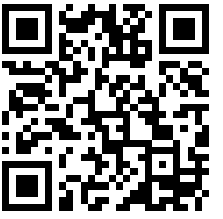

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Research Publications *of the* University *of* Minnesota

Studies in the Social Sciences
Number 15

A HISTORY OF THE CONSTITUTION OF MINNESOTA

WITH THE FIRST VERIFIED TEXT

BY
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Price: $1.75

Published by the University of Minnesota
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PREFACE

The primary aim in the preparation of this volume has been to put between two covers for the use of students and teachers the more essential facts in the history of the constitution of the state. At the same time an attempt has been made to cover the subject with sufficient completeness to make the work useful as a reference book for lawyers, judges, legislators, and public officials generally. The limited scope of the work must, however, be made clear. It is essentially a history of a public document, the written constitution of Minnesota. It explains when and how the original constitution was drawn up and adopted, how it happened to include this and that original provision, and what amendments have been introduced into its text and for what reasons; but it does not, except incidentally, explain how the various clauses have worked in practice, nor does it attempt to discuss fully the interpretation which the courts have given to its several provisions. It is neither a history of the government and politics of the state, nor a treatise on its constitutional law, though it includes some of the elements of both and furnishes the foundation upon which they may be erected.

The manner of treatment combines both the chronological and the topical, and as a result a certain amount of repetition has been unavoidable. The author has looked upon the work primarily as a reference book, however, and has consequently tried to make the discussion under each head fairly complete in itself. In addition there will be found in the footnotes frequent cross-references to other passages. The general policy with regard to footnotes has been to put in too many rather than too few, in order to facilitate further research by the readers of this volume. For this purpose there has been added, also, a bibliography and a somewhat elaborate analytical index, to both of which the attention of the research student is called.

According to the original plan, Mr. Lobb was to have taken the constitution as it was in 1857 and to have traced its history down to the present, showing how the processes of amendment have operated and explaining all the amendments. He had gathered the materials for his chapters and had already prepared rough drafts of them when he was called out of the fields of teaching and research first to become assistant to the president and later comptroller of the University. His new duties prevented his completing the work he had so well begun, and it devolved upon the undersigned to prepare the entire manuscript. While the latter assumes full responsibility for the arrangement, the style, and the substance of all the chapters, he wishes to express his gratitude to Mr. Lobb for his invaluable assistance and for his sustained interest in the work after he was compelled to give it up.

The author is also under obligations to his colleagues Dean Guy Stanton Ford, Professor Cephas D. Allin, Dr. Solon J. Buck, and Dr. Lester B. Shippee, all of whom have read the manuscript and made valuable suggestions. Mention must also be made of the kindly assistance received by the author in the offices of the Secretary of State, the State Librarian, and the Minnesota Historical Society. The collection of newspapers, books, and manuscripts of the Minnesota Historical Society is indispensable for the success of any such work as was here attempted.

This volume is in a sense the first substantial result of the work of the Bureau for Research in Government of the Department of Political Science. The maps were prepared by Miss Sophia Hall, secretary of the Bureau, who also gave worthy assistance in the preparation of the manuscript. It is the plan of the Bureau to prepare a series of monographs, of which this is the first, dealing with various phases and problems of the state and local government of Minnesota.

WILLIAM ANDERSON

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A HISTORY OF THE CONSTITUTION OF MINNESOTA

INTRODUCTION

The study of the history and interpretation of our state constitutions is more and more receiving the attention it deserves. During the nineteenth century one able treatise after another on federal constitutional law received wide recognition from the reading public. In each of these, however, while federal and state relations were usually treated at some length, the state constitutions themselves were very largely ignored. The causes of this widespread indifference to state institutions were undoubtedly numerous, two broadly inclusive factors standing out above all the others. First, the materials necessary to an adequate study of the subject nowhere existed. Every American knew more or less about the history of the federal constitution and there was an attractive simplicity in the task of compiling and interpreting the decisions of one supreme court, rendered in its attempts to elucidate a single document. Very little if anything had to be done outside of a few historical works, the federal constitution and statutes, and the decisions of the United States Supreme Court. It was quite otherwise in the study of the state constitutions. Their histories were little known, even in the states concerned. Long and arduous labors on the part of scholars, many of whom unfortunately had to remain obscure on account of the narrow scope of their studies, were necessary before anything like a composite state constitutional history could be attempted. The study of the cases themselves involved the making of researches into the judicial reports of an increasing number of states, a fact which, considering the early lack of any adequate national digests of the law, placed almost insuperable obstacles in the path of the scholar who was minded to make the study. Today this condition is changing. The law-publishing firms, despite the rigidity and formalism of their classifications, are doing splendid work in collating cognate decisions, while at the same time an increasingly large number of scholars connected with our state historical societies and universities are laying bare one point after another in the political and constitutional histories of our states.

Another important cause of the long neglect of state constitutional law was the mistaken notion that, following the creation of the federal government and the shifting of the political center of gravity from the states to the national authorities, the powers and functions of government were destined to be drawn one by one away from the local centers to the dominant though distant national capital. The idea seems to have prevailed that there is, for all time, a fixed quantum of governmental functions and powers: add a power to the central government, and the local units must of necessity have less to do. The states were looked upon, therefore, as if they were upon the road

to paralysis, to be followed by decay and complete extinction. The economic and social tendencies of the last century, coupled with the demand for more government interference in all the common affairs of life, should have demonstrated the falsity of this opinion. If not these facts, then the commonly observed truth that local self government is attended with a great variety of local experiments, which, when successful, are quickly copied in other localities, should have proved the possibility, at least, of such an increase in the functions of local government as would more than make good the losses occasioned by transfers of power to Washington. It took, however, the emphatic proof of the rapidly increasing quantity of social and economic legislation in the past generation to convince men anew that the states have in fact the reserved powers under our constitutional system. Limited they are, it is true, by specific provisions in the federal constitution,—and the state legislatures are further limited by clauses of the state constitutions. Yet it requires more than a few stakes set here and there in the ground to hold back the tide or the flood. The commonwealths have sovereign powers of government, and it is in the nature of sovereignty to be all-pervasive. It circumvents obstacles; it fills up all void places; and when things stand in its way, it removes or crushes them. It has indeed its limitations; it must keep within its proper sphere. For example, it cannot control our thoughts save indirectly through processes of education and censorship. It is like the air and the water at their respective levels upon the earth; confined only within the broadest limits, it permeates everything within its zone.

Our modern demands for increased and improved social legislation simply cannot be satisfied by the federal Congress, working within the narrow circumscription of its powers. Not even judicial implication of powers has served to render congressional authority adequate to the new demands. In consequence of this, the states are today finding a new importance and a new life. We are once more becoming conscious of them; they are impressing themselves upon our lives as never before. Scholars have for some years been sensitive to this new condition of affairs, and many of them have already turned their attention to the many problems of state history and government. As the result of their labors, we are already becoming aware of the rich constitutional history which lies behind our state governments of today. We begin to see what queer "mixed goods" the fabrics of our constitutions are. Very ancient and very modern principles are like threads lying side by side; important provisions are woven in with trivial, wise clauses with absurd, in the ever-increasing amplitude of the cloth. Every clause, we now observe, has its own history,—not in every state, of course, for one state copies from another; but somewhere it must have originated, and connected with its origin will usually be found some interesting event or circumstance. The beginnings of some clauses, particularly in our bills of rights, lie far back

in Saxon or Norman history, hid almost in "Gothic night." Others are of more recent origin, fresh products of the local soil. Many of them spell the results of political contests within our own state and time.

The history of the constitution of Minnesota herein briefly narrated adds something toward the literature from which will some day be written the composite constitutional history of the states referred to above. Minnesota has had an instructive constitutional history. Her forty-year experience with the simplest amending process then in existence in the states was followed by a rejection of that method and the adoption of one more difficult, with a significant change in results. The history of the taxing clauses of the constitution, of the prohibition of state participation in works of internal improvements, and of many another portion of the constitution must needs throw much light on the experiences of other states and should be a guiding lamp for the feet of future legislatures and constitutional conventions in this and other commonwealths. It is only to be regretted that the narrative could not have been written in greater detail and with a more trenchant pen.

CHAPTER I

THE PRE-TERRITORIAL PERIOD

1. INTRODUCTION. The period in the history of Minnesota which antedates the organization of the territorial government in 1849 is important for the constitutional history of the state in several respects. It is, in the first place, as true of Minnesota as it is of any of the western states, that its constitution is the result of historical development. What was done in 1857 was not the writing of something entirely new. Neither did it consist, as some writers seem to suggest, in the clipping of numerous provisions from the constitutions of other states and the putting of these together into a state constitution without thought of their bearing on Minnesota conditions. It is more nearly in conformity with the facts to say that from the first day that English-speaking white men set foot in the Northwest territory a course of events was begun which in the fullness of time dictated to the people of Minnesota some of the most important clauses in their constitution. Furthermore, the experiences of the pioneers under the various territorial governments which succeeded each other in the control of the Minnesota country, constituted a very solid education in the fundamentals of administration in a new and undeveloped country. In 1857 this experience stood some of the members of the constitutional convention in good stead. Those in the territory who had not been brought up under the harsh circumstances of the frontier came largely from the New England and Middle Atlantic states. Coming westward a number of them stayed long enough in Michigan, Wisconsin, or some other northwestern state or territory to get a strong grasp on the constitutional principles in force in these different localities, and thus it came about that much of what was written into the constitution of Minnesota was drawn directly from the constitutions of the newly formed states immediately to the east and south, though many provisions, also, came from older and more eastern states. Permeating the whole west, and controlling the thought of its people with almost irresistible force in these antebellum days, were the tenets of Jacksonian democracy; not a few of these, also, as for instance the prejudice against banks, had great influence upon the men who drew up the original constitution of the state. Therefore, we cannot wholly neglect the governmental and political events for many years preceding the calling of the first and only constitutional convention of Minnesota.

This early history is important, also, because it alone can tell us how Minnesota came to have her present boundaries. The southern, eastern, and northern boundaries of Minnesota had all become fixed by 1857; it remained only to be decided whether all the territory from Iowa to Canada should constitute one territory, and if so, then to determine its western limits.

Lying almost at the geographical center of North America, and contributing of her waters to three great continental river systems, the region now occupied by Minnesota was from early times the meeting place of the conflicting territorial claims of the great nations. France, Spain, and Great Britain have all, at one time or another, held title to some part of the territory of Minnesota. By purchase, negotiation, or warfare these nations were all finally ousted, and the United States succeeded to their claims. No sooner, however, had the federal government inaugurated its policy of setting up new states in the national territory, than there began a new series of disputes, often of more than local importance, between the territories or between the smaller communities within them, as to what should be the bounds of each incoming state. Every interested group tried to determine these limits most advantageously for itself. Irresistible geographic facts very naturally decided many of these contests; where they were wanting, however, local and congressional politicians had almost complete freedom of action. In the end, as the conclusion of a whole series of these disputes, the boundaries of Iowa were fixed in 1846 and those of Wisconsin in 1848, leaving Minnesota no choice of boundaries on the south and on the east.

The hammering out of the boundaries of Minnesota was, therefore, a double process. One series of events, lying in the international field and made up of explorations, settlements, wars, and diplomacy ended in 1818 when all of the territory now comprised within the state of Minnesota was brought definitely under the American flag. The other, coming within the scope of American domestic politics, consisted in the marking out upon the map of one state after another in the Northwest and Louisiana territories. For Minnesota this process ended in 1857 when its western boundaries were drawn where they now are.

2. INTERNATIONAL BOUNDARY SETTLEMENTS AFFECTING MINNESOTA. By right of discovery, exploration, and settlement of the Mississippi and St. Lawrence valleys, France claimed, prior to 1762, nearly all the present territory of the state. Minnesota east, by which we mean that portion of the Minnesota of today which lies east of the Mississippi, and Minnesota west, which signifies that portion of Minnesota lying west of the Mississippi and within the Louisiana Purchase, were at this time under one flag.[1] The English had discovered Hudson bay, however, and their claims included the waters flowing into it. Though it was not known at this time, a large part

[1] It is an anachronism to apply the term "Minnesota east" and "Minnesota west" to these regions for any period prior to about 1848. However, the argument of convenience outweighs all other considerations.

of present-day Minnesota, lying in the valley of the Red River of the North, was actually within the British claims.[2]

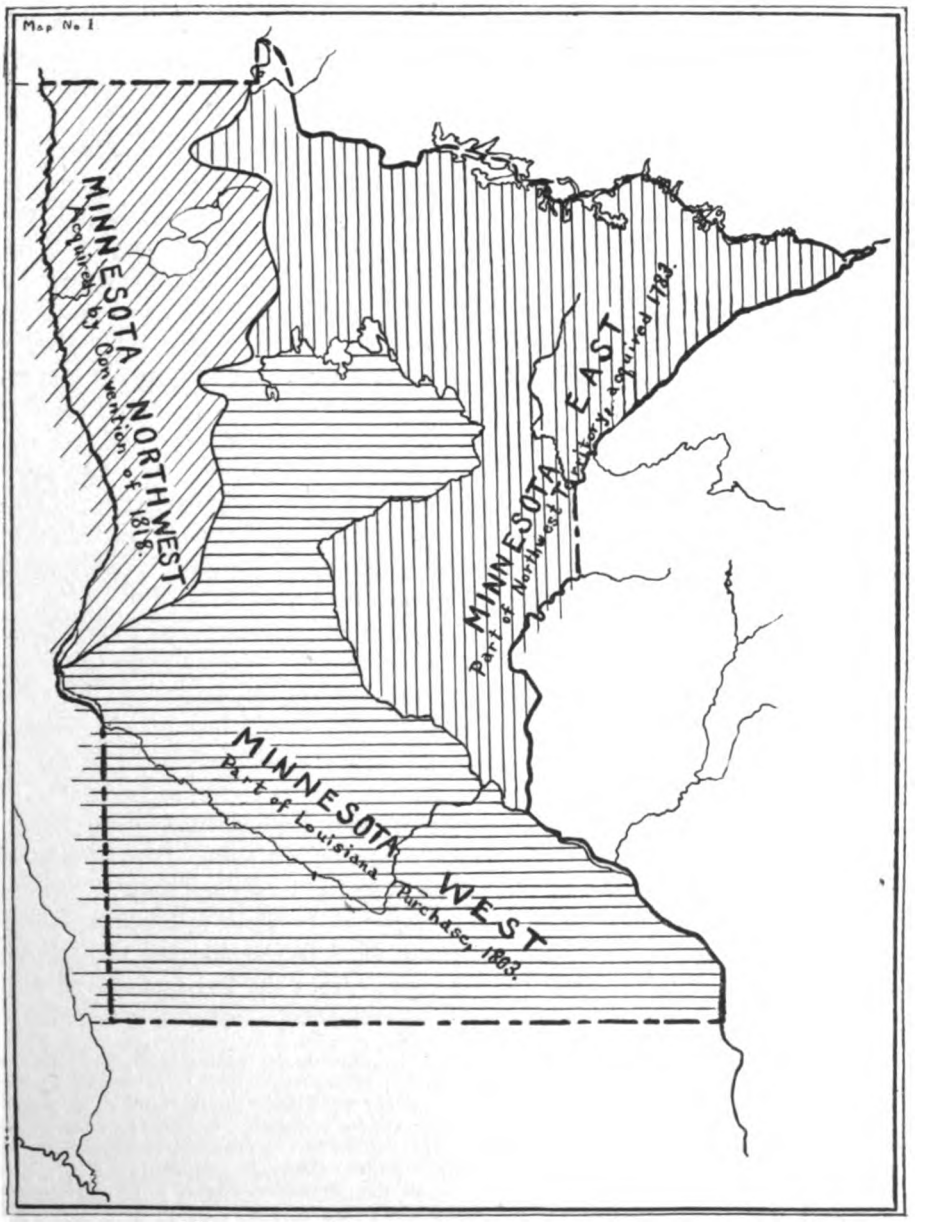
In 1763 at the end of the Seven Years' War—the French and Indian War of our school histories—a vanquished France, utterly defeated at sea and in Canada, was forced to relinquish practically all her boundless North American territories. To England went Canada and all that territory east of the Mississippi to which France had held any claim. To Spain, who had fought on the side of France, and who had suffered losses and needed compensation, fell the western half of the Mississippi valley,—the so-called Louisiana territory. At this time eastern Minnesota was taken from France and added to the British possessions in Canada and the Red river valley, while Spain succeeded France in Minnesota west. For the time being the French were completely ousted from Minnesota.

