; also, council bill No. 32, locating the county seat of Grand Forks county.

REPORTS OF COMMITTEES.

Mr. Wynn, from a special committee, reported council bill No. 36, providing for the repeal of section 665 of the code of criminal procedure, and recommended its passage.

The same gentleman reported from the committee on education H. F. No. 9, to amend sections 8, 92 and 101 of the justice code; recommending its indefinite postponement; also house file No. 13 and recommended its passage.

Mr. Cuppett, from the committee on immigration reported back house file No. 4, the local option law, without recommendation.

Mr. Miner, from the committee on agriculture, reported house file No. 37, a memorial for an increase of mail service between Canton and Milltown, and recommended its passage.

Mr. Ellis, from the committee on counties, reported house file No. 27, authorizing school district No. 1, in Richland county to issue bonds, with a recommendation that it do pass.

Mr. Edmunds, from the special committee composed of the Yankton county members, reported back council bill No. 28, to amend the charter of the city of Yankton, with amendments, and recommended its passage.

Mr. Miner, from the select committee to which had been referred the invitation of President Wicker for an excursion over the Dakota Southern railroad, reported that arrangements had been made for the excursion on Friday, Feb. 14th.

NOTICE OF BILLS.

By Mr. Roberts—To provide a board of education for the city of Fargo, and to regulate the management of public schools therein.

INTRODUCTION OF BILLS.

By Mr. Roberts—A bill for an act to amend the act to incorporate the city of Fargo.

By Mr. Kuykendall—A bill for an act relating to settlers upon the public lands.

Which bills were read a first time.

SECOND READING OF BILLS.

Council bill No. 57—A bill for an act relating to the terms of court in Union county, was read a second time and referred to the committee on judiciary.

THIRD READING AND PASSAGE OF BILLS.
Council bill No. 28, amending the charter of the city of Yankton, was passed.

Council bill No. 36, to amend section 665 of the code of criminal procedure, relating to the fees of officers in conveying convicts to the penitentiary. The bill was lost.

Mr. Rohr moved that the vote by which the bill was lost be reconsidered and that the motion to reconsider lie on the table, which motion did not prevail.

The motion to reconsider was then adopted, and on motion of Mr. Kuykendall the bill was referred to the committee on judiciary.

GOVERNOR BILLS.

Ex-Governor Bullis, of Iowa, being in the hall, on motion of Governor Edmunds, he was invited to a seat within the bar of the council.

COMMITTEE OF THE WHOLE.

At eleven o'clock the council went into committee of the whole, with Judge Kuykendall in the chair, and resumed consideration of council bill No. 34, to provide for the building and government of a territorial penitentiary.

After completing the consideration of the bill, on motion of Mr. Pettigrew the committee rose, reported the bill back and recommended its passage as amended by the committee.

On motion of Mr. Edmunds the bill was ordered engrossed for its third reading.

On motion of Mr. Valentine house file No. 41, a memorial in regard to the system of United States land surveys and the appropriations for the same, was taken up, the rules suspended and placed upon its final passage.

Mr. Pettigrew stated that he was not sufficiently familiar with the objects and statements of the memorial to vote for its passage. The statement of the memorial that the surveys of public lands in Dakota have been correctly and accurately made is not true. It is a fact that the government surveys in some portions of the territory are notoriously incorrect and unreliable, and he would not place himself on record as favoring a memorial which asserted the contrary.

Mr. Valentine said he called up the memorial at the request of a citizen of Yankton, whose name it was unnecessary to mention, as the phraseology and length of the memorial would probably indicate the person. He said he had no interest whatever in the memorial, and merely called it up as requested.

Mr. Edmunds favored the memorial. It asked that the present system of land surveys be continued, instead of having that work done by the engineers of the army, as is proposed by the government.

The memorial passed by a vote of yeas, 8; noes, 5.

Council bill No. 40—A bill for an act to define the boundaries of certain counties of this territory, came up for its third reading.

Mr. Edmunds presented a protest from citizens of Hanson county, protesting against the passage of any bill changing the boundaries of that county.

After some discussion, in which Messrs. Edmunds, Pettigrew and Miner took part, the bill passed by a vote of yeas 8, noes 5.

Council bill No. 44, to amend sections 308 and 555 of the penal code. Passed.

REPORT OF A COMMITTEE.

Mr. Pettigrew, from the committee on railroads, reported back house file No. 5, in regard to the employment of short hand reporters, with an amendment excepting the counties of Bon Homme, Union, Clay and Lincoln from its provisions.

On motion the amendment proposed by the committee was adopted and the bill passed by a unanimous vote.

