

RESOLUTIONS

House Concurrent Resolution No. 5—(H. W. McInnes.)

APPOINTMENT HON. JOHN A. SIMPSON AS SECRETARY OF AGRICULTURE

For Memorial to his excellency, Franklin D. Roosevelt, President-elect of the United States of America, petitioning the President to appoint as a member of his cabinet, Hon. John A. Simpson.

Be It Resolved by the House of Representatives, of the State of North Dakota, the Senate Concurring therein, That:

WHEREAS: American agriculture is at its lowest ebb in the history of this nation, and the nations prosperity can only return with the return of the prosperity of agriculture, and whereas, in the Cabinets of the Presidents of the United States, Secretaries of Agriculture have seemingly forgotten their duties to that portion of the population of this nation they should represent, together with the interest of the balance of the people; and it is necessary to have as Secretary a man who knows and appreciates and will fight for the needs of the farmer, and WHEREAS, the Honorable John A. Simpson, President of the Farmers Educational & Co-operative Union of America, a national organization, and as such has for many years fought the battles of agriculture, and is intimately acquainted with the farmers needs and demands, and is in truth a real dirt farmer; and consequently will be a great aid to the executive officers of this government in bringing back our lost prosperity and returning this nation and its people to peace and contentment, faith in the principles of our republic, and foster confidence in thirty millions of farmers in the wisdom of the leaders of this nation.

THEREFORE: The Legislative Assembly of the State of North Dakota respectfully pray that you appoint Honorable John A. Simpson Secretary of Agriculture of the United States and take him into your family of advisors.

AND BE IT FURTHER RESOLVED, that certified copies of this Joint resolution be forwarded to Franklin D. Roosevelt, President-elect of the United States of America.

Filed January 27, 1933.

Joint Resolution No. 2—(Fine.)

URGING CONGRESS TO EXERCISE FUNCTIONS OF BANKING SYSTEM

A Joint Resolution of the Senate and House of Representatives of the State of North Dakota:

WHEREAS, the banking system of the United States through total inadequacy and inefficiency to exercise its legitimate functions and to serve the needs of government and to meet the existing demands

has broken down and all usual means for the distribution of currency and the transaction of the ordinary business of banking have failed

BE IT THEREFORE RESOLVED that in this most deplorable emergency in the affairs of government thus occasioned, we, the Senate and the House of Representatives of the State of North Dakota

Do petition and memorialize the Congress of the United States that it, by constitutional action, as warranted by the present emergency, take over the exercise of the functions usually performed by the banking system of the United States, and immediately, by proper legislation, provide for and exercise these functions in such manner as to protect the rights and serve the interests of the people of the United States

BE IT FURTHER RESOLVED that a copy of this resolution be wired to the President of the United States, the Vice-president of the United States and the Speaker of the House of Representatives.

Filed March 6, 1933.

Joint Resolution.

EXPRESSION OF SYMPATHY TO MRS. CALVIN COOLIDGE

WHEREAS, Calvin Coolidge, former President of the United States, has passed to the great beyond, and

WHEREAS, We the members of the Twenty-Third Legislative Assembly of the State of North Dakota, are deeply appreciative of the worth of this splendid citizen of America, and of the great loss which his passing means to our country, now therefore

BE IT RESOLVED that the President of the Senate and the Speaker of the House be authorized to send the following message to Mrs. Coolidge:

Mrs. Calvin Coolidge,
Northampton, Mass.

The North Dakota Legislative Assembly desires to express to you its deepest sympathy in the loss of your illustrious husband. In common with all America we appreciate his contribution to our civilization, and we mourn his loss.

May Divine Providence sustain you and grant you fortitude in this trying hour.

BE IT FURTHER RESOLVED, that the Secretary of the Senate be instructed to prepare a suitably engrossed copy of this Resolution and forward the same to Mrs. Coolidge.

Filed January 19, 1933.

Concurrent Resolution D—(Matthaei and Fine.)

INVESTIGATION CAPITOL BUILDING COMMISSION

For a complete investigation of the Capitol Building Commission, its activities and actions in connection with the letting of contracts, preparation and acceptance of plans and specifications, erection and construction of the new Capitol Building, and including alterations made, materials used, and all other acts of said commission in connection with said building and, if possible, provide for a reduction of the cost of said building.

Be It Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring, That:

WHEREAS, it is rumored, and generally believed, that the Capitol Building Commission awarded contracts for the erection and completion of said building in violation of the spirit and intent of Chapter 205, Session Laws of 1931 of this state, and,

WHEREAS, it was the intention of the State Legislature, as expressed in Chapter 205 aforesaid, that said Capitol Building should, if possible, be erected by North Dakota contractors and that North Dakota labor and material should be used as far as possible in the construction of said building, and, yet, it is rumored and generally believed that the Capitol Commission awarded most of the contracts for the erection and construction, as well as for material furnished and labor used, to parties outside of the state, without due regard for the spirit and intent of said Chapter 205; and,

WHEREAS, it is rumored, and generally believed that the contracts awarded for the erection of said building have, since their execution and delivery, been divided into three sections without properly safeguarding the interests of the state; and

WHEREAS, it is rumored, and generally believed, that the manner in which the contracts were awarded and are now being carried into effect indicate that the resident architects are architects in name only and that practically all matters pertaining to the work are handled and directed by the associate architects in Chicago; and

WHEREAS, it is rumored and generally conceded, that the building, if completed, will, in its accommodations, exceed by far the necessary requirements, and that the ultimate cost of said building is an unknown quantity; and

WHEREAS, there is a general demand on the part of the people of the State of North Dakota that in this depression and economic and financial stress action should be taken to save public funds; and,

WHEREAS, it is generally believed that a substantial saving can be made if the spirit and intent of Chapter 205, Session Laws of 1931, are followed, and the best interests of the state and its people considered in the erection and construction of said Capitol Building.

NOW, THEREFORE: BE IT RESOLVED by the 23rd Legislative Assembly of the State of North Dakota, assembled in its regular biennial session, that a committee of seven, consisting of three Sena-

tors and four members of the House of Representatives shall be chosen by the presiding officers of the Senate and House of Representatives, respectively, which committee shall be known as the Capitol Building Investigating Committee. The Chairman of this committee shall be designated and named by the President of the Senate.