The arrangements of 1763 stood until 1783. In the latter year was signed the treaty of peace that finally established the independence of the United States. By this treaty the new nation came into possession of all the territory west of the Alleghanies, south of the Great Lakes, east of the Mississippi, and north of the Spanish possessions in Louisiana and the Floridas, a territory which France had transferred to England but twenty years previous. Spain still controlled the Floridas and Louisiana territory, including Minnesota west. The English right to the Red river valley was not changed by the Treaty of 1783.

The boundary between British and American possessions defined in this treaty, as it particularly concerns Minnesota, gave proof of the vagueness of human knowledge at that time concerning the great central regions of North America. The line ran through Lake Superior from the water communication between Lake Huron and Lake Superior "northward of the Isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most northwestern point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude."

The line to be drawn from "the most northwestern point" of the Lake of the Woods "on a due west course to the river Mississippi" simply could not be drawn. The sense of vastness and grandeur evoked by the mere mention of "the mighty Mississippi" seems to have impressed men with the belief that it rose much farther in the northwest than is actually the case. Undoubtedly the British little thought that a river with an outlet in Hudson bay rose many

[2] This region may be called "Minnesota northwest." For practical purposes it is usually considered as a part of Minnesota west, and for the period after 1818 this is entirely justifiable. See the map, p. 7, showing the three regions.



MAP NO. 1. MINNESOTA EAST, WEST, AND NORTHWEST

miles southward of the "most northwestern point" of the Lake of the Woods. At any rate the northern boundary as traced to the Lake of the Woods could not possibly articulate with the western boundary along the course of the Mississippi by the east and west line prescribed. A great gap was left between these two dangling ends which had later, with some inconvenience, to be closed.

Before the settlement of this detail, events of far reaching effect had thrown Louisiana territory, including Minnesota west, into the lap of the United States. In October, 1800, Napoleon induced Spain to accept the secret Treaty of San Ildefonso, by which Spain conditionally turned Louisiana back to France. Napoleon's aim was nothing less than a great colonial empire in America. In the course of the next three years, however, his colonial ambitions suffered a serious check in San Domingo. At the same time his danger in Europe became great and his sea forces probably seemed too small to warrant any attempt to retain Louisiana. In his extremity and in preference to letting it fall into the hands of the British, he made a hasty treaty with the startled envoys of the United States, thrusting into their hands a prize greater than any man could have dreamed or imagined. Louisiana had hardly been taken over by the French before it was transferred to the United States.[3] At a single bound the American territory was extended from the Mississippi to the Rocky mountains.

By 1803, therefore, all the present territory of Minnesota, with the exception of the Red river valley and the doubtful strip of country from the headwaters of the Mississippi to the Lake of the Woods, had come into the possession of the United States. Already in the Jay Treaty of 1794 doubts had been expressed as to the northwestern limits of the United States as defined in the Treaty of 1783, and a joint survey had been proposed.[4] The acquisition of Louisiana territory greatly enhanced the concern of the American government over the northwestern boundary question. The Treaty of Ghent in 1814 at the close of the War of 1812 having done nothing toward its solution, a convention was finally signed at London, October 20, 1818, by which the forty-ninth parallel of north latitude was adopted as a simple compromise of American and British claims from the Lake of the Woods westward to the Rocky mountains. Thus was settled the last international

[3] The treaty of 1803, dated April 30, contained this important provision relative to the government of this region: "Article III. The inhabitants of the ceded territory shall be incorporated in the union of the United States and admitted as soon as possible according to the principles of the federal constitution to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess." Malloy, *Treaties*, 1:508, 509.

[4] Article IV. "Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods," etc., it was agreed that a joint survey should be made, and if the line due west would not reach the Mississippi, "the two parties will thereupon proceed, by amicable negotiation, to regulate the boundary line in that quarter ... according to justice and mutual convenience, and in conformity to the intent of the said treaty [of 1783]." Jay Treaty, November 19, 1794, in Malloy, *Treaties*, 1:590, 593.

boundary dispute vitally affecting the future state of Minnesota. The headwaters of the Red River of the North were added permanently to the American domain.

3. THE NORTHWEST ORDINANCE. It is now necessary to retrace our steps to the year 1787. While the federal constitutional convention was struggling over the compromises of the new framework of union, a far less distinguished group of men, composing the last Congress of the Confederation, was engaged in passing through its various stages the celebrated Northwest Ordinance.[5] This enactment constituted the first charter of local government passed by federal authority for the newly-won western domain. First in time, it was destined to be first also in importance.

Its terms, which were soon after approved by an act of the first Congress under the constitution,[6] applied only to the region north of the Ohio and east of the Mississippi river. Minnesota east lay within this area, and although it was as yet unpeopled by the white race, the provisions of the ordinance applied fully to it. The ordinance was, therefore, the first American charter of local government for eastern Minnesota. So fundamental and acceptable were the principles of the ordinance that it was inconceivable that they should be circumscribed in their application to a limited area. It is significant that its terms, with the exception of the prohibition of slavery, were soon after extended to a new area,[7] but it was far more important and basic that to every freedom-loving pioneer who labored to extend the American civilization deeper and deeper into the remote west, its principles were among the most priceless of treasures. The anniversary of the passage of the act was a frequent day of celebration in the western country, and it is not too much to say that, in a very true sense, the Northwest Ordinance was the Magna Charta of the west.

The ordinance made brief and simple provision for the temporary government of the territory. In the first stage there was to be a rudimentary administration of the entire district by a governor, a secretary, and three judges, appointed by the president with the consent of the Senate.[8] As soon as the district had attained a population of five thousand free male inhabitants a legislative assembly, of which one house should be popularly elected, was to be created. The whole territorial stage was intended to be purely transitory, however. Out of the territory, states were to be formed, dedicated to "the fundamental principles of civil and religious liberty," and these states were to be admitted "to a share in the Federal councils on an equal footing with

[5] *Stat. at Large*, 1:51, footnote; *Laws of the U. S.*, 1:475; *U. S. Rev. Stat.* 1878, p. 13.
[6] *Stat. at Large*, 1:50.
[7] *Ibid.*, 1:123.
[8] Northwest Ordinance, secs. 3-8, as modified by the act of August 7, 1789, *Stat. at Large*, 1:50.

the original states, at as early periods as may be consistent with the general interest." To this end it was "ordained and declared . . . that the following articles shall be considered as articles of compact, between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent."

The six articles of compact may be summarized as follows: There was, in the first place, the substance of a bill of rights, similar to those already to be found in the state constitutions. The inhabitants of the territory were guaranteed freedom of religious worship, the right to the writ of habeas corpus, jury trial, bail, and moderate punishments in case of conviction for crime. The right to common law was especially mentioned,—ample evidence that the Quebec Act was still held vividly in mind. No person was to be deprived of liberty or property without due process of law; property or particular service was not to be taken without full compensation; and "no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, *bona fide,* and without fraud previously formed." Last, and of great historical importance, was the provision that "there shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crime."

In addition to these provisions for personal liberty, there were exhortations to the people of the territory forever to encourage schools and means of education. They were admonished to be just to the Indians. The territory and the states formed within it were forever to remain a part of the Union, and the inhabitants thereof were to bear their portion of the federal burdens. Their main waterways were to be common highways and forever free to all citizens of the United States. "The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States . . . , nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents." These provisions were unquestionably the source of similar clauses later inserted into the organic acts of many territories and the enabling acts of the states, and from these carried over into the state constitutions themselves.

Article V of the compact stands next to the anti-slavery provision in importance. It provided that "there shall be formed in the said territory not less than three nor more than five States," and upon the assumption that three would be formed, it outlined their boundaries. Congress was, however, authorized to modify the prescribed state lines so as "to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan.

And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government: Provided, The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles." Herein lay the promise, always held out to western settlers, of ultimate statehood and equality in the nation. A more enlightened charter of colonial government had not up to this time been devised anywhere in the world.

Originally adopted in 1787, sixteen years before the Louisiana Purchase, the Northwest Ordinance naturally did not apply from the first to the region designated as Minnesota west, though it was nominally effective in Minnesota east. But Minnesota west was not destined to remain long without the benefit of laws which were in effect east of the Mississippi. By sections 14 and 15 of the act of June 4, 1812, providing for the government of the territory of Missouri, the essential personal liberties guaranteed in the Northwest Ordinance, with the exception of the prohibition of slavery, were extended to the entire northern portion of the Louisiana Purchase.[9] The compromise provision of the Missouri enabling act, March 6, 1820, added the prohibition of slavery and involuntary servitude.[10] The net result was the establishment of the essentials of the ordinance by indirect action. The same end was later accomplished by separate and more direct congressional provision. In the act for the territorial government of Iowa, approved June 12, 1838, it was provided "that the inhabitants of the said territory shall be entitled to all the rights, privileges and immunities heretofore granted and secured to the territory of Wisconsin and to its inhabitants."[11] The Minnesota organic act, 1849, section 12, made similar provision.[12] To have added a general prohibition of slavery to this act, as was attempted during its passage, would, therefore, have changed nothing. As a result of this series of enactments, the territory of Minnesota, both east and west, was legally guaranteed against slavery despite the repeal of the Missouri Compromise in the Kansas-Nebraska legislation in 1854; for, since Minnesota did not depend upon that compromise for her freedom from slavery, the simple repeal of that agreement did not serve to legislate slavery into the territory. In a word, Minnesota west came to enjoy freedom from human servitude not because of the Missouri Compromise, but because the anti-slavery provision of the Northwest Ordinance was extended to her territory.[13]

[9] *Ibid.*, 2:743, 747.

[10] *Ibid.*, 3:545, 548, sec. 8; *Laws of the U. S.*, 6:455, 459.

[11] *Stat. at Large*, 5:235, 239, sec. 12; *Laws of the U. S.*, 9:769, 775.

[12] *Stat. at Large*, 9:403.

[13] Other portions of the Northwest Ordinance were made applicable in Minnesota by sections 6, 18, and other sections of the organic act. *Stat. at Large*, 9:405, 408.

4. CARVING OUT NEW STATES IN THE NORTHWEST. The British were slow to withdraw from the Northwest territory and their tardiness checked for several years the settlement of this region by Americans. After the Jay Treaty and Wayne's victory over the Indians, immigration was more rapid and by 1800 Congress found it necessary to make the first division of the territory for purposes of local government.

The act of 1800 divided the territory into an eastern and a western portion by a line from the mouth of the Kentucky river on the Ohio to Fort Recovery, near Greenville, Ohio, and thence due north to the international boundary.[14] Most of the populous region east of this line was soon admitted to the Union as the state of Ohio.[15] All the territory west of the line became Indiana territory, the second territorial organization to include Minnesota east. Nine years later Indiana territory was itself divided into two parts by act of Congress.[16] Substantially what is now the state of Indiana was set apart with a view to immediate statehood, while the remainder of Indiana territory, as it stood from 1805 to 1809,[17] was erected into the territory of Illinois. Minnesota east thus passed under the third distinct territorial government since 1787. Another nine years brought another change. By an act of April 18, 1818, Illinois was divided.[18] A territory approximating the present state of Illinois was separated from the remainder of the old Northwest territory for purposes of statehood. What remained, including Minnesota east and the territory of the present state of Wisconsin, passed temporarily under the government of Michigan territory.[19]

In the meantime, the territory of Minnesota west had also undergone a series of changes in status due to federal enactments for the government of Louisiana. Following a brief period under what was practically military rule, Louisiana was divided in 1804 into the territory of Orleans south of 33° north latitude, and the district of Louisiana north of that line.[20] The latter, including Minnesota west, was governed from 1804 to 1805 by the governor and judges of the territory of Indiana.[21] It may be remarked that this was the first time since the extension of American sovereignty over Louisiana that the two portions of the later state of Minnesota were united for purposes of local government. Thereafter they were separated and reunited several times.

[14] *Stat. at Large*, 2:58; *Laws of the U. S.*, 3:367.
[15] *Stat. at Large*, 2:173; *Laws of the U. S.*, 3:496.
[16] *Stat. at Large*, 2:514; *Laws of the U. S.*, 4:198.
[17] In 1805 Michigan had been separated from Indiana territory without affecting the status of Minnesota east. *Stat. at Large*, 2:309; *Laws of the U. S.*, 3:632.
[18] *Stat. at Large*, 3:428; *Laws of the U. S.*, 6:292.
[19] *Stat. at Large*, 3:428, 431, sec. 7; *Laws of the U. S.*, 6:292, 295, sec. 7.
[20] *Stat. at Large*, 2:283; *Laws of the U. S.*, 3:603.
[21] *Stat. at Large*, 2:283, sec. 12; *Laws of the U. S.*, 3:603, 608, sec. 12.

This condition of union was altered by the act of March 3, 1805, which changed the district into the territory of Louisiana and set it up as an organized territory with its own governor and judges.[22] The territory of Louisiana endured from 1805 to the first Monday in December, 1812, when it became the organized territory of Missouri without change of boundary.[23] Minnesota west was again affected by federal legislation in 1821 when the present state of Missouri was admitted to the Union with her southern boundary fixed at 36° 30′ north latitude.[24]

The legal position after 1821 of the territory north and west of Missouri is not made clear by the legislation just mentioned. The Missouri enabling act simply authorized the inhabitants of a portion of Missouri territory to form for themselves a constitution preparatory to admission to the Union as a state. Nothing was said as to the government of the remainder, save that "in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state contemplated by this act, slavery and involuntary servitude, ... shall be, and is hereby, forever prohibited."[25]

Looking ahead nearly thirty years we find that when Wisconsin had just been admitted to the Union as a state in 1848, Minnesota east was left outside, with no specific provision made as to its government. It was in precisely the position of the country north and west of Missouri after 1821, except that it was much smaller. At this time the theory was urged, with partial success, that the setting up of Wisconsin as a state did not destroy the existence of Wisconsin territory if there were any territory left over which its government could operate, and on the strength of this contention Mr. Sibley went to Washington, after receiving the suffrages of his constituents, and was seated as the delegate of the territory of Wisconsin. Had this idea prevailed on the admission of Missouri, the government of the territory of Missouri could simply have gone on administering the affairs of the remaining territory, exclusive of the state of Missouri. This was not the case, however; the local authorities seem to have relinquished their offices and for a dozen years no others were set up.[26]

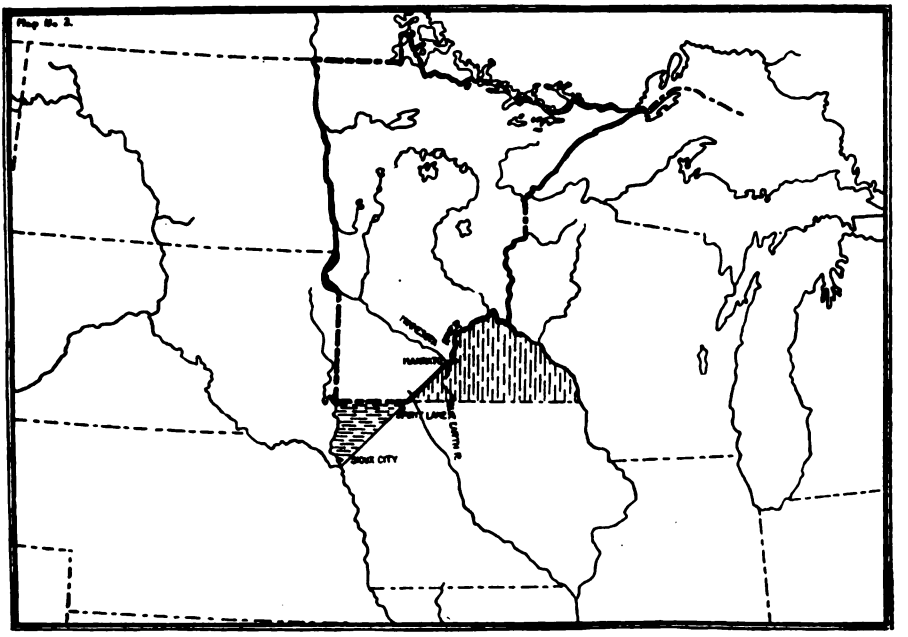
In 1834 Congress finally enacted a statute for the administration of this region.[27] This legislation simply attached the territory between Missouri and the Canadian border, from the Mississippi river west to the Missouri

[22] *Stat. at Large*, 2:331; *Laws of the U. S.*, 3:658.
[23] *Stat. at Large*, 2:743; *Laws of the U. S.*, 4:438.
[24] *Stat. at Large*, 3:645; *Laws of the U. S.*, 6:590.
[25] *Stat. at Large*, 3:545, sec. 8; *Laws of the U. S.*, 6:455, 459.
[26] "After the admission of the State of Missouri, August 10, 1821, that part of the Territory of Missouri ... [north and west of the state of Missouri] had no distinct government." Poore, *Constitutions*, 1:568, note.
[27] *Stat. at Large*, 4:701; *Laws of the U. S.*, 9:79.