HOUSE BILLS.

House file No. 4, being Langness' local option law, coming up on its final reading and passage,

Mr. Wynn moved that it be made the special order at 11 o'clock on Wednesday, February 12th.

On motion of Mr. Kuykendall, Mr. Wynn's motion was laid on the table.

The yeas and noes were then called, and the bill was defeated by the following vote: Ayes—Messrs. Ellis, Miner, Pettigrew, Roberts and Valentine—5. Noes—Messrs. Cuppett, Day, Edmunds, Kuykendall, MacNider, Rohr, Wynn and Mr. President—8. Mr. Kuykendall moved that the vote by which the bill was lost be reconsidered and the motion to reconsider lie on the table which motion prevailed.

House file No. 8, to amend section 336 of the civil procedure, was read a third time, and pending its consideration,

On motion of Mr. Wynn the council adjourned.

THE HOUSE.

The house convened pursuant to adjournment, at ten o'clock a. m.

Mr. Speaker in the chair.

Prayer by the chaplain, Rev. J. P. Coffman.

Roll call showed all members in their seats.

The journal of yesterday's session was read and approved.

COUNCIL MESSAGE.

A message was received from the council announcing the passage by that body of council bills number 38, 41, 42, 51 and 52.

A REMONSTRANCE.

Mr. Cross presented a remonstrance against the passage of the bill for the relief of ex-Treasurer Simonson and his bonds-

men, which was signed by four hundred residents of Clay county.

On motion of Mr. Gray, the remonstrance was referred to a special committee to consist of the Clay county members.

REPORTS OF COMMITTEES.

Mr. Stewart, from the committee on territorial affairs, reported back house file 21 with sundry amendments and recommended its passage.

Mr. Gamble, from the judiciary committee reported back house file 40 with sundry amendments and recommended its passage; also council bill two with like recommendation.

Mr. Langness, from the committee on agriculture, reported back house file 36 with a recommendation that it be indefinitely postponed. A substitute for this bill has been introduced.

Mr. Flick, from the special committee to whom was referred the invitation from the Dakota Southern railroad tendering an excursion to the members from Yankton to Beloit and reported that his committee had conferred with the company and had decided to report an acceptance of the invitation for Friday the 14th inst. between the hours of eight a. m. and half past eight p. m. The report was adopted.

CLAY COUNTY PUBLIC BUILDING.

Mr. Simonson moved a reconsideration of the vote by which house file 32, a bill authorizing Clay county to erect a jail, etc. was indefinitely postponed. The motion, prevailed.

Mr. Burbank moved that the bill be referred to the committee of the whole.

Mr. Cross raised a point of order that a reconsideration placed the bill before the house for action on indefinite postponement.

Mr. Burbank held to his right to move a reference.

The speaker sustained both gentlemen.

Mr. Cross spoke in opposition to the bill. He said a majority of his constituents did not want the legislature to interfere with the local affairs of Clay county. There was a general law under which they could operate and that was sufficient. The bill provided for taxation of about \$6,000 and as the people were poor this levy would be a great hardship. The county was now using at a fair rental, a good building for court purposes and their prisoners were cheaply and satisfactorily cared for at the Yankton county jail which was near at hand. He thought it unjust at this time to force this expense upon the people.

Mr. Gamble moved that the whole subject be laid upon the table until to-morrow. So ordered.

NOTICE OF BILLS.

By Mr. Gamble—For an act to amend an act authorizing the commissioners of Yankton county to fund its outstanding indebtedness and for other purposes.

INTRODUCTION OF BILLS.

By Mr. Gray—H. F. No. 50—To authorize Burleigh county to issue bonds to build a court house.

By Mr. Whitfield—H. F. No. 49—For an act to amend chapter 39 of the political code.

By Mr. Langness—H. F. No. 51—For an act to regulate the sale of intoxicating liquors.

By Mr. Simonson—H. F. No. 52—For an act to amend section 52 of chapter 38 of the political code.

COUNCIL BILLS.

Council bills number 38, 31, 42, 51 and 52 had their first reading.

Mr. Stephens moved a suspension of the rules and that council bill No. 51, relating to female suffrage, be indefinitely postponed.

Mr. Gamble moved as an amendment that the bill be made the special order for April 1st, 1879.

Mr. Gray moved as an amendment that the bill be referred to the committee of the whole and made the special order for to-morrow at eleven a. m.

Mr. Burbank moved to lay the motion on the table. So ordered.

Mr. Gamble's amendment making the bill a special order for April 1st was adopted and the amended motion was adopted.