It shall be the duty of the Capitol Building Investigating Committee, immediately upon its selection, to meet upon the call of its Chairman and make a complete, thorough and impartial investigation of the Capitol Building Commission, its activities, actions and doings in connection with the letting of contracts, the erection and construction of the new State Capitol Building, including the opening of bids, preparation of plans and specifications, alterations, materials used, awarding of contracts, and all other acts, things and matters of said commission in connection with the construction of said building; likewise to investigate the manner of construction, the labor and materials used and such other matters as shall to said committee seem advisable, desirable or necessary in order to make a thorough and complete investigation and report.

Said committee hereby created shall have full and complete power, by subpoena, or by use of such other method as it may determine upon, to compel the attendance of witnesses before said committee, within or without the State of North Dakota, and to swear such witnesses; this to include any or all members of the Capitol Building Commission, architects, associate architects, contractors and sub-contractors, and all of their agents and employees, and all other persons, firms or corporations, furnishing any material or doing any work, or having any connection or information whatsoever, with reference to the erection, construction or completion of said Capitol Building, and shall have full and complete power and authority to compel the production, within or without the State of North Dakota, of any and/ or all books, papers, records, contracts, documents or other writings or memoranda of any and all kinds in the possession of any of the aforesaid persons, firms, co-partnerships or corporations, in any way relating to or connected with the erection, construction or completion of said building, or in any manner connected with work done or pretended to have been done by virtue of the provisions of Chapter 205 of the Laws of 1931; and it shall have full power and authority to do all things necessary in carrying out the intent and purpose of this resolution.

Said committee shall cause to be made and kept a complete stenographic record of all its proceedings, cause the same to be transcribed, including any and all testimony taken before it; shall keep a complete record of all the books, documents, papers and writings produced, whether filed as exhibits or not, and wherever deemed necessary shall cause copies to be made before the originals are returned.

It shall be the duty of the commission to make preliminary

reports to the Legislature when called upon by signed request by the President of the Senate and Speaker of the House of Representatives, and shall make a final report at the conclusion of its investigation, such final report to set forth in concise form its findings and conclusions and shall make recommendations to the Legislative Assembly with reference to any action which in the opinion of the committee should be taken by the Legislature.

Such committee shall have full power and authority to employ such assistance as it deems necessary in making such investigation, and to make such expenditures as it may deem necessary in carrying out the provisions of this resolution, and it shall be the duty of the Attorney General and all other officers and employees of the state to assist said committee in its work when called upon by the committee.

Said committee shall have full power and authority to promulgate and adopt all rules of procedure in the conduct of its procedure.

The sum of \$7500.00, or so much thereof as may be necessary to carry out the provisions of this resolution, is hereby appropriated out of the moneys in the State Treasury not otherwise appropriated, to be paid by the State Treasurer upon warrants drawn upon the Treasurer by the State Auditor, upon the presentation to him of approved vouchers of the Committee, signed by its chairman.

Filed January 24, 1933.

House Concurrent Resolution No. 14—(Flannigan.)

CAPITOL CORNER STONE

Concurrent Resolution declaring that the laying of the cornerstone of the new Capitol Building now being constructed at Bismarck was brought about by deception; and resolving that it is the sense of the Legislature that the Governor and Capitol Commission shall hereafter cause to be arranged a fitting ceremony for the placing of such corner stone of the Capitol Building at the proper time.

WHEREAS, the building now being constructed at Bismarck to serve as the Capitol of the state will soon have reached the stage of construction where the facing will be placed; and

WHEREAS, in the placing of this facing there will be incorporated a stone in common parlance called a corner-stone; and

WHEREAS, in the placing of corner stones in all public buildings, it is usual practice to incorporate in said stone a repository for state and historical documents that may serve a purpose in the future history of the country; and

WHEREAS, at some date already past there has been a purported laying of the corner-stone for this building and at a cost of several thousand dollars to the taxpayers, and which laying was only a deceiving show in that a cement block was built up outside of the actual area to be occupied by the building and great display was

made thereof and this block and stone have now been removed to the chagrin and disgust of the general public ; and

WHEREAS, there is due to the people of the state a more fitting ceremony in the proper laying of a corner stone in a place where it will forever rest ;

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the House of Representatives, the Senate concurring, that it is the sense of this Legislature, and it is hereby directed, that the Governor and the Capitol Commission or other body responsible to the people for the erection of this building, shall cause to be arranged a fitting ceremony, for the placing of the corner-stone of the Capitol Building, at the proper time, in the place where the plans of the architects call for it to be placed. Provided further, that the corner-stone shall be cut from North Dakota Granite.

Filed in this office this 7th day of March, 1933.

Senate Concurrent Resolution H—(Stucke.)

RATIFICATION CHILD LABOR AMENDMENT

Be It Resolved by the Senate of the State of North Dakota: the House of Representatives Concurring.

WHEREAS, the 68th Congress of the United States of America, at the first session begun and held at the City of Washington, on Monday, the 3rd day of December, A. D. 1923, by a Constitutional majority of two-thirds thereof, made and passed a proposal to amend the Constitution of the United States of America in the following words, which joint resolution was duly ratified by Congress and approved by the President of the United States on or about the 6th day of June, A. D. 1924.

“JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution :

“ARTICLE.....

“Section 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

“Section 2. The power of the several states is unimpaired by this article except that the operation of State Laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.”

THEREFORE, BE IT RESOLVED, by the Legislative Assembly of the State of North Dakota, duly convened, that the said foregoing pro-

posed amendment to the Constitution of the United States of America be, and the same is hereby ratified by the Legislative Assembly of the State of North Dakota.

AND BE IT FURTHER RESOLVED, that certified copies of this Joint Resolution be forwarded by the Governor of this State to the Secretary of State for the United States of America at Washington, D. C., and to the President of the Senate and the Speaker of the House of Representatives of the National Congress.