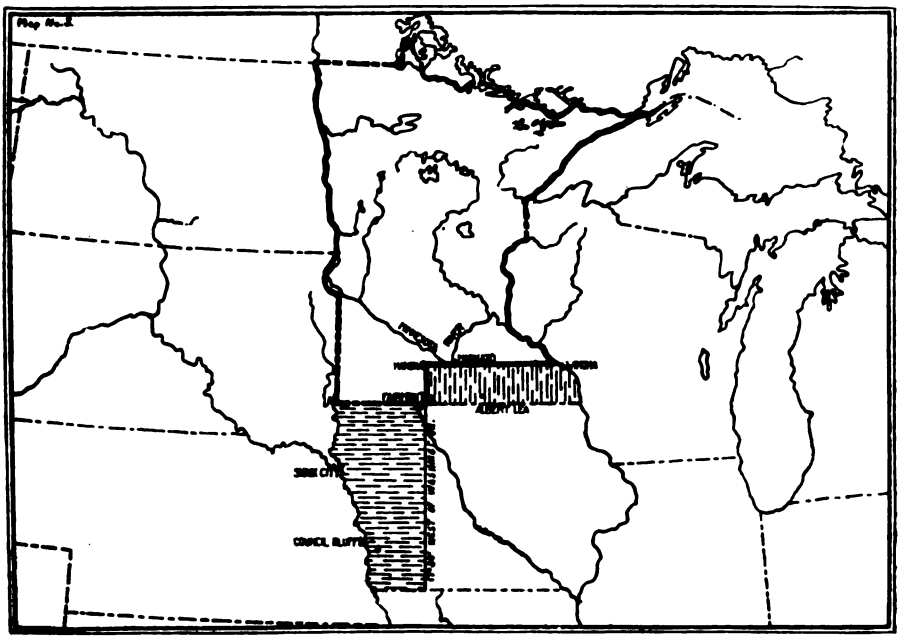
and White Earth rivers, to the territory of Michigan "for the purpose of temporary government." By this action Minnesota east and Minnesota west were again temporarily brought under the same local government. On April 20, 1836, while events were rapidly shaping for the early entrance of Michigan into the Union, Congress set apart all the territory from Lake Michigan west to the Missouri and White Earth rivers, and from Illinois and Missouri north to the Canadian border, as the organized territory of Wisconsin.[28] United under the territorial government of Michigan since 1834, Minnesota east and Minnesota west continued now to be united under the territory of Wisconsin for two more years. The union was ended by the act of June 12, 1838, which created the organized territory of Iowa, comprising all of the Wisconsin territory west of the Mississippi.[29] During the next ten years "the Minnesota country," as it was coming to be called, continued to be divided. Minnesota east was in this period a portion of St. Croix county, Wisconsin, and as such it helped to elect representatives to the territorial legislature and to the two constitutional conventions of 1846 and 1847.[30] Minnesota west, on the other hand, was a part of Clayton county, Iowa, which was almost an empire in area. Henry H. Sibley served as a justice of the peace in this vast territory for several years.[31]

5. THE NORTHERN BOUNDARY OF IOWA.[32] Iowa had hardly become organized as a territory before there arose a strong agitation for statehood. This movement, as well as the boundary dispute with Missouri, lies beyond the scope of this essay. It is sufficient to say that Iowa had but one fixed and certain boundary, the Mississippi river on the east. On the south, west, and north the boundaries of the future state had yet to be defined, and there were strong factions within the territory favoring each of the several proposed solutions. In 1844 a convention drew up a constitution which in 1845 was twice submitted to the people. This document fixed the northern limits of the proposed state by a line from "the mouth of the Sioux or Calumet River" on the Missouri, "in a direct line to the middle of the main channel of the St. Peters [Minnesota] River, where the Watonwan River (according to Nicollet's map) enters the same; thence down the middle of the main channel of said river to the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said river to the place of beginning" at the northeastern corner of Missouri.[33] This plan would have given Iowa a magnificent territory from the Mississippi to the Missouri, and north to

[28] *Stat. at Large*, 5:10; *Laws of the U. S.*, 9:310.
[29] *Stat. at Large*, 5:235; *Laws of the U. S.*, 9:769.
[30] Folwell, *Minnesota*, p. 85.
[31] *Minn. Hist. Col.*, 3:265-66.
[32] See maps, p. 15.
[33] Shambaugh, *History of the Constitutions of Iowa*, pp. 234-40; *Minn. in Three Cen.*, 2:335-36.



MAP NO. 2. NORTHERN BOUNDARY OF IOWA PROPOSED BY THE IOWA CONSTITUTIONAL CONVENTION OF 1844 and twice rejected by the voters of Iowa, along with the proposed state constitution, in 1845.



MAP NO. 3. BOUNDARIES OF IOWA PROPOSED BY THE ACT OF CONGRESS OF MARCH 3, 1845, and rejected by the voters of Iowa.

the Minnesota river. There had been other schemes, also, one of which would have pushed the northern boundary of Iowa to the forty-fifth parallel of north latitude, and another of which would have left it at the forty-second parallel. Before the constitution was submitted to them, however, the people of Iowa were apprised of the act of Congress of March 3, 1845, providing an entirely different set of boundaries and making the admission of the state dependent upon popular ratification of the proposed limits. Briefly speaking, the proposed boundaries extended the state up the Mississippi "to a parallel of latitude passing through the mouth of the Mankato, or Blue Earth river, thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington City, thence due south to the northern boundary line of the State of Missouri," and thence to the point of beginning.[34] This proposal evoked strong opposition among Iowans generally, without distinction of party. Criticism of the constitution, already begun, was redoubled. The Whig minority in the territory, which had from the first manifested its opposition to the constitution, was joined by a group of insurgent Democrats. In the end the constitution was defeated, but by only 996 votes.[35] Another attempt to have this instrument approved by the people, independent of the act of Congress and its obnoxious boundaries, was made later in the year, but again the people expressed their disapproval, this time by a reduced majority. Clearly enough, it was not so much the boundaries proposed by Congress as the constitution itself which the people refused to accept.

In 1846 the people of Iowa once more proceeded to make a constitution.[36] The convention which met for only fifteen days in May, 1846, agreed upon a compromise northern boundary at 43° 30′ north latitude, while the proposed state was extended westward to the Missouri and Big Sioux rivers. This was the boundary which the people had instructed their delegate in Congress, Mr. A. C. Dodge, to support, and it enclosed a territory as extensive as the people dared hope to receive, in view of Congress' opposition to excessively large states. This time they were not disappointed. On August 4 the boundary act became federal law.[37] The people were not, however, overmuch pleased with the new constitution, which embodied the new limits. It was adopted by the narrow margin of 456 votes in a total of over eighteen

[34] *Stat. at Large*, 5:742. The "parallel of latitude passing through the mouth of the Mankato river," would leave the Mississippi river at a point near Whitman, some miles north of Winona, and in its passage westward would pass north of the cities of Rochester, Owatonna, and Waseca, and through the city of Mankato. The northwest angle of the proposed state would have been a little north and west of Hanska, in Brown county. The western boundary on the meridian of 17° 30′ west of Washington would have passed east of St. James, but would have included the present city of Fairmont within the state. See map, p. 15.

[35] Shambaugh, *op. cit.*, pp. 256 ff.; *Minn. in Three Cen.*, 2:335-39.

[36] Shambaugh, *op. cit.*, pp. 285-98.

[37] *Stat. at Large*, 9:52.

thousand. On December 28, 1846, Iowa was, after much tribulation, admitted to the Union, with its northern boundary, identical with the southern boundary of Minnesota, fixed at 43° 30′ north latitude. Temporarily, and for the second time since 1804, Minnesota west was left without a local government.

6. THE WESTERN BOUNDARY OF WISCONSIN.[38] The eastern boundary of the future state was the next to be established. It was settled upon the admission of Wisconsin to the Union, May 29, 1848.

The region west of the Mississippi river was a part of Wisconsin territory from 1836 to 1838 only, when it became a part of the territory of Iowa. The people of Wisconsin had, therefore, little thought that their state-to-be would extend beyond the river. They did, however, feel that all the remnant of the old Northwest territory, including the whole of Minnesota east, was theirs by right.[39] The Wisconsin enabling act of 1846 did not respect this claim in its full extension.[40] Congress established therein the northwestern boundary of the proposed state as it stands today, that is to say, down "through the centre of Lake Superior to the mouth of the Saint Louis River; thence up the main channel of said river to the first rapids in the same, above the Indian village, according to Nicollet's map; thence due south to the main branch of the river Saint Croix; thence down the main channel of said river to the Mississippi; thence down the centre of the main channel of that river to the northwest corner of the State of Illinois." This provision deprived Wisconsin of much of her "ancient birthright," and excluded her from any footing on the northern shore of Lake Superior. Michigan had already been given the southern shore of the lake from the St. Mary's river to the Montreal river, which empties into the lake some miles east of Ashland.[41] Should the proposed western boundary now go into effect, Wisconsin would be more limited in territory and in direct access to Lake Superior than her people had at any time foreseen.

Nevertheless, when the first constitutional convention met in Madison in October, 1846, an attempt was made still further to restrict the territory of Wisconsin on the west.[42] The settlers in the St. Croix valley and those farther west, as at St. Paul, were already dreaming of a separate state. They felt that the whole of the St. Croix and Chippewa river valleys had little

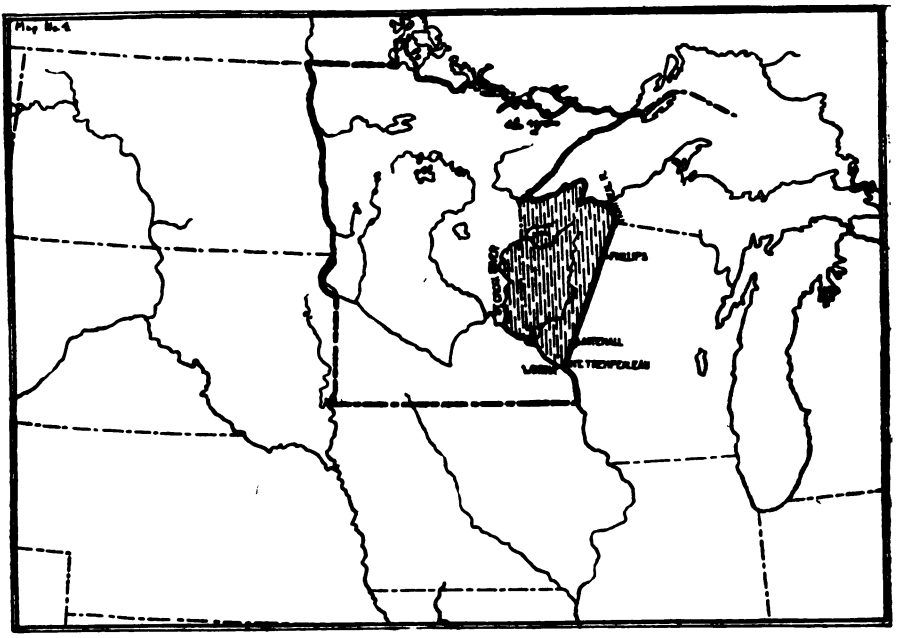
[38] See maps, pp. 18, 20. An adequate account of the evolution at this boundary will be found in *Minn. in Three Cen.*, 2:339-48.

[39] Section 14, article V, of the Northwest Ordinance contained the provision that "There shall be formed in the said [Northwest] territory not less than three nor more than five states." Wisconsin as the fifth and presumably the last state to be erected in this region had at least a paper claim to all that remained of the territory. *Wis. Hist. Col.*, 11:488.

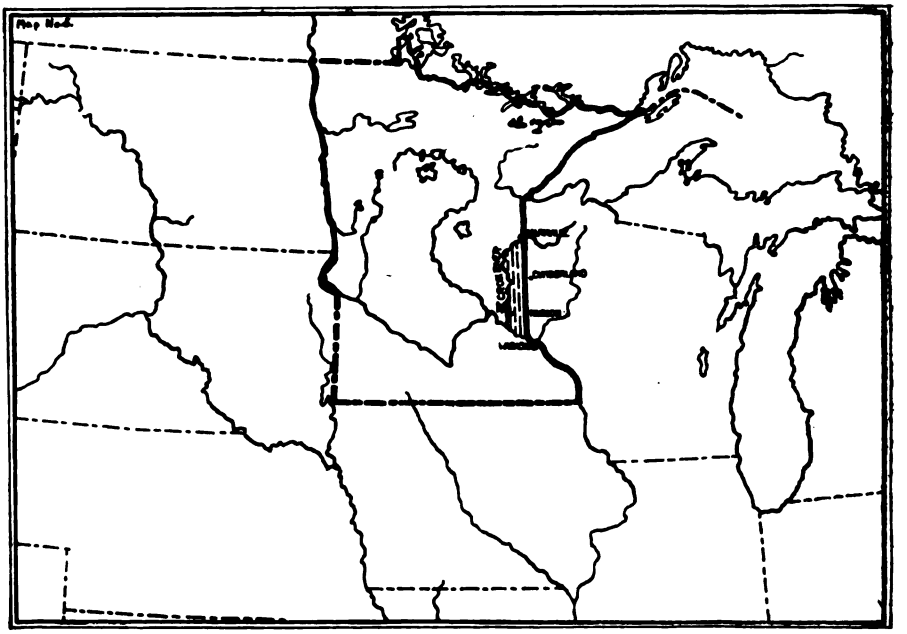
[40] *Stat. at Large*, 9:56.

[41] Thwaites, The boundaries of Wisconsin, *Wis. Hist. Col.*, 11:469-85.

[42] Thwaites, *op. cit.*, in *Wis. Hist. Col.*, 11:488, 489.



MAP NO. 4. NORTHWESTERN BOUNDARY OF WISCONSIN FROM THE HEADWATERS OF THE MONTREAL RIVER TO MOUNT TREMPEALEAU, PROPOSED BY WILLIAM HOLCOMBE in the Wisconsin constitutional convention of 1846 and by George W. Brownell in the convention of 1847, and rejected by both conventions.