Mr. Stephens moved to reconsider the vote by which the motion was adopted, and to lay the motion on the table. Adopted.

The following council bills had their second reading and were disposed of as indicated.

C. B. No. 37—referred to committee on mines and mining, on motion of Mr. Flick.

C. B. No. 54—referred to a special committee, with instructions to examine the papers and vouchers in the hands of the governor relating to expenditures for the insane hospital, and to report to-morrow. Messrs. Burbank, Gamble and Whitfield were appointed as such committee.

C. B. No. 29—referred to committee on education, on motion of Mr. Peterson.

C. B. No. 16—referred to a special committee consisting of Black Hills members, on motion of Mr. Burbank.

C. B. No. 55—Under suspension of the rules, on motion of Mr. Flick, the bill had its third reading, and the question being upon its passage, it was passed by unanimous vote. The act defines the boundaries of Burleigh county, and creates the counties of Emmons, Stark and Billings, lying in and near the northwestern corner of the Sioux reservation.

C. B. No. 3—Referred to the committee on charitable and penal institutions.

The report of the committee on council bill two was adopted, the bill read a third time, and the question being upon its final passage, it was passed by unanimous vote. It increases justices of the peace in Custer, Lawrence, Pennington, Burleigh and Grand Forks counties.

HOUSE BILLS.

House file 42 came up for second reading, and, on motion of Mr. Burbank, further consideration was indefinitely postponed, and the vote by which the motion was adopted was reconsidered, and the reconsideration laid upon the table. The bill pro-

posed to attach the counties of Lincoln, Clark, Minnehaha, McCook, Lake, Moody, Wood, Brookings, Hamlin, Deuel, Codington, Grant, Greeley and Stone to the third judicial district.

MESSAGE FROM THE GOVERNOR.

A message was received from the governor embodying a petition from the commissioners of Grand Forks county, asking public aid in the emergency forced upon the people of that region by the prevalence of small pox.

HOUSE BILLS.

The following house bills had their second reading and referred as indicated:

H. F. 44—committee on territorial affairs, on motion of Mr. Flick.

H. F. No. 45—committee on ways and means, on motion of Mr. Stephens.

H. F. No. 45—committee on ways and means, on motion of Mr. Gunderson.

House file No. 21, reported back from committee was recommitted for correction.

House file 34 had its third reading and was passed, by unanimous vote, excepting that Mr. Helvig was excused from voting.

House file 36 was laid on the table, on motion of Mr. Gamble.

RECESS.

Mr. Gamble moved that the house take a recess until 2:30 o'clock p. m.

Mr. Flick moved as an amendment that the house adjourn.

The amendment was lost and the original motion adopted and the house at 12:20 p. m. took a recess till 2:30 p. m.

AFTER RECESS.

House file No. 40, a bill protecting licensed ferry boat owners, came up for third reading and passed by a vote of 22 to 1, Mr. Weeks voting in the negative. Messrs. Flick, Gray and Johnson absent and not voting.

CALL OF THE HOUSE.

Mr. Burbank, at 2:40 p. m. moved a call of the house, which being ordered it was found that Messrs. Flick, Gray and Johnson were absent. The sergeant-at-arms, the recording clerk, the assistant clerk and the messenger were deputized to hunt up the missing members and bring them before the bar of the house.

Mr. Gray appeared at this juncture and was arraigned for an explanation. He was somewhat embarrassed under the trying ordeal, but the substance of his explanation as understood by the reporter, was that Governor Pennington had undertaken to bring him to the legislative building with his horse and buggy, and he thereby became late without any intention on his part. Mr. Gray was excused.

At three o'clock the sergeant-at-arms returned and announced that Mr. Johnson was present. Mr. Johnson being arraigned, admitted that he had no excuse for his absence, and he was excused.

Mr. Gray moved that further call of the house be dispensed with.

While this motion was being discussed, the sergeant-at-arms returned and reported that he had found Mr. Flick, and that Mr. Flick refused to return.

Mr. Gray withdrew his motion.

The sergeant-at-arms stated that Mr. Flick was in the basement under the Merchant's hotel and that his assistants were watching him. The sergeant-at-arms stated that he would bring him to the house if he were given time.

The sergeant-at-arms was instructed to reduce his report to writing, which was done.

Mr. Gray moved that the report of the sergeant-at-arms be adopted and that he be instructed to bring Mr. Flick before the bar of the house.

The sergeant at arms departed with his posse to carry out the orders of the house.

At 4:40 p. m. Mr. Burbank moved that further call of the house be dispensed with.