Filed in this office this 4th day of March, 1933.

Senate Concurrent Resolution A—(Indergaard.)

**RATIFICATION PROPOSED AMENDMENT TO THE
CONSTITUTION OF THE UNITED STATES**

WHEREAS, the 72nd Congress of the United States of America, at the first session begun and held at the City of Washington, on Monday, the 7th day of December, 1931, by a constitutional majority of two-thirds thereof, made and passed a proposal to amend the Constitution of the United States of America in the following words, which joint resolution was duly ratified by Congress on March 3rd, 1932, and approved by the President of the United States, to-wit:

“JOINT RESOLUTION”

“Proposing an amendment to the Constitution of the United States, fixing the commencement of the terms of President, Vice President and members of Congress, and fixing the time of the assembly of Congress.

‘Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled (Two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the Legislatures of three-fourths of the several States.

‘ARTICLE

‘§ 1. The terms of the President and Vice President shall end at noon on the 20th day of January and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

‘§ 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

‘§ 3. If, at the time fixed for the beginning of the term of President, the President-elect shall have died, the Vice President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice President-

elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such persons shall act accordingly until a President or Vice President shall have qualified.

'§ 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

'§ 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

'§ 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several states within seven years from the date of its submission.'"

THEREFORE, BE IT RESOLVED, by the Legislative Assembly of the State of North Dakota, duly convened, that the said foregoing proposed amendment to the Constitution of the United States of America be, and the same is, hereby ratified by the Legislative Assembly of the State of North Dakota.

AND BE IT FURTHER RESOLVED, that certified copies of this Joint resolution be forwarded by the Governor of this State to the Secretary of State for the United States of America at Washington, D. C., and to the President of the Senate and the Speaker of the House of Representatives of the National Congress.

Approved January 20th, 1933.

Filed January 20, 1933.

Concurrent Resolution No. 15—
(Lillehaugen, Carlson, Treffry and Owings.)

STATEWIDE COUNTY OFFICERS CONVENTIONS

Protesting against state-wide conventions held by certain county officers held at the expense of the county, and vacation with pay.

Be It Resolved by the House of Representatives of the State of North Dakota, the Senate Concurring:

WHEREAS, it has come to our knowledge, that there is a practice of certain county officials to hold state-wide conventions of their respective office at the expense of their counties; and

WHEREAS, it has further come to our knowledge that it is the practice of certain counties to allow its county officials vacation with pay; and

WHEREAS, there is no provision in our law for state-wide con-

ventions of county officers other than that of County Superintendent of Schools when called by the State Superintendent of Public Instruction, nor any provisions for vacation with pay; and that,

THEREFORE, such expenditure of county funds is unlawful; and

WHEREAS, the Twenty-Third Legislative Assembly is doing all in its power to reduce the expense of government to meet the present depressing economic condition; and

THEREFORE, BE IT RESOLVED; That the House of Representatives, the Senate concurring, protest against such unlawful expenditure of county funds;

AND BE IT FURTHER RESOLVED that the chief clerk of the House mail copies of this resolution to the Chairman of the Board of County Commissioners and the County Auditor of every county in the state.

Filed March 6, 1933.

Senate Concurrent Resolution AA—(Whelan.)

MANUFACTURE ETHYL ALCOHOL

Requesting Congress to enact legislation providing for the use of farm products in the manufacture of ethyl alcohol.

WHEREAS, it has been successfully demonstrated in fourteen countries of the World today that the mixing of ethyl alcohol with gasoline in the operation of motor vehicles and power machinery is not only practical but economically profitable to the user, and

WHEREAS, ethyl alcohol can be manufactured from any or all agricultural products, including corn, wheat, oats, rye, barley, potatoes, beets, and many other farm products, and

WHEREAS, the use of such farm products in the manufacture of ethyl alcohol would remove from the markets of the United States the surplus of such products for which there now appears to be no profitable market demand, necessitating the producers thereof accepting for the same an amount far below the cost of production, and

WHEREAS, Legislation requiring the use of ethyl alcohol made from domestic agricultural products in an amount of from ten to twenty per cent in all motor fuel placed upon the market, would in no way further tend to depress the motor fuel industry, but would, on the other hand, by increasing the income to agriculture tend to stimulate an increase in the use of motor fuel, and

WHEREAS, the development of any industry that would create a market for surplus agricultural products throughout the United States, and the Northwest in particular, would be more beneficial than any plan proposed to date for price stabilization, decreased production or price fixing for agricultural products,

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE

STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING:

That the Congress of the United States be and the same is hereby respectfully urged to give to the above plan immediate consideration, with the end in mind of enacting at the earliest possible moment, legislation for the purpose of carrying out and putting into effect some law which has for its object the utilization of surplus farm products in the manner above outlined.

Filed March 6, 1933.

House Concurrent Resolution No. 12—(Endres.)

FEDERAL GAME RESERVES

Providing for the establishment of Federal Game Reserves on or near the Fort Berthold Indian Reservation, and on the Standing Rock Indian Reservation near Fort Yates.

Be It Resolved by the House of Representatives of the State of North Dakota, the Senate Concurring:

WHEREAS, there are at the present time thousands of acres of land in North Dakota which are not adapted to agricultural purposes, and which have little or no commercial value; and

WHEREAS, deer, antelope and other game animals are steadily decreasing in numbers due to the fact that they are not given sufficient protection; and

WHEREAS, the people of North Dakota are interested in the preservation and perpetuation of these forms of native wild life,

NOW THEREFORE, BE IT RESOLVED by the House of Representatives of the Twenty-third Legislative Assembly of the State of North Dakota, the Senate concurring, that we hereby request the present Congress to pass the legislation necessary for the acquisition of land for Federal Game Reserves in North Dakota, and for the maintenance of such reserves on or near the Fort Berthold Indian Reservation, and on the Standing Rock Indian Reservation near Fort Yates.

Filed March 6, 1933.

Senate Concurrent Resolution K—(Stucke and Regeth.)