MAP NO. 5. WESTERN BOUNDARY OF WISCONSIN PROPOSED BY THE WISCONSIN CONSTITUTIONAL CONVENTION OF 1846. This line (substantially due south) would have begun at the first rapids in the St. Louis river, and would have run thence due south to the St. Croix river, thence to a point fifteen miles east of the most easterly point of Lake St. Croix, and thence due south to the Mississippi river or Lake Pepin.

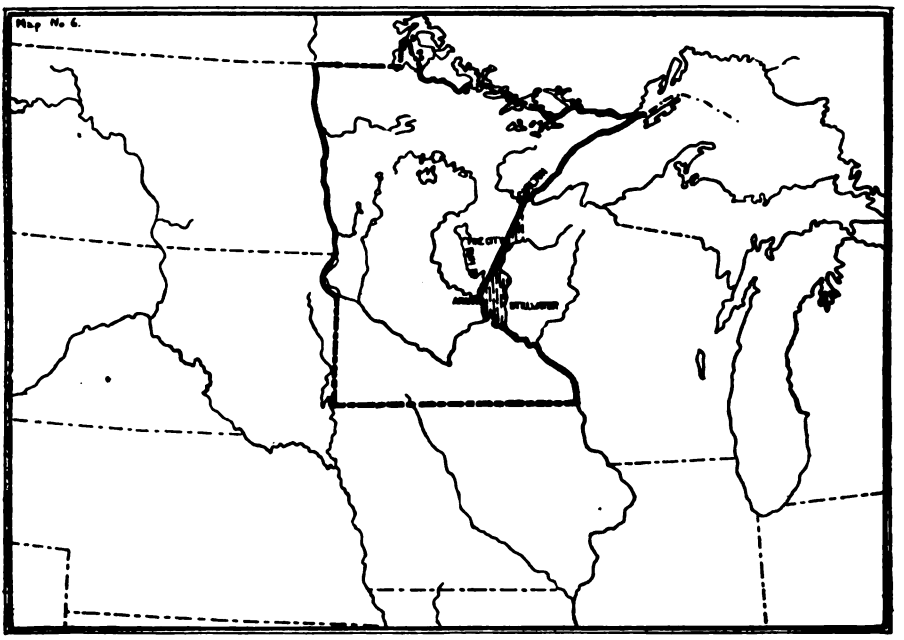
interest in or connection with the southern and eastern communities in Wisconsin, and it was their ambition to create a new state to be called Superior, comprising the Chippewa, St. Croix, and upper Mississippi valleys.[43] William Holcombe, of the St. Croix, fought strenuously and persistently throughout the first convention to have Wisconsin bounded on the northwest by a straight line from the borders of Michigan, at the headwaters of the Montreal river, southwest to Mount Trempealeau, which lies across the river and a short distance southeast of Winona. This scheme would have excluded Wisconsin entirely from the control of any part of the Lake Superior shore. At one stage in the proceedings the convention adopted this plan, but in the end the best that Holcombe could obtain was the adoption of a proviso stating that the people of Wisconsin preferred to the line proposed by Congress a line substantially due south from the first rapids in the St. Louis river to the Mississippi river. This would have left much of the St. Croix valley outside of the state of Wisconsin. Congress subsequently approved this boundary preference,[44] but the people rejected the whole constitution and thereby defeated the proposed limits. How much effect the boundary question had upon the result of the vote is not known, but certainly it would be hard to demonstrate that the people actually preferred the boundaries proposed by the convention.

The second Wisconsin constitutional convention, which met in December, 1847, was confronted with the same boundary question, and the same opposition from the St. Croix valley to being included in the state. This time, however, the separation movement was decisively defeated.[45] Instead of voting for boundaries more restricted than those proposed in the enabling act, this convention went beyond them, expressing a desire for a line from the first rapids in the St. Louis river southwest to the mouth of the Rum river, where it flows into the Mississippi within the present city of Anoka. A large portion of Minneapolis, the major part of St. Paul, all of Stillwater and other important towns, and several counties now in Minnesota, would by this boundary plan have been made part of Wisconsin.[46] So small was the population west of the Mississippi and Rum rivers in 1848, that it would have taken several years before there would have been enough people there to have justified the establishment of a new territorial government. This boundary scheme, together with the new constitution, the people of Wisconsin promptly ratified.

The towns from Stillwater to St. Paul, together with the settlements farther north and west, were roused to action by the new menace. Since nothing more could be done locally, the struggle was transferred to Washington.

[43] Thwaites, *op. cit.*, in *Wis. Hist. Col.*, 11:488, 489.
[44] *Stat. at Large*, 9:178.
[45] Thwaites, *op. cit.*, in *Wis. Hist. Col.*, 11:490-92.
[46] *Ibid.* See map, p. 20.

The leading men of what we have called Minnesota east sent a strong petition to Congress, protesting against the Rum river line, which they denounced in the strongest terms.[47] It is said, also, that there was active lobbying by the friends of Minnesota. Finally Congress admitted Wisconsin with the western boundary specified in the enabling act of 1846.[48] Thwaites tells how the surveyors who ran the line south from the St. Louis to the St. Croix



MAP NO. 6. WESTERN BOUNDARY OF WISCONSIN PROPOSED BY THE CONSTITUTIONAL CONVENTION OF 1847 AND REJECTED BY CONGRESS. This line would have begun at the first rapids of the St. Louis river and run thence in a straight line southwest to the mouth of the Rum river.

river, failing to find the first rapids in the former, due to high water in the lower stream, went farther up river before striking southward across country. By this natural circumstance, "a ribbon of dense pine forest forty-two miles long by about half a mile broad" was added to the state of Wisconsin, and lost to Minnesota.[49]

The process of clipping new states out of the old Northwest territory was at last ended. Ohio, Indiana, Illinois, Michigan, and Wisconsin—five states—had been successively delimited upon the map and introduced to an equal station with the original states in the Union. The Louisiana territory was already undergoing the same process, the states of Louisiana, Missouri, Ar-

[47] *U. S. Sen. Doc.* (misc.) 30 Cong. 1 sess., no. 98. Thwaites, *op. cit.*, in *Wis. Hist. Col.*, 11:492-93.

[48] *Stat. at Large*, 9:233.

[49] Thwaites, *op. cit.*, in *Wis. Hist. Col.*, 11:493-94.

kansas, and Iowa having already been erected.[50] There was now left in "the Minnesota country," about the headwaters of the Mississippi, the northwesternmost corner of the Northwest territory, the northeasternmost portion of the Louisiana territory, and, a little farther northwest, that portion of the valley of the Red River of the North which, by the convention of 1818, had become part of the American domain.[51] In 1848 there was not even a recognized territorial government in this region, and there was very little population,—yet it was destined to become a state in the Union in less than ten years from the time of the admission of Wisconsin. Only one other state, California, was admitted to the Union in the period between the admission of Wisconsin and that of Minnesota.

7. MINNESOTA AS UNORGANIZED TERRITORY. It is probable that the plan for a separate territorial organization for the country west of the St. Croix originated in a few fertile minds within a very short time after the beginning of white settlements at Stillwater and Marine.[52] The necessity for action toward this end was clearly seen late in 1846. On August 6 of that year was passed an act enabling that portion of Wisconsin east of the St. Croix to form a state government and to come into the Union. In December of the same year Iowa was admitted as a state, leaving Minnesota west without organic existence.[53] At this juncture of affairs, Morgan L. Martin, delegate from Wisconsin, probably inspired by Joseph R. Brown, introduced a bill to create the territory of Minnesota out of the region west of Wisconsin and north of Iowa. His bill passed the House but was lost in the Senate.[54]

Due to the difficulties which Wisconsin was experiencing in drafting an acceptable constitution, the year 1847 passed without definitive action toward her admission into the Union. Minnesota east continued in the meantime to be part of Wisconsin territory. Early in 1848, when it seemed that Wisconsin was about to agree at last upon her fundamental law, as she presently did, Senator Douglas introduced a second bill to organize the new territory.[55] His effort also proved to be premature. The summer drew on; on May 29 Wisconsin was finally admitted as a state, with her western boundary fixed at the Mississippi and St. Croix, yet no provision had been made for the region to the west.

Filled with a common sense of danger and neglect, the scanty populations of the remnants of Wisconsin and Iowa were drawn closer to each other than ever before. The little settlement at Mendota, which had formerly looked to the territorial government of Iowa for its laws and administration,

[50] The dates of these several admissions were as follows: east of the Mississippi: Ohio in 1803, Indiana in 1816, Illinois in 1818, Michigan in 1837, Wisconsin in 1848; west of the Mississippi: Louisiana in 1812, Missouri in 1821, Arkansas in 1836, and Iowa in 1846.

[51] See pp. 8-9.

[52] *Minn. Hist. Col.*, 8:70-72; *Minn. in Three Cen.*, 2:349 ff.

[53] *Stat. at Large*, 9:117.

[54] *Cong. Globe*, 29 Cong., 2 sess., pp. 53, 71, 441-45, 540, 572; *Minn. in Three Cen.*, 2:350-54.

[55] *Cong. Globe*, 30 Cong., 1 sess., pp. 136, 656, 772, 1052; *Minn in Three Cen.*, 2:355.

found a new attachment to the neighboring towns of St. Paul and Stillwater. The people from both sides of the river promptly met to confer with each other and seem to have agreed to pool their resources and influence to mend their isolated and disorganized state. Several meetings, attended by residents of both regions, were held in St. Paul and Stillwater during July and August.[56] The culmination of these gatherings was the so-called Stillwater Convention of August 26.[57]

The call for the Stillwater Convention was issued from Stillwater under date of August 4. It was in the following language:

> We, the undersigned, citizens of Minnesota Territory, impressed with the necessity of taking measures to secure an early Territorial organization, and that those measures shall be taken by the people with unity of action, respectfully recommend that the people of the several settlements in the proposed Territory appoint delegates to meet in convention at Stillwater, on the 26th day of August next, to adopt the necessary steps for that purpose.[58]

Appended to this appeal were the signatures of eighteen of the leading men of the Minnesota country, the second, third, and fourth names being those of H. H. Sibley, Joseph R. Brown, and W. Holcombe, all of whom took an important part nine years later in the work of the Democratic wing of the state constitutional convention. Sibley and Holcombe became, respectively, the first governor and the first lieutenant governor of the state in 1858.

The convention was well attended, sixty-one delegates signing the memorials. Among them were nearly all the outstanding men of the whole Minnesota region,—Joseph R. Brown, A. L. Larpenteur, C. F. Leach, H. L. Moss, Morton S. Wilkinson, W. Holcombe, H. H. Sibley, H. Jackson, Socrates Nelson, Louis Robert, Joshua L. Taylor, Samuel Burkleo, James S. Norris, and many more. These men were the true pioneers of the Minnesota country. They lived mainly in St. Paul, Stillwater, and the adjacent towns, but there were delegates also from Sauk Rapids, Spunk Creek, and Crow Wing, who had received word of the meeting far in their northern settlements and had descended the river many miles to take part in the deliberations. Only the distant Pembina country seems to have been unrepresented.

The results of the convention were in every way gratifying. Everything went smoothly. There was apparently unanimous agreement upon the memorials which were presently addressed to President Polk and the Congress of the United States.[59] Sibley was elected "a Delegate to proceed to Washington City," his election being made unanimous on the motion of Brown. Several committees were appointed, including one which was to gather business statistics to fortify the delegate in his attempts to bring

[56] *Minn. Hist. Col.*, 1:482-85; 8:70-80; *Minn. in Three Cen.*, 2:356 ff.

[57] The manuscript record of the proceedings is preserved in the manuscript division of the Minnesota Historical Society, and is published in *Minn. Hist. Col.* 1:53 ff. See also *Minn. in Three Cen.*, 2:356 ff. There are some very evident chronological errors in the printed accounts.

[58] *Minn. Hist. Col.*, 1:55.

[59] *Ibid.*, 1:59-61.

about an early organization of Minnesota territory.[60] From the little we know about the meeting it appears that its spirit was above reproach and that its attitude toward the situation in which the Minnesota country found itself was sensible and praiseworthy. The point of view of the delegates is best expressed by themselves in their memorial to President Polk:

> Your memorialists, citizens of the Territory north of the northwestern boundary of Wisconsin and of the northern boundary of Iowa, ask leave respectfully to represent:
>
> That the region of country which they inhabit formed, formerly, a portion of the Territories of Iowa and Wisconsin, subject to the laws and government of those Territories; . . .
>
> That this region of country is settled by a population of nearly 5,000 persons, who are engaged in various industrial pursuits; . . .
>
> That by the admission of Wisconsin into the Union, with the boundaries as prescribed by Congress, and the omission by that body to pass a law for the organization of a new Territory, embracing the portion of country inhabited by your memorialists, they and all their fellow citizens are left without officers to administer and execute the laws. That, having once enjoyed the rights and privileges of citizens of a Territory of the United States, they are now without fault or blame of their own, virtually disfranchised.
>
> They have no securities for their lives or property but those which exist in mutual good understanding. Meanwhile all proceedings in criminal cases, and all process for the collection of debts, are suspended; credit exists only so far as a perfect confidence in mutual good faith extends, and all the operations of business are embarrassed.

From this point they went on to argue that so lawless a state "is fraught with evils and dangers," and they closed with an appeal to the president to "call the attention of Congress to their situation at the opening of the next annual session, and recommend the early organization of the Territory of Minnesota."[61]

The certificate of election issued to Sibley also bears out the idea that Wisconsin territory and Iowa territory had both ceased to have any legality in the Minnesota region, that Minnesota was, in fact, virtually without laws and government. This document, made out by "the officers of a convention of Delegates for the people of Minnesota," declared Sibley "unanimously elected a Delegate to proceed to Washington City and there use such measures as may best tend to effect the early organization of the territory of Minnesota."[62]

Every document and pronunciamento issuing from its deliberations bears out the statement that the Stillwater Convention was proposed and carried through on the theory that the region north of Iowa and west of Wisconsin was without political organization. It was neither Wisconsin territory nor Iowa territory. It was simply a "region of country" in which

[60] See the report of the "committee to collect information as to business, capital, etc." now preserved in the manuscript division of the Minnesota Historical Society.

[61] *Minn. Hist. Col.*, 1:59-61.

[62] *Minn. in Three Cen.*, 2:367.

dwelt some few thousands of people who so strongly desired to be organized as the territory of Minnesota that they occasionally spoke as if the wished-for territorial organization already existed. Sibley's credentials as delegate made him the representative of the Stillwater Convention and of the "people of Minnesota."

A few weeks later, however, a different idea came to prevail among certain of the leaders in the Minnesota country. It was simply this, that the territorial organization of Wisconsin was still effective in the region between the St. Croix and the Mississippi.[63] It seems that Mr. John Catlin, the last secretary of Wisconsin territory, with the encouragement of what Minnesotans is not definitely known, reached this conclusion when the state of Wisconsin was admitted. The last territorial governor, Mr. Henry Dodge. having been elected senator from the state of Wisconsin, had ceased to be territorial executive; hence Catlin reasoned that he himself, as secretary, became acting governor. Furthermore, the last delegate to Congress from Wisconsin territory, Mr. John H. Tweedy, stood ready to resign, he said; and if he did, what was to prevent Catlin as acting governor from calling a special delegate election, and the people of the remnant of Wisconsin territory from electing a bona fide delegate to Congress? "If a Delegate was elected by colòr of law," he argued, "Congress would never inquire into the legality of the election." He was sure such a delegate would be seated, and he cited a precedent.[64] "And unless a Delegate is elected and sent on," he warned, "I do not believe a government will be organized for several years."

The argument just set forth was expressed in a letter dated August 22, 1848, addressed by Catlin to William Holcombe.[65] It was supported by an opinion of James Buchanan, then secretary of state, to the effect that the laws of Wisconsin territory continued in force in the portions of the old territory excluded from the new state, though he failed to express an opinion on whether the governor, secretary, and other general officers of the old territory still had authority to exercise their former powers in the remnant, and stated that "immediate legislation is required."