Mr. Gray asked if the house now dispense with the call can it consider the missing member under contempt when the house again assembles. He asked this for information.

The opinion of the speaker was, that if the house dispensed with the call it lost jurisdiction of the case.

Mr. Gray was in favor then of suspending proceedings, but thought it best to first get the council in session and pass a joint resolution to adjourn *sine die* to night. If the position was that one member could control this entire house, it was time to quit. Whenever an important measure came up a member by absenting himself could stop proceedings.

Mr. Gamble directed the attention of the house to the law governing cases like this and held that the house could in future emergencies adjourn without suspending a call of the house, provided it made a rule that such adjournment should not dismiss a call. He held that by adjourning, the house lost jurisdiction of the present case, but that it could again assume jurisdiction by amending its rules.

In response to a question by Mr. Gray, the speaker ruled that by suspending a call the house lost jurisdiction over the person of the absent member.

The ayes and noes were called on Mr. Burbank's motion to suspend the call of the house, and it was lost by a vote of 15 to 10, and at 4:55 p. m. the house was again in a state of semi-disorganization, under a full resumption of the call, awaiting the arrival of Mr. Flick. Legislation once more halted in obedience to the movements of the gentleman from Pennington county. By this time the indignation of the members locked within the room began to find vent in no measured terms. The situation was becoming intensely aggravating. Heavy fines were suggested and it was even intimated that preemptory expulsion might not be out of order.

At 5:20 p. m. Mr. Gamble moved that the fireman be delegated a special messenger to hunt up the sergeant-at-arms and instruct him to come in immediately and make his report. The motion was adopted and the fireman started on his errand.

At 5:45 o'clock the sergeant-at-arms returned and reported that he had run Mr. Flick over into Nebraska; had run him back again to Dakota; had been close upon him; had run him into his room; could break in the door, but hadn't strength left just now to take Mr. Flick.

The report was adopted.

ADJOURNMENT.

The house, at 5:50 o'clock p. m., adjourned to ten o'clock a. m., February 6th.

CALENDAR OF BILLS.

IN COUNCIL.

ON SECOND READING.

Council bill No. 55, by Mr. Wynn—A bill for an act creating a school law for the territory of Dakota.

Council bill No. 58, by Mr. Kuykendall—A bill for an act appointing a firewarden for the town of Deadwood and for other purposes.

Council bill No. 59, by Mr. Roberts—A bill for an act to amend the act incorporating the city of Fargo.

Council bill No. 60, by Mr. Kuykendall—A bill for an act relating to settlers upon the public lands.

IN HANDS OF COMMITTEES.

Council bill No. 57, by Mr. Rohr—Relating to terms of court in Union county—judiciary.

H. F. No. 18—By Mr. Stewart—For an act to amend section 15, chapter 39, of the revised code, relating to the compensation of public officers—education.

House file No. 2, by Mr. Gray—A bill for an act concerning corporations and persons engaged in the business of banking—judiciary.

Council bill No. 53, by Mr. Wynn—A bill for an act providing compensation for the clerk of the district courts of the several judicial districts of this territory—territorial affairs.

House file No. 12, by Mr. Flick—A bill for an act relating to fences and enclosures—territorial affairs.

Council bill No. 50—By Mr. Cuppett—A bill for an act authorizing the counties of Lincoln, Turner, Moody, Minnehaha, Grand Forks, Trell and Pembina in Dakota territory, and organized townships, towns and cities therein to issue bonds to aid in the construction of railroads in said townships, towns and cities—railroads.

Council bill No. 34, by Mr. Pettigrew—A bill for an act to provide for the building and government of a territorial penitentiary—committee of whole.

Council bill No. 46—by Mr. Cuppett—A bill for an act to amend chapter 28 of the political code, entitled "revenue," passed at the 12th session of the legislative assembly.—territorial affairs.

Council bill No. 36, by Mr. Roberts—A bill for an act amending section 665 of the code of criminal procedure—judiciary.

ON THIRD READING.

House file No. 8, by Mr. Gamble—A bill for an act to amend section 339 of the code of civil procedure.

House file No. 27—A bill for an act authorizing school district No. 1 in Richland county to issue bonds.

House file No. 37—A memorial for an increase of mail service between Canton and Milltown.

House file No. 9, by Mr. Gamble—A bill for an act to amend sections 8, 92 and 101 of the justice code.

Council bill No. 40, by Mr. Pettigrew—A bill for an act to define the boundaries of certain counties of this territory.

H. F. No. 13—A bill for an act to amend section 15 of chapter 13 entitled compensation of public officers, of the political code of the territory of Dakota.