FOUR BEARS MEMORIAL BRIDGE

Be It Resolved by the Senate of the State of North Dakota, the House Concurring Therein, that

WHEREAS, representatives of the Gros Ventres, Mandan, and Arikara tribes of the Fort Berthold Reservation have indicated by petition their desire to have the bridge now in the process of construction at Elbow Woods named the "FOUR BEARS MEMORIAL BRIDGE"; we therefore direct the State Highway Commission to have two suitable plaques or tablets prepared and displayed in public

and prominent places, one at each end, upon this bridge on which shall be engraved inscriptions in the following words :

(North Side Plate)
 FOUR BEARS MEMORIAL BRIDGE
Gros Ventres Chiefs *Arikara Chiefs*
 Poor Wolf Bear Chief
 Crow Paunch White Shield
 Big Brave Son of Star
 Porcupine Head Peter Beauchamp, Sr.
 Crow Flies High Bobtail Bull
 Black Hawk
 Old Dog

(South Side Plate)
 FOUR BEARS MEMORIAL BRIDGE
Mandan Chiefs
 Charging Eagle
 Red Buffalo Cow
 Flying Eagle
 Black Eagle
 Water Chief

Filed February 28, 1933.

House Concurrent Resolution No. 8—(Morgan.)

URGING PASSAGE OF FRAZIER BILL

Memorial to our next President and the next Congress

Be It Resolved by the House of Representatives of the State of North Dakota, the Senate Concurring, That

WHEREAS, there are a number of so-called farm relief bills pending in the present Congress, most of which bills are just make-believe farm relief, and mere gestures, and intended to deceive and mislead the farmers of this nation and

WHEREAS, there is now pending and has been pending, before the present Congress a real farm relief bill known as the Frazier bill, which provides that the United States government shall refinance the existing farm indebtedness at 1½% interest and 1½% principal on the amortization plan, not by issuing bonds, but by issuing Federal Reserve notes, secured by first mortgages on farms—the best security on earth—better than foreign bonds, and far better than the security put up for Federal Reserve notes by the Federal Reserve Board, and

WHEREAS, two to three billion dollars used as a revolving fund will be sufficient to refinance the nine and one-half billion dollars of farm indebtedness and the government will make six billion, three

hundred forty-five million dollars, gross profit at 1½ per cent interest, in forty-seven years and

WHEREAS, if this bill is passed, it will put from two to three billion dollars, new money, in circulation among the people—it will loosen the frozen assets of the nation—the unemployed will again be able to get work and eat—the price of agricultural products will go up—the starving of millions will end and business will again be general and

WHEREAS, there is also pending before the present Congress a real Cost of Production bill, agreed to a year ago by three great farm organizations: The Farmers Union, the Farm Bureau and the Grange, which bill is known as the McNary bill, in the Senate, and which provides for the cost of production of that part of American agriculture consumed or used within the United States, and

WHEREAS, this bill is far superior to the so-called Jones bill in that it is not loaded down with cumbersome and expensive machinery and limited to only part of the agricultural products

NOW THEREFORE, the legislature of North Dakota respectfully petitions the Honorable Franklin D. Roosevelt, our next president, in whose ability and wisdom we have unbounded faith to carefully consider the Frazier bill and the McNary bill above referred to, which we believe are far superior to any measures so far introduced in Congress or discussed in public and which we believe will put an end to this depression that has all but wrecked this nation and

BE IT FURTHER RESOLVED that we respectfully request the next Congress to give careful consideration to these two bills and to pass them without further delay. This, we believe, was the mandate of the people of this nation in the last election.

The Frazier bill has the endorsement of seven state legislatures, Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Illinois and Nevada and if passed, together with the McNary bill, will give sure and certain relief immediately to agriculture and the wheels of industry will start again, the depression will end and the confidence of the people of this nation will again be restored.

Filed March 6, 1933.

Senate Concurrent Resolution No. A-1—(Fine and Greene.)

URGING CONGRESS TO PASS FRAZIER BILL

Memorial to the members of State Legislatures urging State Legislatures to memorialize Congress to pass Senate Bill 1197, known as the Frazier Bill.

Be It Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring, That:

WHEREAS, a crisis exists and hundreds of thousands of once prosperous farmers in this nation have already lost their homes and their all by mortgage foreclosures because of the fact that the price

of agricultural products has for years been below the cost of production, a condition that affects all of the people of this nation and is largely responsible for the continuance of the depression; and

WHEREAS, there is no adequate way of refinancing existing agricultural indebtedness and the farmers are at the mercy of their mortgagees and creditors; and

WHEREAS, unless immediate relief is given thousands and hundreds of thousands of additional farmers will lose their farms and their homes and millions more will be forced into our cities and villages and the army of unemployed will necessarily increase to alarming proportions, precipitating a condition that threatens the very life of this nation; and

WHEREAS, the State Legislatures of Montana, North Dakota, Minnesota, Wisconsin and Illinois have each and all memorialized Congress to pass Senate Bill No. 1197, known as the Frazier Bill, without delay, which bill provides that existing farm indebtedness shall be refinanced by the Government of the United States at $1\frac{1}{2}\%$ interest and $1\frac{1}{2}\%$ principal on the amortization plan, not by issuing bonds and plunging the nation further into debt, but by issuing Federal Reserve notes the same as the Government now does for the banks through the Federal Reserve Bank.

NOW, THEREFORE, the Legislative Assembly of the State of North Dakota respectfully requests and petitions the legislatures of the other states that have not already done so to memorialize Congress to pass Senate Bill 1197 without delay, in order that the agricultural indebtedness of this nation be speedily liquidated and refinanced and agriculture saved from utter ruin and destruction and this depression brought to an intelligent and speedy end, and respectfully requests that the state legislatures cause copies of such memorial, after same has been passed, to be sent to the President of the United States, to the President of the Senate and the Speaker of the House, to Senator Frazier at Washington, D. C., and to William Lemke, congressman-elect, at Fargo, North Dakota.

BE IT FURTHER RESOLVED, that the Secretary of State cause sufficient copies of this resolution to be printed and that he cause to be mailed a copy to the President of the Senate and the Speaker of the House of each of the forty-three states that have not as yet memorialized Congress to pass Senate Bill 1197, requesting that said resolution be read before each of said bodies.