Catlin was encouraged by friends of the Minnesota country to put his ideas into effect. He left Wisconsin to take up his residence as acting governor at Stillwater in the "Territory of Wisconsin."[66] Tweedy having resigned as delegate, Catlin on October 9 called for the election of a new delegate on October 30. The polling places designated were all within the old territory of Wisconsin. In the election which followed Sibley won by a clear majority over his opponent, Henry M. Rice. Thereupon Catlin, still acting as governor of the territory of Wisconsin, issued to Sibley a certificate of election as "Delegate of the Territory of Wisconsin," and having performed these acts, he presently departed for his home in the real Wisconsin.[67]

[63] *Minn. Hist. Col.*, 1:53 ff.; *Minn. in Three Cen.*, 2:364.
[64] The precedent cited was the case of George W. Jones. See p. 26.
[65] *Minn. Hist. Col.*, 1:53-54; *Minn. in Three Cen.*, 2:364.
[66] *Minn. Hist. Col.*, 1:61; *Minn. in Three Cen.*, 2:371.
[67] *Ibid.*, 2:376.

Strict adherence to legal formalities is not a common attribute of backwoods communities, and politicians should not be held to an undue consistency. From whatever standpoint it is considered, however, Sibley's position presents an unusual number of inconsistencies. He represented in the first place the Stillwater Convention, which was entirely outside the law, and in the second place the "people of Minnesota," a place which did not exist, and a people who had not elected him to be their delegate, since only the residents east of the Mississippi seem to have voted. He claimed at the same time to be the delegate of the territory of Wisconsin, a hypothetical region consisting of about one third of the old Wisconsin territory and containing certainly not over one thirtieth of its population, a region without a legislature and probably without legal organization. From this portion of the Minnesota country he had been duly elected, and from this alone. Though he claimed to represent this so-called territory of Wisconsin, he himself had not even a constructive residence within its limits. He lived on the other side of the Mississippi in the remnant of the old Iowa territory. But if Wisconsin territory still existed east of the Mississippi, so too did Iowa territory west of that river, a claim which Sibley himself and the handful of people on his side of the river seem never to have put forward. Happily the Wisconsin organic act did not require delegates to Congress to have local residence[68] and though he lived in the remnant of Iowa, it was not strictly illegal for Sibley to represent Wisconsin, if such a territory existed.

Following his election, Mr. Sibley proceeded almost at once to Washington, where Congress was due to begin a session on the first Monday in December. He presented his certificate signed by Catlin, and asked to be seated as the delegate from Wisconsin territory.[69] His case received prompt attention from the House committee on elections, and he was given a full hearing. In his most important argument before this body, a speech which has been preserved for us, he reasoned somewhat as follows: There could be no question, he said, as to the legality of his election, since he held the certificate of the acting governor which was "prima facie evidence of that fact."[70] It remained only to show, if possible, "that the residuum of Wisconsin Territory, after the admission of the State, remained in the possession of the same rights and immunities which were secured to the people of the whole Territory by the organic law." This he endeavored to demonstrate by urging that the government is obligated to afford to all its citizens the

[68] *Stat. at Large*, 5:10. Mr. H. P. Hall, in his book *Observations*, says that "the first delegate to Congress from Minnesota was from Wisconsin." It is more nearly correct, though less epigrammatic, to say, that the first delegate in Congress who claimed to represent the geographical region known as *"the Minnesota country,"* got into Congress as "delegate of the Territory of Wisconsin," but resided in the remnant of the territory of Iowa. H. P. Hall, *Observations*, (1849-1904), 1904 ed., p. 53. Cf. *Minn. in Three Cen.*, 2:392-93.

[69] *Cong. Globe*, 30 Cong., 2 sess., p. 2; *Minn. Hist. Col.*, 1:61; *Minn. in Three Cen.*, 2:379.

[70] *Minn. Hist. Col.*, 1:69 ff. The Republicans in the constitutional convention in 1857 charged Sibley with having changed his views as to the conclusive effect of certificates of election.

protection of law, that the only law under which the people of Wisconsin not within the state of Wisconsin could live was the organic law, and that this law had not been repealed by the act admitting the state. Hence, the organic law remained in "full operation" in the excluded territory. And finally, this act, and its higher antecedent, the Northwest Ordinance, both guaranteed the right of representation.[71]

In support of this argument, Sibley cited two supposed precedents. The first was that of Paul Fearing who sat in Congress as delegate for the excluded portions of the Northwest territory after the admission of Ohio as a state.[72] The other case was that of George W. Jones who sat as delegate for Michigan territory after Michigan had formed a state constitution and had sent senators and representatives elect to Washington to apply for admission to Congress.[73] It is fair to say that neither of these cases was exactly parallel to that of Sibley. It is not, however, necessary to discuss them, since in no case could they throw much light on the status of the Minnesota region in the period now under discussion.

Suffice it, then, that Sibley, being a man of genial bearing and considerable persuasive ability, convinced the committee that he was a gentleman worthy of being admitted to represent his constituents.[74] It was the personality and the abilities of the man, rather than the logic of his case, which won the committee to Sibley's side, and so thorough was his conquest that Mr. Richard W. Thompson, chairman of the committee on elections, was not averse to taking advantage of parliamentary procedure to force a quick vote on the admission.[75] The result was that Sibley was seated by a vote of two to one, without there having been any discussion by the House of the merits of his case.

The vote seating Sibley was taken on January 15, 1849. Three days later a proposition was put forward to appropriate $10,500 for the salaries and expenses of the officers of the territory of Wisconsin. At this time there was a discussion at some length of the status of the region between the St. Croix and the Mississippi which had been excluded from the state of Wisconsin. The result was a decisive defeat of the proposed appropriation, clearly indicating that the House did not believe that Wisconsin territory still existed.[76] In the course of the debate it was brought out that the pre-

[71] Wisconsin organic act, April 20, 1836, sec. 14, Northwest Ordinance, sec. 14, art. II: "The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature," etc. This certainly did not grant the people the right of representation in Congress.

[72] For discussions of this case see *House of Rep. Comm. Reports*, 30 Cong., 2 sess., no. 10, Jan. 2, 1849; *ibid.*, 35 Cong. 1 sess., no. 435, May 29, 1858.

[73] This case is discussed in *House of Rep. Comm. Reports*, 30 Cong., 2 sess., no. 10, Jan. 2, 1849.

[74] *Minn. in Three Cen.*, 2:393.

[75] *Cong. Globe*, 30 Cong., 2 sess., 259-60.

[76] *Ibid.*, 295-97. On this very day Senator Douglas had proposed in the other chamber to take up the bill to create the territory of Minnesota.

cedents were all against such a construction of the law, the cases of Iowa and Missouri being considered especially in point.

The question of the status of the Minnesota region is not settled by the several decisions of the House of Representatives here noted, but certainly they throw much light upon the problem. Had the House stopped after seating Sibley, the problem would have been only slightly different from what it is. Briefly, the people of a territory have no absolute right of representation by a delegate in Congress. When this privilege is conferred, it amounts to nothing more than an act of grace on the part of Congress, which may revoke the privilege at any time. Congress may confer the privilege upon any territory, whether organized or not. The cases of Fearing and Jones seem to have been illustrations of the granting of the privilege to unorganized territories. Consequently the reception of a delegate cannot raise any presumptions that the territory represented is an organized one. Even if this presumption could be raised, it could never be more than a mere presumption, for whatever Congress may do in the premises, certainly the House of Representatives alone cannot create a territory, nor can it organize a portion of the unorganized territory of the United States, nor can it, by merely receiving a delegate, raise an unorganized region into the status of an organized territory unless the organization has some other demonstrable legal basis. Therefore, despite the fact that the House seated Sibley as delegate from Wisconsin territory, upon his certificate from a person who claimed to be acting governor of that territory in its organized capacity, this fact alone did not constitute Minnesota east the territory of Wisconsin.

Other considerations which serve but to complete the demonstration that Minnesota east was not the organized territory of Wisconsin, may be summarized as follows:[77] First, within three days after seating Sibley, the House itself, following debate, refused to pass an appropriation for the support of the governmental organization of the territory. Second, before the end of the same session both houses and the president agreed upon a bill establishing a new organization in the same and an additional region, proving that Congress as a whole believed that a new organic act was needed; for it was no mere extension of the "Territory of Wisconsin" which Congress enacted, but a complete new act, organizing the territory of Minnesota. Third, Catlin did not actually carry on a government in the supposed territory. He returned to the state of Wisconsin at an early date after the election of Sibley as delegate. Therefore, there was no actual territorial organization during the months under consideration.[78]

[77] While it is true that territories of the United States and municipal corporations do not stand upon the same footing, there are some interesting parallels between them particularly in this matter of the succession of one to the territory, powers, and duties of another. See Pepin *v.* Sage, 129 *Fed.* 657; 64 *C. C. A.* 169 (1904); Brewis *v.* City of Duluth, 3 McCrary *U. S. C. C. Rep.*, 219 (1881); Dillon, *Comm. on the Law of Mun. Corp.*, 5th ed., I, secs. 352-60, and cases there cited.

[78] *Minn. in Three Cen.*, 2:376.

The most reasonable conclusion seems to be that the region which we call Minnesota east was, from May 29, 1848 to March 3, 1849, unorganized territory of the United States, and that Minnesota west was in the same position from December 28, 1846 to March 3, 1849. It is not necessary to go so far as to say that the people in these regions relapsed during these periods into a state of anarchy or the philosopher's "state of nature." Private rights acquired under the previously existing organized territorial governments continued to have legal effect, and the private legal relations of man to man were probably but little affected. What was lacking, and it was a very important element, was an organized government which could enforce the law. This was the outstanding need of the Minnesota region and its people. To its establishment Mr. Sibley, loyally supported by his late opponent, Mr. H. M. Rice, now bent his most powerful efforts.

CHAPTER II

THE TERRITORY OF MINNESOTA

1. THE PASSAGE OF THE ORGANIC ACT. The first bill to organize the territory of Minnesota, as has been related, was introduced prematurely into Congress in 1846 by Morgan L. Martin, the delegate from Wisconsin.[1] The next effort was put forth early in 1848 when Senator Douglas brought in a similar bill. This proposal proving unsatisfactory, at Douglas's own request it was recommitted to his committee, reconsidered, amended, and brought in again, too late for further action that summer.[2]

The beginning of the next session found the matter again before Congress. To Minnesotans the need was more urgent than ever, but Congress took its usual deliberate course. On January 18, the day on which the House voted down an appropriation for "Wisconsin Territory," the bill came up for brief debate in the Senate.[3] A more extended discussion followed the next day. There was no studied opposition to the bill. True, there were some ominous rumblings from one southern senator to the effect that the creation of new territories in the northwest was detrimental to the "particular interests" of his section, but even among the southern members the consensus was that Minnesota should not be left without laws and that if the population were large enough, a territorial organization should be set up. The bill passed the Senate on the same day without a record vote.

In the House the bill fell upon evil days. It devolved upon Sibley to urge its adoption in the face of a hostile Whig majority. Not until February 22, after a fruitless attempt ten days earlier, was he able to procure a suspension of the rules, discharging the committee of the whole on the state of the Union from consideration of the bill, so that it could be taken up directly by the House.[4] He at once moved the previous question. There ensued then a parliamentary squabble, which had no sooner subsided than the House proceeded to adopt a whole series of amendments to the Senate's measure. The last of these, adopted by a party vote of 101 to 95, postponed the taking effect of the act until March 10, 1849, a week after Taylor, the Whig president-elect, was to take office. Without this provision, President Polk might have

[1] See p. 21.

[2] *Cong. Globe*, 30 Cong., 1 sess., pp. 136, 656, 772, 1052.

[3] This was three days after Sibley had been given his seat in the House as a delegate from Wisconsin territory. *Cong. Globe*, 30 Cong., 2 sess., p. 286.

[4] *Ibid.*, pp. 581-83.

the appointment of the first territorial officers. The bill passed as amended on February 28.[5]

The measure now seemed as bad as lost. There remained but three days of the session. On the terms of the bill the Whig majority in the House had thrown down the gauntlet to the Democratic majority in the Senate by the adoption of a strictly partisan amendment. Sibley may well have despaired of the outcome. As he himself put it, "the bill was suspended between the two bodies, and would probably be killed."[6] On March 1 the Senate quickly acceded to all the House amendments except the last.[7] Speaking to that, however, Senator Douglas denounced the Whigs for proposing what he termed a vote of censure upon President Polk. There followed some bitter partisan repartee, and a vote of 30 to 18 rejecting the final House amendment.[8] The next day in the House, Sibley moved the previous question on concurring with the Senate's views, and it was so ordered.[9] The vote was postponed, however, until the next day, the last of the session.

In the meantime, Sibley had become the intermediary in striking a neat political bargain. The Whig majority in the House had a keen interest in the passage of the bill to create the Department of the Interior, an interest perhaps not unconnected with the filling of the new offices. The Democratic majority in the Senate was decidedly cool to the whole proposal. Sibley himself may tell the remainder of the story:

> It was while laboring under great apprehensions lest the Minnesota bill should be defeated, that I chanced to find myself in the Senate. I expressed my fears to several of the Democratic senators who were my personal friends, and they, to the number of five or six authorized me to say to the Whig leaders in the House, that unless that body receded from its amendment, and thus permitted Minnesota to be organized, they would cast their votes against the bill for the formation of the Interior Department. I hastened back to the House, called together several of the prominent Whig members, and informed them of the state of affairs. Satisfied that the votes of the senators I named would turn the whole scale for or against a measure they particularly desired should succeed, they went to work in the House, and produced so great a change in a short time, that a motion to recede from their amendment to the senate bill was adopted the same evening, by a majority of some thirty or forty, and into our infant Territory was breathed the breath of life.[10]

It was on March 3, 1849, that the House yielded to the Senate by eliminating its amendment. The bill was passed and signed that day and went into effect at once.[11]

[5] *Cong. Globe*, 30 Cong., 2 sess., p. 617.
[6] *Minn. Hist. Col.*, 1:62, note.
[7] *Cong. Globe*, 30 Cong., 2 sess., pp. 635-37.
[8] *Ibid.*, p. 637.
[9] *Ibid.*, p. 666.
[10] *Minn. Hist. Col.*, 1:62, note; 1:63-65. The quotation is from a speech delivered June 1, 1858, ten years after the events narrated.
[11] *Cong. Globe*, 30 Cong., 2 sess., pp. 693, 699; *Stat. at Large*, 9:403-9.

2. THE TERRITORY OF MINNESOTA, 1849-1858. The Democratic victory over the Whigs, if such it was, in the struggle for the amendment of the organic act, came too late to permit the victors to claim the spoils. Within a few hours after the passage of the act both houses of Congress adjourned, thereby closing the history of the 30th Congress, and preventing a ratification of any Democratic appointees by the Senate. The result was that President Polk had to forego the pleasure of appointing Democratic friends to organize the new territory and it fell to the incoming Whig president, Zachary Taylor, to make the selections. He chose as the first territorial governor of Minnesota the sturdy, youthful, and politically successful Alexander Ramsey of Pennsylvania.

We need but to picture Mr. Ramsey's arrival in Minnesota to see what great changes have occurred in the past seventy years. He arrived in St. Paul early in the morning of May 27, 1849, a total stranger in a new country.[12] He found St. Paul a village of less than a thousand people, in which there was not room to house even the governor. A small frame house was indeed in the process of erection for him, but he found it necessary for several weeks to accept the hospitality of Mr. Sibley in his more pretentious home at Mendota. The total population of the entire territory at this time, counting half-breeds and all others, was less than 5,000, and to make up this number it was necessary to include the large settlement of French and half-breed traders at Pembina, now in the state of North Dakota. When Ramsey's house was finally near enough to completion so that it was possible for him to move in, the story runs, there could not be found in the village of St. Paul a drayman to haul his household goods from the wharf to his residence, but he chanced to find an ox-cart which was soon mustered into service and the governor and his wife were presently parading up the street with their household goods on the cart, Mrs. Ramsey sitting atop the load.

It was on June 1, 1849, that Judge Cooper wrote out the proclamation signed by Governor Ramsey declaring the territorial government in existence.[13] From that day until 1858, the organic act was the basic charter of the government of Minnesota territory. For nine years Minnesota was an organized territory of the United States, subject to the federal constitution, the organic act, and the over-ruling power of Congress.

The act under which the new government began, it may here be remarked, was the joint product of the labors of a number of men. Senator Douglas's bill introduced January 10, 1848, had been withdrawn by him for purposes of revision on May 16. It was reintroduced as amended on August 9, but came to naught. The same bill was before the Senate at its next session. On December 20, it was recommitted to the committee on territories of

[12] Hall, *Observations*, pp. 8-11; *Minn. in Three Cen.*, 2:429; *Minn. Hist. Col.*, 13:8-10.
[13] *Minn. in Three Cen.*, 2:429.

which he was chairman. The purpose in recommitting it on this occasion was to permit Sibley, then in Washington, "to change certain provisions of the bill so as to meet the wishes of [his] constituents," as he put it.[14] One notable change made by him at this time was to have the capital established at St. Paul instead of at Mendota as had been proposed by Douglas. It is not unlikely that Henry M. Rice, who was in Washington lobbying for the bill, also had some influence on the details of the act, especially with reference to the boundaries of the proposed territory. The bill was further slightly amended in its passage through the Senate and again amended with the subsequent concurrence of the Senate by the House.

The boundaries of the territory on the south, east, and north were identical with those of the present state. To the west they extended to the Missouri and White Earth rivers, including, therefore, much of the present territory of North and South Dakota.[15] Congress expressly reserved the right to divide this region at any time into two or more territories. According to the usual practice, the governor, secretary, chief justice and associate justices, attorney, and marshal of the territory were nominated by the president and appointed with the advice and consent of the Senate.[16] The members of both houses of the legislative assembly, and most of the local officers in the territory, were chosen by the electorate, as was also the delegate to Congress.[17] The body of electors included "every free white male inhabitant above the age of twenty-one years" who was a resident at the time of the passage of the act. Declarants were especially included among the electorate, although in the cases of Wisconsin territory (1836) and Iowa territory (1838) the suffrage had been expressly restricted by act of Congress to citizens of the United States.[18]

It is impossible to read any of the organic acts of the territories from 1787 down through the following century without being deeply impressed by the sweeping powers conferred upon the territorial governor. In his person was represented the authority of the national government keeping order on the lawless frontier. He stood, also, at the head of the local corporate community, guiding its legislation and enforcing its laws. The governor of Minnesota territory had "the executive power and authority in and over said Territory of Minnesota" vested in him for a period of four years. He had

[14] *Cong. Globe*, 30 Cong., 2 sess., p. 68.

[15] Organic act, sec. 1.

[16] *Ibid.*, sec. 11.

[17] *Ibid.*, secs. 4, 7, 14.

[18] *Ibid.*, sec. 5. The federal government's policy in the matter of suffrage in the territories did not follow any consistent course. From 1787 down to the passage of the Wisconsin organic act the suffrage was bestowed, in one form or another, on free white male inhabitants, whether citizens or not. The Missouri organic act of 1812 was exceptional. In the territories of Wisconsin and Iowa, organized in 1836 and 1838 respectively, the suffrage was limited to inhabitants who were citizens. With the organization of Oregon and Minnesota territories, in 1848 and 1849, the laws permitted alien inhabitants who had declared their intention to become citizens to vote equally with citizens.

the power to command the militia, and often did so in person. He was superintendent of Indian affairs; he granted pardons, commissioned all territorial officers, and was required and empowered to "take care that the laws be faithfully executed."[19] The legislative power of the territory was vested not in the legislature alone but "in the governor and a legislative assembly." He inaugurated the legislative body by making a preliminary apportionment of members among the districts which he designated, by providing for the election, and by setting the date for the first session.[20] Thereafter he had substantially the same power of veto over legislative acts as the president possesses with reference to congressional legislation.[21] Under his direction was to be spent the federal appropriation for a territorial library.[22] His consent was necessary to the designation of the temporary territorial capital and to the expenditure of the fund set aside for territorial buildings.[23] He was to define judicial districts in the first instance and to make the first assignment of judges.[24] A broad power of appointment was also conferred upon him, subject to the advice and consent of the legislative council.[25]

The secretary, attorney, and marshal of the territory were the only other executive and administrative officers who received their appointments directly from the president.[26] Of the three, only the secretary had an annual salary sufficient to maintain him in an independent position. The attorney and marshal had casual functions. They relied more upon their private incomes and employments than upon the uncertain fees which constituted their chief pay from the public, and consequently they never rose to positions of importance in the territorial administration. The secretary, on the other hand, was little more than a recording officer except that he was acting governor in the absence of the executive. In fine, the governor of the territory, unlike the latter-day state executive, stood alone and unrivaled as the head of the administration.

What has been said amounts to a fact of no little importance in our state constitutional history. Just as the English royal colonies in America before the Revolution, having suffered from the excesses of powerful, appointed governors, reacted against a continuance of "one man rule" when they drew up their first state constitutions, even so did some of the new states in the west whose experience under powerful territorial governors had been none too happy, create for themselves executives much weakened as compared to the territorial governors. In Minnesota both the Ramsey and Gorman administrations were much criticized. Mr. Gorman was exceedingly unpopular

[19] Organic act, sec. 2.
[20] *Ibid.*, sec. 4.
[21] *Ibid.*, sec. 20.
[22] *Ibid.*, sec. 17.
[23] *Ibid.*, sec. 13.
[24] *Ibid.*, sec. 19.
[25] *Ibid.*, sec. 7.
[26] *Ibid.*, secs. 3, 10, 11.

even in his own party. One consequence was that in the Democratic wing of the constitutional convention in 1857, despite the fact that Gorman was chairman of the committee on the executive department, the convention itself so clipped and amended the powers of the executive proposed by him, as to make the governor head of the administration in little more than name. In the compromise committee the Republicans, whose territorial experience had been shorter, and who had themselves proposed a very powerful executive, were able to compel the acceptance of but a single added power for the governor, namely that which provides that "he shall take care that the laws are faithfully executed."[27]

The legislative assembly consisted of a council and a house of representatives. Both were elected directly by the voters for terms of two years and one year, respectively.[28] Any qualified voter was eligible to the assembly, but residence in the respective districts was required. The number of members was fixed at not more than fifteen for the council and thirty-nine for the house. The assembly reached its maximum size in 1856. Population in the various counties and districts was to be the basis of the apportionment, which was to be "as nearly equal as practicable." Sessions were limited by the act to sixty days, but by a law approved July 18, 1850, Congress authorized the next annual assembly to remain in session for ninety days.[29] Considering the term of representatives—a single year—it is fair to presume that annual sessions were contemplated. The joint legislative power of the governor and legislative assembly extended to "all rightful subjects of legislation" consistent with the federal constitution and the organic act of the territory.[30] All laws were required to be submitted to Congress and they stood unless disapproved. No laws might be passed, however, interfering with the primary disposal of the soil by the federal government, taxing federal property, or taxing the property of non-residents at a higher rate than that of residents.[31]

The supreme court of the territory consisted of a chief justice and two associates. Sitting separately in the districts to which they were severally assigned, the same three men held the three district courts also. There was in addition a provision for the creation of probate courts and justices of the peace.

It was provided in the act that, as the government lands in the territory were surveyed preparatory to sale, sections sixteen and thirty-six in each

[27] *Minn. Const.*, art. 5, sec. 4.

[28] Organic act, sec. 4. The Northwest Ordinance, 1787, sec. 11, had provided that the lower house, itself elected by the voters of the territory, should nominate ten fit persons, of whom Congress, and later the president, should choose five to be the council in the territorial legislature. This scheme was continued in the act for Indiana territory (1800), Michigan territory (1805), and Illinois territory (1809). The acts of 1836 and 1838 for the organization of Wisconsin and Iowa territories made the council as well as the lower house elective by the voters.

[29] *Stat. at Large*, 9:440. In the legislative session of 1851 it was possible, due to the length of the session, to pass some of the most important laws of the territorial period.

[30] Organic act, sec. 6.

[31] *Ibid.*, See also Northwest Ordinance, sec. 14, art. IV.

township were to be "reserved for the purpose of being applied to schools in said Territory, and in the state and territories hereafter to be erected out of the same."[32] This was merely a reservation for future use, not a grant.[33] One of the leading incentives for seeking statehood not many years later was the hope of the people to get actual control of these lands.

The laws of Wisconsin territory were temporarily extended over the new territory.[34] This was undoubtedly due, in the main, to the fact that most of the population of Minnesota in that day was east of the Mississippi and had formerly lived under the laws of Wisconsin, rather than Iowa territory. The people's own laws were, therefore, simply continued in effect.

3. TERRITORIAL POLITICS. The political history of Minnesota territory divides itself rather sharply into two periods. The earlier, from 1849 to the summer of 1855, was distinguished chiefly by the absence of clear-cut party alignments. Being incapable of electing their principal territorial officers, the voters found no occasion for the organization of political parties. There obtained, furthermore, a strong conviction that there was little to be gained and possibly much to be lost by partisanship. What the territory needed from Congress was appropriations and beneficial legislation for the development of the territorial resources. Only as the people maintained a united front in support of their delegate and abstained from partisan activity, could they expect, no matter which party controlled Congress, to obtain the maximum of results from their efforts. There was called into being, therefore, a bi-partisan "Territorial Party." It had no formal organization, and was more in the nature of a truce between the normal party groups than a party of itself, yet it enjoyed considerable influence in the earlier years.[35]

This is not to say that the citizens of the territory forsook their American birthright, nor that they entirely ceased to be political animals. Personal politics simply took the place of party struggles. There were "Fur" and "Anti-Fur." Sibley had his following, and so too had his rival, the shrewd and able Mr. H. M. Rice. In later years Mr. Gorman attempted to create a like personal party, but with less success. All three of these men were Democrats by inclination if not by public declaration, and they all came sooner or later to ally themselves openly with the fortunes of the Democratic party. Among those who were known or reputed to be Whigs, both Mr. Ramsey and Mr. M. S. Wilkinson may be mentioned as having led small personal factions.

[32] Organic act, sec. 18. This was only the second instance in American history of the reservation of two sections of land in each township for school purposes. Orfield, *Federal Land Grants to the States*, p. 44.

[33] Orfield, *op. cit.*, p. 148.

[34] Organic act, sec. 12.

[35] *Minn. Hist. Col.*, 8:84, 9:167-73.

In the absence of partisan election statistics, it is impossible to say with precision just how the people were divided politically in these early years. It must be remembered, however, that the nation had been in the control of the Democratic party, with but few and unimportant intermissions, since the days of Jefferson. In the west Jacksonian democracy had arisen to supplant Jeffersonianism, with the effect that Democratic supremacy became in that region more than ever the normal political condition. It is true, indeed, that Minnesota became an organized territory in 1849 under a Whig administration and that Governor Ramsey and the other office-holders in the territory had Whig affiliations. For reasons not necessary to discuss here, these men were unable to increase very greatly the number of Whigs in Minnesota. At heart the majority of the people of the territory were probably Democrats, and when in 1852 the Democratic party won a national victory, the people looked forward with satisfaction to the day early in 1853 when a Democratic would succeed the Whig administration in the territory.

During the four years of Ramsey's administration, the Democrats of the territory remained without thorough party organization. They were undoubtedly aware of their own numbers and potential strength, yet they were too intelligent not to perceive that while the Whigs controlled both the national and territorial administrations it was better to postpone organization, working in the meantime in harmony with the Whig administration through the colorless "Territorial Party." They continued to be only nominally organized almost solely for reasons of policy. The arrival in the territory of Gorman and the other Democratic office-holders, while it did not have much outward effect on the political situation, did serve to change greatly the attitude of the Democratic politicians towards the shackles which bound them to non-partisanship. They became increasingly restive under this restraint. On the other hand, the rank and file of the party, more confident than ever of their strength and security since the national party victory of 1852, found it easier than ever to pursue a policy of political inactivity. In this position the body of the voters had the support of several of the leading men and newspapers of the territory.[86]

The result was that for another two years, from 1853 to 1855, nothing of importance was done to provide a political organization for the territorial democracy. In fact the party fell into almost hopeless division due to the feuds of the leaders, Sibley, Rice, and Gorman. In 1855 there was open schism between the two chief factions,[87] and this condition of demoralization was made worse during this and the two following years by the attacks of the *Pioneer and Democrat*, the Rice organ of St. Paul, upon the

[86] On the early politics of Minnesota, see Wallace, *Political History of Minnesota Territory, 1849-1853*, an unpublished monograph (University of Minnesota); *Minn. in Three Cen.*, 2:447 ff.; Smalley, *Hist. of Repub. Party*, pp. 145-48.

[87] *Minn. in Three Cen.*, 2:484-86.

administration of Gorman. It was not until the meeting of the constitutional convention in July, 1857, that the *Pioneer and Democrat,* having laid away the cudgels with which it had been belaboring Mr. Gorman, was able, for the first time in its history, to congratulate the Democratic party of the territory upon the unanimity which it had at last attained. This period of healing of old wounds came almost too late, for in the meantime the Republican party had been formed and had for two years profited greatly by the factional disturbances among the Democrats.

But it was not the petty affairs of the territory as such which were destined to divide the men of Minnesota into two hostile political groups. As it happened, it was nothing less than the great national issue created in 1854, the question upon which was founded the Republican party, which was to precipitate in Minnesota territory the formation of local parties. The uneasy and apprehensive quiet which had filled the land following the passage of the compromise measures of 1850 was shattered with almost electric shock and suddenness in 1854 by the passage of the Kansas-Nebraska measure repealing the Missouri Compromise. Kansas was thrown open to slavery. Nebraska was threatened. The whole western domain with the exception of Minnesota seemed instantly at the mercy of the slave power. From freedom-loving men throughout the North came startled, angry, bitter voices. They felt that they had been betrayed by the South. They were injured beyond words. In their pain and confusion men forgot party; the party system temporarily gave way to chaos. Few elections in our history present a more confused aspect than the congressional canvass of 1854. Only two facts can be said to have stood forth with any clarity: First, the slavery issue had been revived and raised to first place; and second, with the emergence of that issue, the Republican party had been born.

The wave of emotionalism which swept over the North throughout 1854 and the years which followed could not fail to reach Minnesota. As the rush of northern settlers into the western country brought on those struggles known as "the war in Kansas," the voice of "bleeding Kansas" filled the air. Skilled newspaper correspondents sent almost daily stories to the northern press, denouncing the "border ruffians" or pleading in their defense. For weeks at a time some of the Minnesota newspapers ran little other news from the outside world than the tales of this frontier strife. Every breeze from the South seemed freighted with blood-curdling tales. Every boat which ascended the river brought not only an occasional "freedom shrieker" and a new batch of middle western newspapers, but also a fresh supply of the New York *Tribune,* which was widely read in the territory. All of these periodicals simply increased the emphasis on Kansas and the slavery issue.

Meetings of protest were early held in Minnesota. One of the most important occurred in St. Anthony, March 29 and 30, 1855.[38] Such Whigs as William R. Marshall and Alexander Ramsey were leaders in this meeting, but a number of anti-slavery Democrats are also reported to have attended. The name "Republican" was used in connection with this meeting, but it was reserved for a later assemblage to organize the party. Resolutions were adopted condemning the repeal of the Missouri Compromise and proclaiming the power and the duty of Congress to prohibit slavery in all new states. The meeting also took the unexpected step of demanding a prohibitory liquor law.