Approved January 25th, 1933.

Filed January 25th, 1933.

Senate Concurrent Resolution B—(Whelan.)

Be It Resolved by the Senate of the State of North Dakota, the House Concurring, That

WHEREAS, there is now before the Senate of the United States

a treaty between this nation and Canada providing the terms under which may be constructed the long sought and much needed Seaway uniting the Great Lakes with the Atlantic ocean, and

WHEREAS, such maritime benefits extended to the nearby ports on the Great Lakes would be of inestimable value both to the agricultural and industrial life of North Dakota,

NOW THEREFORE, we urgently request of our Senators in the Congress of the United States that they not merely support immediate and unconditional ratification of said treaty, but that they use every legitimate effort to impress upon the Senate the dire need of this state for relief from an overwhelming burden of transportation costs—a relief obtainable in very large measure through the ratification of this treaty and through the immediate construction thereafter of the navigation works required to extend the Atlantic ocean westward to within less than 300 miles of the boundaries of this State.

Ordered that copies of this resolution be sent to each member of the Senate and House of Representatives of the Congress of the United States.

Filed January 24, 1933.

Senate Concurrent Resolution U—(Fine and Drew.)

CARE, RELIEF AND EDUCATION OF THE INDIAN

WHEREAS, the Indian situation, on and off the various reservations in the State of North Dakota, is becoming a serious problem to the taxpayers in the counties where such reservations are situated and communities adjacent to such reservations by reason of the economic stress through which agriculture is passing, and

WHEREAS, the policy of the Department of Indian Affairs appears to be to rid themselves of the care, support and education of the Indian and attempting to force the burden of relief and education on the local communities of this state, and

WHEREAS, the care, relief and education of the Indian peoples has been and should remain a National problem by reason of Treaties made by the Federal Government with said Indians at the time they were placed upon the various reservations, and

WHEREAS, it has come to the attention of the Legislature of this state that there are hundreds of Indian children on and off the various reservations who are entirely without any school opportunities whatsoever and others who by reason of the fact that they are not properly clothed or nourished are unable to attend school, and

WHEREAS, it has come to the attention of this Legislative body that it is the policy of the present Commissioner of Indian Affairs to make changes in the educational system by eliminating certain Indian boarding schools, by reducing the appropriation therefor, and

WHEREAS, we believe that during these times when relief is necessary to a greater extent among the Indians than any other people, the boarding school serves a distinct agency, not only for education but for relief as well by taking care of the comforts of those Indian children attending by keeping them in that certain physical condition for mental development, and

WHEREAS, we believe that providing means of education to those Indian children now denied that opportunity is a sufficiently large program to engage the efforts of the Indian Department of the Federal Government for a number of years, and

WHEREAS, we do not believe it would be expedient to have the Indian children mingle with the white children in our educational institutions by reason of the vastly different temperament and mode of living and other differences and difficulties of the two races, and

WHEREAS, we believe it is impossible and impracticable for the local communities to bear the expense or any portion of the expense of educating said Indian children; the local communities already being over-burdened with taxes trying to maintain institutions for the education of children of their own race, and

WHEREAS, the problem of relief and education are so closely interwoven and the relief problem has reached such large proportions as to go beyond the ability of local communities to handle,

NOW, THEREFORE, BE IT RESOLVED By the Senate of the State of North Dakota, the House of Representatives concurring, that we urge the Congress of the United States to recognize the responsibility of the Federal Government for the care and education of the Indian by making adequate provision for taking care of these Indian problems, and that before adopting a policy of eliminating the boarding school, steps be first taken to establish supervised colonies through the purchase of land whereon the Indian can be assisted in building and maintaining his home and by such contact and follow-up work, including school facilities, whereby the Indians may be taught to farm and become self-supporting.

Filed March 7, 1933.

Senate Concurrent Resolution V—
(Dubay, Atkins, Magnuson, and Gronvold.)

INTERNATIONAL PEACE GARDEN

WHEREAS, the peace, health, safety, morals and general welfare of the public of this State are promoted by the establishment of public parks, and that the term "public parks" includes all enterprises devoted exclusively to the use of the public, whether the title to the property is held by the State of North Dakota, the International Peace Garden, Inc., or by some other park corporation authorized by this State to own and maintain land for public park purposes, and it is within the legislative power to declare that the International

Peace Garden established in the County of Rolette in this State under control of and held by the International Peace Garden, Inc., and all gardens and parks similarly dedicated to the public are public parks; and

WHEREAS, all public parks devoted exclusively to public use are conducive to the general welfare of the people, and, as their use becomes more general, requires the acquisition of adjoining lands and properties through the power of eminent domain and it is desirable that such power be by the legislative assembly of this State granted to and extended to all enterprises and corporations owning and controlling such public parks as may hereafter be defined by law;

BE IT THEREFORE RESOLVED BY THE SENATE THE HOUSE OF REPRESENTATIVES CONCURRING that we recommend that International Peace Garden, Inc., maintaining a public park on the International boundary line between Canada and the United States in Rolette County, this State, commemorating and perpetuating the amicable and peaceful relations long existing between our country and Canada, be by the next legislative assembly granted the power of eminent domain to condemn private property for the public use of the public parks or gardens it may maintain for the purpose aforesaid, and that the said corporation through its Board of Directors or of Administration be vested with the power to make all necessary rules and regulations to control and prevent within reasonable territorial limits on adjoining property all unsightly advertising, all commercial enterprises, all forms of amusement and other objectionable features which may be necessary to promote the health, safety, happiness and general welfare of the general public, and promote international amity and good will.

Filed March 7, 1933.

Senate Concurrent Resolution X—(McDonald and Fowler.)