The St. Anthony meeting was followed by one on a larger scale in St. Paul in July.[39] This may be considered the first territory-wide Republican convention in Minnesota. The platform adopted by this gathering "reaffirmed" the purpose of the Republicans "to array the moral and political powers of Minnesota, whether as territory or state, on the side of freedom, and to aid in wielding the whole constitutional force of the federal government, whenever we can and wherever we can, against the existence of slavery."[40] The platform then proceeded to insist upon the abolition of slavery wherever possible, to denounce the repudiation by the South of the Missouri Compromise, and to assert a purpose to take hold of the territorial government for the purpose of keeping slavery out of Minnesota. The last resolution in the platform gives some indication of the character of the early Republican party in Minnesota. It was a resolution insisting upon the prohibition of the liquor traffic throughout the territory.[41] The platform and the subsequent address to the people appear to have been written in large part by some of the leading clergymen of Minnesota, men who might have been classified among the "moral" rather than the "political powers" of Minnesota, and who were strong in the belief that human slavery to liquor must be destroyed along with all other forms of servitude.

The earnestness and the success of the Republicans drove home to the Democrats also, in the course of a few years, the need of better party organization. In the fall elections of 1855 the lines were already drawn quite clearly between the parties, but the Democrats, though divided among themselves, won an easy victory. In 1856 the Republicans succeeded in carrying the lower house of the territorial legislature which was to sit early in 1857. This partial defeat spurred the Democrats to renewed efforts to

[38] *Minn. in Three Cen.*, 2:481-83; Smalley, *Hist. of Repub. Party*, pp. 148 ff.

[39] *Minn. Hist. Bul.*, 2:24-30; *Minn. in Three Cen.*, 2:483-84; Smalley, *op. cit.*, 149-54.

[40] The platform will be found in Smalley, *op. cit.*, pp. 150-53; also in *Daily Minnesotian*, July 27 and 28, 1855.

[41] The sentiment in favor of a prohibitory liquor law had been strong in Minnesota from the early territorial days. In 1852 the territorial legislative assembly passed a prohibition law, but made it dependent upon the approval of the voters. The electors ratified the measure; but it was subsequently declared unconstitutional by the territorial courts and it did not go into effect. *Minn. in Three Cen.*, 2:462-66.

settle their own intraparty differences, and though they were still partly divided in the June 1 elections for the constitutional convention, by the fall of that year they had patched up their quarrels sufficiently to present a united front to the Republicans in the statehood election of October 13.

It is necessary, in view of their influence upon the coming constitutional convention, to take stock of the parties with a view to ascertaining their composition and the principles for which each stood.[42] The Democratic picture of the Republican party of the territory, as expressed in the extravagant newspaper editorials of 1856 and 1857, partakes more of the nature of a caricature than of a portrait, yet it furnishes some excellent clues. In one denunciation after another, the Democratic newspapers held the "Black Republicans" up to scorn as rank abolitionists and "nigger worshippers," exponents of negro equality and negro suffrage. They were sneeringly referred to as "Know-Nothings" but thinly disguised, the sworn enemies of the immigrants from Europe. Their "freedom shrieking" leaders, "political priests and pulpiteers" were pious hypocrites who would regulate every detail of human life and conduct according to their own puritanical notions, let the cost be never so great. In their political methods they were accused of being revolutionists and disunionists, who, in order to realize their fanatical "higher law" beliefs, would destroy American institutions and the very Union itself.

This mordant newspaper characterization gives ample evidence, among other things, of the bitter feeling existing between the two parties in the territory. At the same time it presents, when proper discounts are made for exaggerations, a penetrating view of the original Republican party of Minnesota. The puritanical elements were undoubtedly very strong among the Republicans of the late fifties. A large percentage of the party came from the New England states, bringing with them New England views not of their own day only, but of a century or two earlier. In this New England section of the party, the "Maine law" men and the ministers were fairly numerous and highly influential. These men felt themselves the leaders in a crusade against the debasing immoralities of drink and slavery. Their fundamental principles were abolition and prohibition, yet it would be unfair to accuse them of having had a purely negative and destructive program.

[42] The brief description of the parties here given is applicable to them primarily in the last few years of the territorial period, and is the result of the piecing together of many small bits of information gathered from a variety of sources. The two leading partisan newspapers of St. Paul, the *Pioneer and Democrat* and the *Daily Minnesotian*, for the years 1855, 1856, and 1857 yielded a considerable amount of contemporary printed material, and the St. Paul *Times* was also consulted. Something was learned from the *Sibley Papers*, the *Stevens Papers*, the *McLeod Papers*, and other collections in the manuscript division of the Minnesota Historical Society. The debates of both wings of the constitutional convention were of much value, and particularly at those points where business was set aside while the members told what they knew and thought about the rival organization. In addition, attention may again be called to the works cited in note 36, above.

They were puritans, it may be fairly said, with a social vision. They believed, for instance, that the criminal code should be founded upon the principles of reformation rather than of punishment. Their emphasis was upon education and liberation rather than upon mere repression.

The group of Republicans thus briefly described needs first to be spoken of because in the early years it stood at the front of the party in Minnesota and gave it principles and issues upon which to fight campaigns. In addition to this group, however, other elements soon drifted into the Republican ranks. A number of old-line Whigs, exemplified by ex-Governor Ramsey, after standing aloof and hesitant for a short time, found themselves irresistibly drawn into the new party. The Whigs of Minnesota, insofar as there was such a group, were soon absorbed in the growing and startlingly successful anti-slavery party. In the same way, a few members of the ill-starred Know-Nothing party undoubtedly joined the Republicans, though there is evidence that some went also into the Democratic party. Stressing the slavery question above all others, the Republican platform appealed also very strongly to the anti-Nebraska and anti-slavery Democrats. When these began to join the new party in considerable numbers, its success was immediately assured.

It is of some interest to observe the position taken by the new Swedish and German settlers in Minnesota. In the election of members to the constitutional convention on June 1, 1857, the large Swedish settlement in Chisago county went solidly Republican. The Swedes accepted not only the anti-slavery, but also the anti-liquor, and other radical views of the Republican reformers. The Germans, on the other hand, who had settled in the group of counties around the big bend in the Minnesota river southwest of St. Paul, while they strongly opposed slavery, could not accept the prohibition plank of the Republican platform, and when in the election of June 1, 1857, it was secretly whispered about among them that the Republicans were Know-Nothings, the enemies of the foreigners, the Germans voted almost solidly for the Democratic ticket. It was not until the Republicans acquired the political wisdom a few years later to eliminate the "Maine law" principle from their platform that the Germans found it possible to vote for the Republican party.

The platform of this new party was naturally not a very consistent document. Moreover, there were divergent views within the party upon questions not dealt with in the platform adopted. For example, it is clear that the members were divided upon the question of squatter sovereignty, on the giving of full rights of citizenship to foreigners, on negro suffrage, and on prohibition. The one principle which united them was unquestionably opposition to slavery.

If, as in the case of the Republicans above, one were to obtain his view of the Democratic party in the territory from the opposition newspapers

of the day, he would see in the party of Sibley, Rice, and Gorman, the arch supporters of the nefarious institution of slavery. Editorial writers on Republican newspapers seemed to try to outdo each other in denouncing the Democrats as the slavery party. They seemed totally unable to distinguish the Democrats of the North and particularly the Democrats of Minnesota, from that group of their fellow partisans in the South who had really come to justify negro servitude. In addition to this, however, the Republicans looked upon their opponents as a group of corrupt and immoral Indian agents, fur-traders, and federal office-holders. The name "Mocassin Democrats" was applied as a sort of stigma.

The exact strength of the various elements which made up the Democratic party in the territory is not capable of determination. The leaders among the old settlers seem to have been mainly Democrats, though there were many Whigs among the early lumbermen on the St. Croix. The Irish population of St. Paul was Democratic, and many of the German people of the territory also worked with the Democratic party at this time. Among its leading members were the federal office-holders in the territory, most of the fur-traders, many of the lumbermen, particularly those on the Mississippi, the men of large business in St. Paul and St. Anthony, and in addition a sprinkling of laborers, farmers, and small merchants throughout the territory. On the whole it is probably fair to say that the Democratic party was more representative of the various interests of the territory than was the Republican.

If a map could be drawn of the territory in the year 1857 showing the precise distribution of the Republican and Democratic strength, this interesting fact would undoubtedly appear.[43] The Democrats were strong throughout the length and breadth of the newest frontier. The Republicans were later comers and were to be found on the real frontier only on the upper St. Croix river in the Swedish community which has been mentioned. In the main their strength was in the southeastern angle of the territory, extending as far north as the new town of Minneapolis across the river from St. Anthony and as far west as the town of St. Peter. Everywhere else, in the southwestern, western, northern, and northeastern portions of the territory, the Democrats held sway. Far in the northwest the towns of Pembina and St. Vincent together with the other small fur-trading posts in the Pembina country, always sent Democratic delegates to the legislature, and in 1857 to the constitutional convention.

[43] See map, p. 76, showing the results of the election of June 1, 1857.

CHAPTER III

PRELIMINARIES OF STATEHOOD.

1. PLANS AND COUNTERPLANS. The rapid settlement and progress of the northwestern country is in nothing better exemplified than in the rapidity with which Iowa, Wisconsin, and Minnesota passed through their period of tutelage as territories. Iowa became an organized territory in 1838; eight years later the state of Iowa was ushered into the Union. Wisconsin was given territorial organization in 1836; the state of the same name could have entered the Union in 1847, and it was only the inability of her people to agree upon a constitution which postponed her admission until 1848. Minnesota traveled the entire route from unorganized territory through the territorial stage to statehood in the course of nine years, from 1849 to 1858.

Viewed in retrospect it would appear that Minnesota was in any event destined to become a state at an early date, and that the transition to statehood, although rapid, must have been an easy and unexciting process. Nothing could be farther from the facts. It was not at all a simple and isolated movement, but on the contrary bound up in a web of personal and party politics arising almost inexplicably out of bitter conflicts among sectional and economic interests. The whole movement, full of color and incident, and covering a period of not over three years, constitutes one of the most dramatic in the history of Minnesota.

It is not the primary object of this study to deal with the political maneuvers of the various groups and parties which accompanied and lent color to the transition of Minnesota from the status of territory to that of state. The politics of the period throw but little light on the contents of the constitution which was adopted. There was all too little discussion of the significant problems of constitution-making Despite all considerations of this kind, however, one is drawn irresistibly into a brief study of the comings and goings, the plans and the counter-plans, of the politicians who guided the early destinies of our state. Whether or not their activities had much influence upon the framework of the government they undoubtedly determined to some extent the time when, and the circumstances under which, statehood was to be achieved. In the pages which follow it will be necessary to look somewhat closely into the activities of the parties and of the smaller more personal groups,—of the governor, the legislature, the delegate in Congress, and of Congress itself; to consider the apportionment for and the elections to the constitutional convention; to determine what relationships, if any, existed between the movement to remove the capital to St. Peter, the effort to have the territory divided by an east and west line, the activities of the land speculators, and the struggle for railroads on the one side, and the move-

ment for statehood on the other. If the writer succeeds in giving a picture even partially complete in the following pages, he will feel amply repaid for his efforts.

The Congress of the United States in the fifties did not especially relish the task of appropriating federal funds year after year in increasing amount to the western territories. The sums were, indeed, mere trifles even for those days, yet congressmen were unable to avoid the thought that the thriving young communities on the western frontier could and should pay their own bills. It was particularly irritating to find that the territories incurred obligations in total disregard of congressional appropriations. The original $20,000 set aside for public buildings in Minnesota by the organic act, had to be supplemented by four additional appropriations.[1] Territorial legislative expenses regularly exceeded congressional grants; judicial expenses grew by leaps and bounds; and executive officers drew their salaries even when they spent much of their time outside of the territories. The indulgent national government knew, however, when the limits of imposition had been reached. In 1856 there was added a clause to the appropriations for the legislative assembly of Minnesota territory, "that hereafter said compensation, mileage and contingent expenses shall not exceed the sums previously appropriated therefor."[2] In the discussion of this measure, Mr. Campbell of Ohio, chairman of the House ways and means committee, is reported to have thrown out this remark: "I desire in this connection to give a gentle hint to the delegate from Minnesota Territory, that with a population of one hundred and fifty thousand or one hundred and sixty thousand, it is time that territory should make application to come into the Union as a state, and pay its own expenses."[3] Early in the next year, the expenses of local sessions of the territorial courts were shifted to the counties.[4] Territorial officers had previously, but without success, been forbidden to collect salaries during their absence from the territory.[5] It was very evident that, from financial considerations alone, Congress was willing enough in 1856 and 1857 to allow Minnesota to become a state.

The new attitude of Congress coincided well with the rising sentiment in Minnesota in favor of statehood. In 1854 there had begun a new movement of people into the territory. With the opening in that year of the railroad from Chicago to Rock Island, the journey became much easier than it had been. The years 1855 and 1856 were years of heavy immigration and great material progress in the territory. It is reported that "the season of 1855 saw 50,000 people in the territory; that number was

[1] *Stat. at Large*, 9:403, 438; 10:243, 292, 609.
[2] *Ibid.*, 11:114.
[3] *Pioneer and Democrat*, Aug. 19, 1856. This statement could not be found in the *Congressional Globe;* it may have been uttered in committee.
[4] *Stat. at Large*, 11:220.
[5] *Ibid.*, 9:611; 10:10, 98, 188.

doubled in 1856."[6] It took but a few days or weeks for these new Minnesotans, after alighting from their steamers, to supply themselves with the necessary goods at rising towns like St. Paul, and to set their faces westward through the woods and openings to the promised lands. The whole country was in a natural glow of confidence, attended by the energetic bustle of rising towns and industries, the opening of roads, and the clearing and planting of the land. On the crest of this wave of prosperity, Minnesotans were prepared for anything that was big and new—schools, new towns, railroads, and statehood.

How powerful was the movement for statehood, and how soon it would have spurred reluctant politicians to action are matters not now capable of determination. Public opinion does not seem to have been much worked up over the question at any time. As late as the summer of 1856 there was very little space devoted to the question even in leading St. Paul papers. The politicians and the interests they represented were entirely awake to the situation, however. Statehood must come sooner or later. But before statehood, there must be a division of the territory—that was conceded; and upon the particular mode of division depended the location of the capital and other state institutions, the prosperity of the towns affected, and the value of town lots.

A little explanation of the problem of dividing the territory is required. Minnesota territory, extending as it did to the Missouri and White Earth rivers at the west, had almost exactly twice the area of the present state, or approximately 166,000 square miles. Within this great area were to be found fertile, rolling uplands in the south, a fine stretch of hardwood forests in the east central and central portions, a great northeastern triangle of evergreen timber, the fertile valley of the Red River of the North in the north central region (a splendid reach of land full of streams and lakes), and beyond that the higher, grassy and almost treeless lands extending to the Missouri and White Earth rivers. In the southeastern corner of this great region agriculture had gained a sure foothold as early as 1854.[7] Lumbering was already the established industry up the St. Croix and Mississippi rivers. There were rumors, also, of great coal and mineral resources not yet discovered in the north. Within this extensive region, so full of undeveloped resources, lay rivers and harbors which would ultimately give its people access by water to the east via the Great Lakes, to the Canadian north, and to the south.

It was very clear, however, that Congress would never consent to the admission of this imperial domain as a single state. Members of Congress from the North were inclined to create as many northern states as possible

[6] Folwell, *Minnesota*, p. 121.
[7] Robinson, *Early Econ. Cond. and the Devel. of Agri. in Minn.*, p. 43.

to maintain the balance in the Senate with the South.[8] Wisconsin had come in with only 54,000 square miles, Iowa with 56,000, and Illinois with 56,000, to speak of only the more immediate neighbors of Minnesota. Minnesota territory, with 166,000 square miles, would make three states of this average size. It was to be expected, therefore, that at least two would have to be created. The question early presented itself as to whether, when Minnesota came to apply for admission as a state, it should ask for a north and south or an east and west division of the territory.