DISTRIBUTION LEGISLATURE DESKS TO SCHOOLS

A JOINT RESOLUTION of the Senate of the State of North Dakota, the House of Representatives concurring therein, that

WHEREAS, owing to the destruction by fire of the State Capitol in December 1930, it became necessary for the state to rent and furnish certain rooms within the city of Bismarck for the use of the Houses of the Legislature, and

WHEREAS, in furnishing such chambers to be used, it was necessary for the state to furnish and supply 162 desks, and, that upon the construction and furnishing of the new State Capitol these desks will be of no further use to the state in any of its departments and will become almost wholly useless and valueless,

THEREFORE, BE IT RESOLVED that upon the completion of the construction of the new state Capitol and when proper provision has

been made therein for permanent desks in the Legislative Houses that the 162 desks purchased and used as aforesaid, be set over and distributed among the rural public schools of the state, and we do recommend that such distribution be supervised by the Governor and Board of Administration of the State and that such distribution be made by the State Superintendent of Public Instruction in such manner as, in his judgment, accords with the needs of such schools of the State.

Filed March 6, 1933.

House Concurrent Resolution No. 22—(Twichell and Swett.)

EXTRA PAY FOR EMPLOYEES

Be It Resolved by the House of Representatives of the State of North Dakota, the Senate Concurring That:

WHEREAS: The House and Senate have been employed two extra days during this Session:

THEREFORE IT IS HEREBY DIRECTED that each of said employees be paid for two extra days at the rate at which they were employed, such moneys to be paid from the appropriation for legislative expense of the 1933 legislative assembly of the State of North Dakota.

Filed March 7, 1933.

Joint Resolution No. 7—(Swett and Twichell.)

APPRECIATION TO CITIZENS AND CITY OF BISMARCK

WHEREAS the City of Bismarck was so generous in furnishing accommodations for the Twenty-third Assembly, be it resolved that a vote of appreciation be extended the citizens and the City of Bismarck.

Be It Resolved by the House of Representatives of the State of North Dakota, the Senate Concurring:

WHEREAS, the State Capitol of North Dakota and the Legislative Chambers therein contained were totally destroyed by fire in December, 1930, and

WHEREAS, in this emergency depriving the Legislature of a meeting place for its Twenty-third Assembly, the City of Bismarck most generously and liberally tendered and contributed to the Legislative Assembly the use of the Memorial Building and the City Auditorium as a meeting place for the Twenty-third Legislative Assembly, and

WHEREAS, the City of Bismarck, by greatly discommoding itself, supplied for the Twenty-third Legislative Assembly a commodious and comfortable meeting place which could not have been supplied within the Capital by other means

NOW, THEREFORE, BE IT RESOLVED: Jointly by the Senate and

the House of Representatives of North Dakota, that it is the sense of this Legislative body that we tender to the City of Bismarck and especially to Myron H. Atkinson, City Auditor of the City of Bismarck, and E. M. Davis, Superintendent of the building of the City of Bismarck, and to the Citizens of Bismarck, our thanks and high appreciation for the courtesies and liberalities shown us by them throughout the Twenty-third Legislative Session, and

BE IT FURTHER RESOLVED that an engrossed copy of this resolution, signed by the Speaker and Chief Clerk of the House of Representatives, and the President and Secretary of the Senate, be forwarded to the Mayor and City Commission of the City of Bismarck, to be received by them as a small token of our appreciation.

Filed in this office this 7th day of March 1933.

**TWENTY-THIRD LEGISLATIVE ASSEMBLY OF THE STATE OF
NORTH DAKOTA**

House Concurrent Resolution No. 19—(Swett and Twichell.)

HEAT, LIGHT, WATER AND POWER LEGISLATIVE ASSEMBLY

WHEREAS, the Twenty-third Legislative Session Assembly was held in the World War Memorial Building and the City Auditorium, both owned by the city of Bismarck, and

WHEREAS, The City of Bismarck is entitled to expenses for heat, light, water and power and other things rendered the aforesaid Legislative Assembly in the amount of \$4,410.00,

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES, THE SENATE CONCURRING THEREIN, there is hereby appropriated out of any moneys in the legislative expense fund not otherwise appropriated the sum of \$4,410.00 to the Board of Administration to be used in paying the City of Bismarck such sums as may be necessary to pay for heat, light, water and power or other expenses incurred by the City of Bismarck for the Twenty-third Legislative Assembly.

EMERGENCY. This resolution is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval by the Governor.

Filed March 9, 1933.

**Senate Concurrent Resolution BB—
(Joint Committee on Employment.)**

**COMPILING AND INDEXING LEGISLATIVE ASSEMBLY
JOURNALS**

Be It Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring:

That Sidney A. Papke, Secretary of the Senate, James P. Curran, Chief Clerk of the House and Howard Thomas, first Assistant

Chief Clerk, are hereby authorized, empowered and employed to compare and index the Journal of the Twenty-third Legislative Assembly, and to complete the Senate and House Journals and mail out to the members the temporary Journals of the last days of the session, which have not been delivered to members before the close thereof; and the said Sidney A. Papke and James P. Curran are hereby directed and required at their own cost and expense to arrange for and procure sufficient assistance to insure that the said work shall be completed within thirty days after the adjournment of the session.

BE IT FURTHER RESOLVED, that for the services of Sidney A. Papke, as above set forth, that he be paid the sum of Four Hundred Dollars (\$400.00), and the said James P. Curran, as Chief Clerk of the House and Howard Thomas, first Assistant Chief Clerk, (\$400.00), which shall include compensation for an assistant to be selected by each, all to be paid as other legislative expenses, and paid when the respective claims are verified by the affidavits of Sidney A. Papke and James P. Curran showing the completion of such work.

BE IT FURTHER RESOLVED, that the necessary postage for mailing out the copies of temporary Journals as aforesaid be furnished to the said Sidney A. Papke and James P. Curran as part of the legislative expense of this session.

Filed March 7, 1933.

Senate Concurrent Resolution CC—
(Joint Committee on Employment.)

RETENTION MAILING CLERKS, ETC.

Be It Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring:

That V. C. Hamilton and Valentine Keller, mailing clerks of the Senate, and P. H. Miller and Joe LePire, mailing clerks of the House of the Twenty-third Legislative Session, be retained for five days after the close of this session to complete sending Senate and House Journals of the last days of the session; and that R. T. Wood, proof reader in the House, and H. R. Long, proof reader in the Senate, be retained for two days after the close of the session to finish proof-reading the Journals of the House and Senate for the last day of this Twenty-third Legislative Assembly; and that G. Sundfor, messenger, and Minard Jacobson, Roswell Kamrath, and Merle Langeberg, pages, in the Senate, and Fred Fleck, E. D. Cantwell, J. E. Pfeiffer, and Alva Wambheim, as pages of the House, be retained for two days after the close of the session for the purpose of wrapping and either mailing or expressing to the members of the Senate and House bill books, journals, reports, and files.

AND WHEREAS, Geo. D. Laird, the Governor's Messenger, has

expended for taxi hire between the office of the Governor and the Legislative Assembly some \$14.75.

BE IT FURTHER RESOLVED, that each of the above named employees, to-wit: V. C. Hamilton, Valentine Keller, P. H. Miller, Joe LaPire, as mailing clerks, be paid for said additional five days the sum of \$4.50 per day; and that R. T. Wood and H. R. Long, proof readers, be paid the sum of \$4.50 per day for two days; and that G. Sundfor, Minard Jacobson, Roswell Kamrath, Merle Langeberg, Fred Fleck, E. D. Cantwell, J. E. Pfeiffer, and Alva Wambheim, as messengers and clerks, be paid the sum of \$4.50 additional for two days, and that Geo. D. Laird be paid the sum of \$14.75 for expenditures incurred for taxi hire.

All of the above to be paid as other legislative expenses and paid when the respective claims are verified by the affidavits of said parties herein named at the completion of such work.

Filed March 7, 1933.

House Concurrent Resolution No. 7—(Flannigan.)

HATFIELD-KELLER RAILROAD RETIREMENT PENSION BILL

Memorial to the members of the United States Congress urging Congress to pass the bill known as the Hatfield-Keller Railroad Retirement Pension Bill.

Be It Resolved by the House of Representatives of the State of North Dakota, the Senate Concurring, That:

WHEREAS, there is a bill known as the Hatfield-Keller Railroad Retirement Pension Bill providing for the establishment of a National Pension Plan for all employees of the railroads in the United States now before the Congress of the United States, and

WHEREAS, we believe that upon the united support of all railroad employees and the public depends the passage of a just and satisfactory pension bill, and

WHEREAS, it is adequate in its provisions for retirement; tends to relieve unemployment because it retires older men on pension annuities and keeps younger men at work,

WHEREAS, a full application of its principles to all persons will help solve the unemployment problem confronting the nation,

NOW THEREFORE, the Twenty-Third Legislative Assembly of the State of North Dakota respectfully requests and petitions the Congress of the United States to give favorable consideration of this bill,

BE IT FURTHER RESOLVED, that the Secretary of State cause sufficient copies of this resolution to be printed and that he cause to be mailed a copy to both the President of the Senate and Speaker of the House of Representatives of the Congress of the United

States, requesting that said resolution be read before each of said bodies.

Filed March 6, 1933.

Concurrent Resolution No. 11—(Olson of Bowman.)

URGING PASSAGE BY CONGRESS OF VARIOUS PROTECTIVE MEASURES

Be It Resolved by the House of Representatives of the State of North Dakota, the Senate Concurring:

WHEREAS, the financial debacle which has swept down farm prices to a point now where the price received will barely pay the freight and where every sale is a complete surrender of the resources of our entire people and therefore the State, and

WHEREAS, we believe that the financial interests of the country are unwilling even now to recede from their position and be patriotic enough to absorb their equal share of the losses incident to the depression, and that as a result of said attitude, farm prices will be further lowered to a point of no value whatever, and

WHEREAS, this State is rich in resources of all that goes to support in food production not only our own people but millions in other states, and still find themselves bankrupt because of no medium of exchange and because of the unwarranted premium on hoarded money deliberately accumulated in the hands of the financial interests, and

WHEREAS, the present Government is now under the power and subservient to those interests, and no relief can be expected from the Government agencies distributing Government funds and that such agencies are not committed to the direction of the people but lodged with the bankers, and

WHEREAS, we believe we are about to the end of human endurance, that the people of this state, through its legislature, questioning the ability of the Democratic party, when in power, to remedy the abuses that have grown up under twelve years of Republican misrule, must assume that the people of this state will be compelled to suffer further losses of property, opportunity and credit, uncertainty of security, of their homes and food, and that the unfed will constantly increase, therefore

BE IT RESOLVED, that we recommend the immediate passage by this legislature of the following drastic measure for the protection of the people of this state:

First: The passage of a one year moratorium that will prevent foreclosures and collections, that will drive our people from their homes, and force more into a position of abject want.

Second: The passage of the Peterson bond currency bill, which will provide a medium of exchange for the use of our own people,

and enable them to exchange commodities upon a basis that will set a fair exchange value, regardless of market prices, and will enable our schools and institutions to function, and supply employment for those who can not now obtain employment because of a shortage of money.

Third: The passage of a bill that shall authorize the Governor to declare an Embargo on the shipment of farm products out of this State, except for the purpose of exchange, with such other states as will be willing to exchange commodities on a cost of production basis, and thus prevent the entire resources of our state from being sacrificed upon a market created and manipulated by the financial interests of the country, and empowering the Governor to use the Military forces of the state to enforce such an Embargo, and for the purpose of inviting other states to join us in like purposes and like Embargoes.

Fourth: A bill to authorize the Industrial Commission to use our Mill and Elevator for the purpose of grinding wheat and rye and distributing the same to our people on an exchange value that shall disregard the present market price and the present financial mediums.

Fifth: A bill empowering the Industrial Commission to install manufacturing plants for the purpose of manufacturing our own wool and such cotton products, as we shall be able to secure from other states by exchanging commodities and thus furnish clothing for the use of our people.

Sixth: A bill authorizing the Industrial Commission to establish a plant for the manufacture of leather and shoes utilizing the enormous supply of raw hides that is being given away on the present markets.

Seventh: Said Commission shall be authorized to exchange such products, or any products named herein, with other states upon an exchange value that will insure cost of production for both parties.

Eighth: The Industrial Commission shall be empowered to negotiate with producers of other states for the exchange of commodities not produced here.

Ninth: The Industrial Commission shall be authorized in emergency cases to take over and operate coal mines within the state for the benefit of the people.

Tenth: That in carrying out any of the additional projects by the Industrial Commission, as set forth herein, no further bonds of the state shall be issued therefor, but the same shall be financed by the use of bond currency, as described in the Peterson bill.

Filed March 6, 1933.

House Concurrent Resolution No. 10—(Ettestad.)

CANCELLATION STATE LAND CONTRACTS

Urging the Board of University and School Lands of the State of North Dakota to refrain from cancelling State Land Contracts and that in the collection of rentals for cultivated lands, it be as lenient as public policy will permit.

Be It Resolved by the House of Representatives of the State of North Dakota, the Senate Concurring:

WHEREAS, under the Constitution and Laws of this State, the Board of University and School Lands has the full control of the selecting, appraisalment, rental, sale, disposal and management of all school and public lands of the State of North Dakota; and,

WHEREAS, because of the low price of farm products and adverse conditions, there are numerous reliable and bona fide farmers who are unable to pay the rental on the cultivated lands which they have leased from the State, or are unable to pay the interest or installment on their State Land Contracts;

NOW, THEREFORE, BE IT RESOLVED: That the House of Representatives of the State of North Dakota, the Senate concurring, urges the Board of University and School Lands to refrain from cancelling any state land contracts, except in cases where absolutely necessary, or where the contract holder has abandoned the premises, and that in the collection of rentals for cultivated lands, it be as lenient as public policy will permit.

AND BE IT FURTHER RESOLVED that the Secretary of State of the State of North Dakota be and is hereby instructed to forward a duly authenticated copy of this resolution to the Secretary of the Board of University and School Lands of the State of North Dakota.

Filed March 7, 1933.

TWENTY-THIRD LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA

Concurrent Resolution No. 4—(Patterson.)

VETERANS MEETING PLACES

Requesting Boards of County Commissioners of counties having World War Memorial Buildings to furnish meeting places for all veterans' organizations without charge.

Be It Resolved by the House of Representatives of the State of North Dakota, the Senate Concurring:

WHEREAS, some veterans' organizations are unable to properly function on account of inability to pay rent for meeting places; and,

WHEREAS, numerous counties within the state have erected World War Memorial Buildings under the provisions of Section

2071C1 of the Supplement to the 1913 Compiled Laws of North Dakota, and amendments thereto; and,

WHEREAS, said World War Memorials were erected in commemoration of the people of the county who rendered services, or who lost their lives in the service of their country during the great World War;

NOW, THEREFORE, BE IT RESOLVED: That the House of Representatives of the State of North Dakota, the Senate concurring, most respectfully urge the boards of county commissioners of counties within the state having World War Memorial Buildings to furnish meeting places for all veterans' organizations without charge.

AND BE IT FURTHER RESOLVED that the Secretary of State of the State of North Dakota be and is hereby instructed to forward a duly authenticated copy of this resolution to all boards of county commissioners within the state of North Dakota.

Filed March 6, 1933.

House Concurrent Resolution No. 6—(Lillehaugen.)

FUTURE WARS

Memorializing Franklin D. Roosevelt, President, and the Congress of the United States pertaining to future wars.

Be It Resolved by the House of Representatives and the Senate of the State of North Dakota Concurring:

That we, the members of the State Legislature in regular session assembled, representing the people of the commonwealth of North Dakota, hereby renew our pledge of loyalty to our God, our Nation and our Flag, and to the Commander in Chief of the Army and Navy to whom we pledge our lives and property, and the lives and property of our posterity UPON INSTANT CALL to defend them against any nation which shall attempt to attack our shores or invade our land.

And we further pledge that should such attack or invasion provoke a declaration of war against such nation, that this commonwealth will furnish her full quota of the man-power to do the fighting and the dying to make the defense of this nation adequate though the filling of such quota may require submission to conscription or selective draft.

Realizing that "war is hell" that human life is sacred and that bonds mean bondage, we demand in the name of this commonwealth that the power to declare war other than to resist attack or invasion of our own shores, be vested in the voice by referendum vote of the people governed, and in the event of conscription, draft or other compulsory service of the man-power in future wars, we demand that you provide for the conscription of all productive resources and accumulated fortunes in excess of \$500,000.00 before further bonds

against the nation in defense of which our volunteer and conscripted men and boys offered up their lives to the end that our returned soldiers, their posterity and those who furnish the food and clothing to sustain them may not be placed in perpetual bondage to pay interest on those bonds and further swell such fortune.

Be it further resolved that copies of this resolution be forwarded to the President of the United States, and to the Senate and the House of Representatives of the United States.

And your memorialists will ever pray.

Filed March 7, 1933.

VETOES

H. B. No. 32—(Swendseid.)

DISMISSAL CIVIL ACTIONS. HOW AND WHEN

An Act to amend and re-enact Section 7597, Chapter 10, of the Code of Civil procedure of the Compiled Laws of North Dakota for the year 1913 providing for and relating to when and how civil actions may be dismissed.

V E T O

March 9, 1933.

TO THE HONORABLE THE SECRETARY OF STATE:

I herewith return House Bill No. 32, being an Act to amend and re-enact Section 7597, Chapter 10, of the Code of Civil Procedure of the Compiled Laws of North Dakota for the year 1913, without my approval, for the reason that the present law on this matter, in my judgment, is sufficient and of greater value to litigants than the proposed measure.

Very respectfully,

WILLIAM LANGER,
Governor.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 7597, Chapter 10, of the Code of Civil Procedure of the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows:

§ 7597. DISMISSAL OF CIVIL ACTIONS. HOW AND WHEN.] Civil action may be dismissed without a final determination of its merits in the following cases:

1. By the plaintiff, at any time before trial, if a provisional remedy has not been allowed, or counterclaim made, or affirmative relief demanded in the answer; provided, that an action on the same cause of action against any defendant shall not be dismissed more