This important question came to be freighted with a great deal of sectional and personal hostility in 1856 and 1857. From early territorial days the small triangle of land between the St. Croix and Mississippi rivers, including the towns of Stillwater, St. Paul, and St. Anthony had maintained a commercial and a political predominance in the territory. Up to 1855 it probably contained the bulk of the population, and in consequence it controlled the legislature and the territorial delegate to Congress. It had contrived to locate the great public institutions of the future, the university, the capitol, and the prison, at St. Anthony, St. Paul, and Stillwater, respectively. These institutions meant much to the prosperity of the towns concerned.

The greater number of the immigrants of 1855 and 1856 settled on the "treaty lands" west of the Mississippi, between the northern boundary of Iowa and the Minnesota river.[9] Many of these settlers must have come part of the way west with the great stream of immigration then setting in toward Kansas. They came, moreover, from the same regions, from New England, New York, Pennsylvania, and the old Northwest. In their political views they seem to have been, or soon to have become, Republicans. What must have been their dismay upon taking up their residence in southern Minnesota, to find how isolated and impotent they were politically. The territory was under the control of the "Moccasin Democracy" of Stillwater, St. Paul, St. Anthony, and the north. Under the apportionment of 1855, which had been made just at the commencement of the great influx already mentioned, there was no possibility of southern Minnesota attaining equality of representation. The capitol at St. Paul was almost inaccessible to the southern population at certain seasons of the year. It was easy under the circumstances to imagine all sorts of political trickery going on at the capital. Men living in southern Minnesota did not have to be Republicans to grow suspicious of St. Paul; many undoubtedly joined the Republican party because it promised early to be strong enough to break the power of the St. Paul-Stillwater region, the stronghold of the territorial Democracy. Many people in southern Minnesota wanted to see some of the federal

[8] Moran, in *Minn. Hist. Col.*, 8:148-49.

[9] The Indian treaties which opened up the lands west of the Mississippi to settlement were negotiated in 1851 and 1852. *Minn. in Three Cen.*, 2:291-324.

appropriations spent in their own region, west of the Mississippi. They wanted the capital more accessible and the government closer to their homes.

Another element in the general situation must not be neglected, namely, the great need of railroads and the hopes of a congressional land grant for that purpose. Early in the history of the territory, before the federal government had adopted a settled policy of giving public lands for railroad building, there had been talk of railroads in Minnesota to connect Lake Superior with the Mississippi and to link up the navigable waters of the upper Mississippi with those of the Red River of the North.[10] To the people in southern Minnesota, however, newcomers from the east and farmers who must rely on the east for markets, the great object came to be to get direct rail connections with Chicago. They had no great interest in any projects to connect them with St. Paul and the north, particularly if they could bring about a division of the territory which would enable them in a few years to deprive that city of the capitol. Plans were therefore formed by them for railroads connecting with the lines to Chicago at points on the lower river like Winona, and running thence westward through the agricultural regions of the southern part of the territory. It is not unlikely that they favored and supported the plans discussed in Congress in 1856 for the Pacific railroad.

The people of the St. Paul region had entirely different plans. They wished a system of railroads centering in St. Paul and St. Anthony, consolidating the entire Minnesota region by giving all parts of the territory direct access to these two towns by rail, as they already had it by water via the Minnesota and Mississippi rivers, and connecting with the eastern lines at some point near Stillwater only after passing through both of the other towns. Mr. Rice is reported to have opposed the Pacific railroad bill of 1856. He "refused to sanction any routes not calculated to benefit actual settlements, and to consolidate the flourishing settlements which have sprung up over your territory."[11] At about the same time his organ, the *Pioneer and Democrat*, argued cogently that any railroad to the north Pacific coast ought to be routed through St. Paul.[12] Thus was the issue joined between southern Minnesota and the St. Paul region.

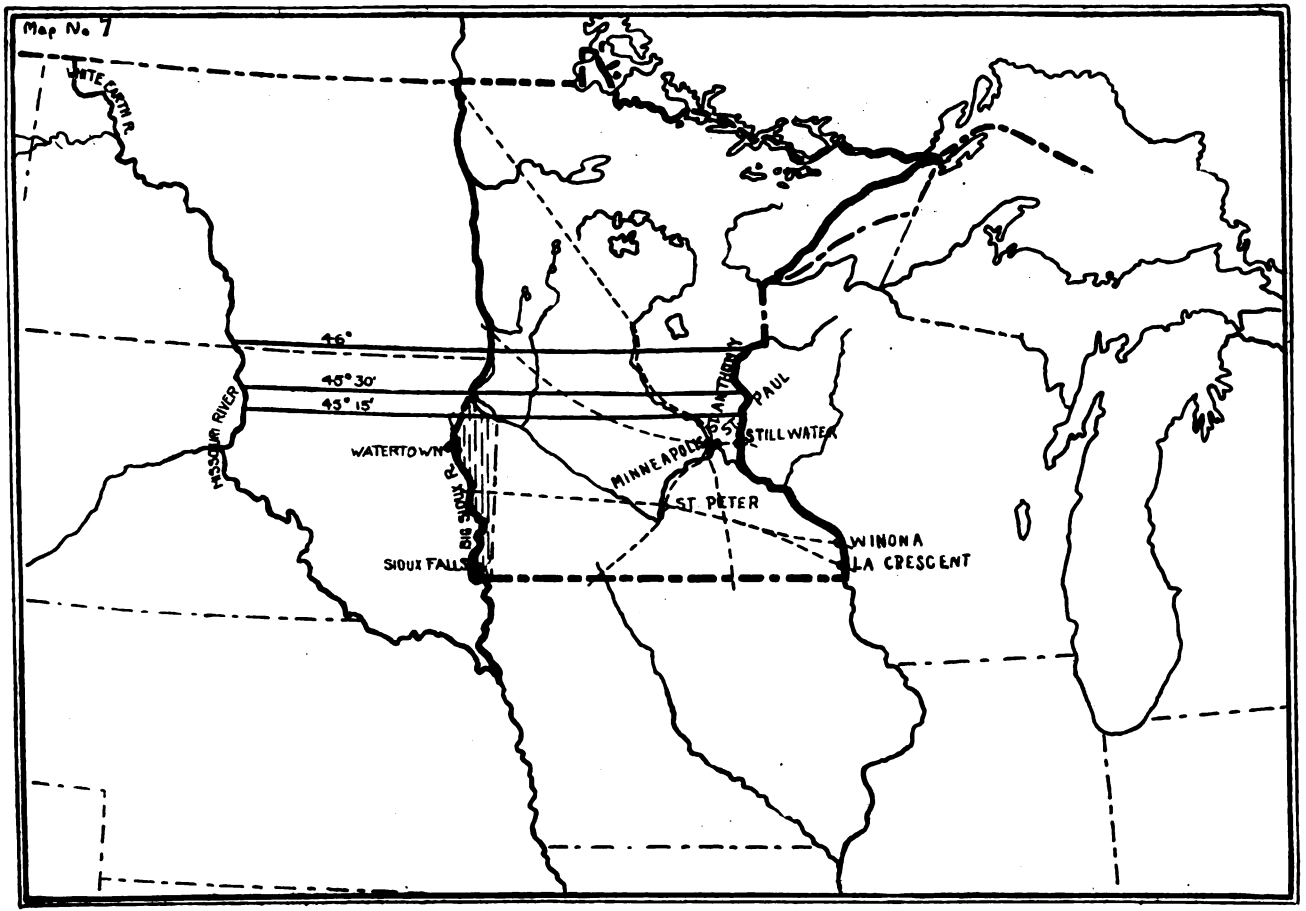
Hoping to take advantage of this sectional feeling, a group of clever and ambitious men laid plans both daring and comprehensive. One of these men was Governor Gorman who, though a Democrat, had not been able to get on harmoniously with the party leaders in St. Paul, and who had, therefore, no great attachment to the place. Other members were drawn from various parts of the territory, but principally from the southern counties. At one time or another Joseph Rolette and other leaders from the far north worked in harmony with this group. A combination of north and south

[10] *Minn in Three Cen.*, 4:337 ff.; *Minn. Hist. Col.*, 15:3-4.
[11] *Pioneer and Democrat*, Jan. 26, 1857. The reporter was Ben. Perley Poore.
[12] *Ibid.*, Jan. 14, 1857.

against the central region was at one time foreshadowed, but did not fully materialize. Undoubtedly the foundation of common interest was too narrow.

The essential elements in the plan to deprive St. Paul, St. Anthony, and Stillwater of their predominant position were somewhat as follows: First, to get the people to express a preference for an east and west division of the territory at about 46° north latitude, the southern portion to extend to the Missouri river. Second, with this much accomplished the scheme appears to have been to present a bill for the organization of the southern portion as a state. St. Paul and its neighboring cities would thus be left in the far northeastern corner of the state, or might even be left out altogether, as some proposed to draw the lines. In either case, in or out, St. Paul would be deprived of its political predominance, for under a new apportionment southern Minnesota would get a large increase of representation, while by the division of the territory the Democracy of St. Paul would lose the support of the constituencies of the upper Mississippi and the Red river valleys. This much accomplished, the constitutional convention itself, or the legislature, could proceed to the third step, that of removing the capital to a more central location in the state. St. Peter was the town selected for the honor. Rounding out the entire plan was the proposal to get at the same time, or as soon as possible after the creation of the new state, a grant of federal lands for the building of a system of railroads to run primarily east and west through the state, beginning at Winona and other down-river towns, and running west to the Missouri river, with a junction of several of the lines at or near St. Peter. In all things, Winona and St. Peter were to be preferred to the group of rival towns farther north.

2. THE LEGISLATIVE ASSEMBLY OF 1856. Whether the plan here outlined had been fully formulated by the time the legislature met in January, 1856, is not clear, for, indeed, the whole plan is somewhat vague and appears rather as a growth or an evolution than as a sharply defined plan of action. It is very likely, however, that it was in the making even before 1856. Governor Gorman was already at swordspoints with Rice and the other Democratic leaders in St. Paul, but if he had actually joined forces with the east- and west-line group, he concealed his intentions very cleverly in his annual message. In one part of it he did, indeed, remark in passing that "The people of Minnesota must, at no very distant day, expect to be admitted into the Union as a State," but in an earlier passage in the same message he said: "I trust I shall be pardoned if, in this connection, [the population, resources, and prosperity of the territory] I suggest the propriety and public policy of our remaining a territory for a few years, without manifesting too much eagerness to assume the mantle of state sovereignty. Our progress is rapid,



MAP NO. 7. RIVAL PLANS FOR STATEHOOD, 1856-57. The state boundaries proposed by Rice are indicated by the heavy black line. Three of the proposed east and west divisions of the territory are shown in lighter lines. The dotted lines follow the routes of the railroads proposed in Rice's bill for a federal land grant and approved by Congress.

but healthy and permanent, and we can afford to be called political infants, while we are enlarging and developing the bone and muscle which are to give us energy, vigor, and power, when we arrive at manhood."[13] From words as soothing as these no one would have suspected that Gorman was to be the man to propose immediate statehood by squatter sovereign methods at the very next annual session.

Two proposals made in the legislative session of 1856 looked toward carrying out the plans described. One was a memorial, proposed by a member from far northern Pembina, for an east and west line to divide the territory at 45° 10′ north latitude, approximately twelve miles north of St. Paul.[14] This line seems to have been chosen with a view to making a separate territory in the north as large as possible, and free from St. Paul domination. The people in the north were even farther removed from St. Paul than those in the south, and the northern politicians were cognizant of their own interests. At the same session St. Andrew D. Balcombe of Winona, a Republican leader from southern Minnesota, introduced a joint resolution calling for the holding of a territorial convention to frame a constitution for the future state of Minnesota, which convention, in conformity with the principles of squatter sovereignty, was to be held without congressional authority.[15] Mr. Balcombe was also one who favored an east and west division.

These proposals failed of adoption; both were premature. A bill which did pass and which proved to be of no little importance was that which incorporated the St. Peter Company.[16] This act was innocent enough upon its face, yet it possessed several peculiarities. Apparently the company had previously incorporated under the general law,[17] only to find its powers thereunder to be inadequate for its purposes, and it thereupon applied for a special act of incorporation. The name given in the special law in no way indicated its purpose, and the powers granted to it, though referring more specifically to milling, manufacturing, and the improvement of its water power, were sufficiently broad to authorize it to enter a general real-estate business and other lines of activity. Indeed, so unusual was this corporation deemed to be, that even the printer of the laws classified it along with more general legislation rather than with ordinary acts of incorporation.[18] If common report be true, it was the members of this corporation who presently made it their aim to have the capital removed to St. Peter in order to enhance the value of their real-estate holdings there.[19]

[13] Appendix to *Council Journal*, 1856, p.2.
[14] *Council Journal*, Feb. 15, 1856, p. 141; *Pioneer and Democrat*, Feb. 18, 1856.
[15] *Council Journal*, Feb. 8, 1856, p. 130; *Daily Minnesotian*, Feb. 12, 1856.
[16] *Terr. Sess. Laws*, 1856, ch. 45.
[17] *Ibid.*, sec. 10.
[18] See index to *Terr. Sess. Laws*, 1856.
[19] Hall, *Observations*, pp. 26-27; *Minn. in Three Cen.*, 2:490-99. Among other measures of importance passed at the session of 1856, there were seven acts chartering as many railroad corporations, formed in anticipation of a forthcoming federal land grant.

In the session which has been thus briefly reviewed party divisions were, for the first time in the history of Minnesota, sharply brought into the foreground. The Republican minority in the lower house fought day after day to bring about the adoption of anti-slavery resolutions. The Democratic majority, dominated by the "Riceite" faction and strongly attached to the interests of St. Paul,[20] succeeded not only in putting off the slavery question which would have split the party, but also in defeating the proposal for an east and west division of the territory and the plan for a constitutional convention. The struggles were many and bitter but the Republicans made little headway. At the end of the session they extracted what comfort they could from the holding of a final meeting of protest, and they departed to their homes only after issuing a ringing appeal to the people to rally to their cause.[21]

3. THE SUMMER OF 1856. After so heated a session it might have been expected that the newspapers would have kept on fanning the fires of political agitation during the spring and summer preparatory to the holding of the new elections in the fall. In fact, however, if the leading St. Paul newspapers on each side are at all reliable, the interest in territorial politics sank to a low ebb. In the months from April to August, there was very little said in either the *Pioneer and Democrat* or in the *Daily Minnesotian* either to arouse or to educate the voter on any question of peculiarly local political interest.[22] Insofar as there was any matter at all of a political nature in these newspapers, it related to the national campaign which was being waged that summer, and to the national issues. At no time did the territorial issues come into prominence. Not even statehood received the attention of which it was worthy.

Several of the histories make mention of a series of letters on statehood, from the pen of J. E. Warren, published during 1856 in the newspapers of St. Paul. John Esaias Warren was a respected citizen of St. Paul, one of the board of trustees of the College of St. Paul incorporated in 1856,[23] and a lawyer by profession. He had been district attorney for Minnesota for a short time in 1854-55 but had been removed from office because of his handling of certain railroad litigation affecting the interests of both the federal and territorial governments.[24] His removal seems to have been

[20] *Daily Minnesotian*, Jan. 1856, *passim*.

[21] *Ibid.*, Mar. 3, 1856.

[22] These two newspapers of St. Paul, leaders of the press in their respective parties, have been taken as typical of the newspapers of the territory. While the authors did not think it necessary for their purposes to go much beyond these two, some other student could do the state a valuable service by traversing all the extant territorial newspapers for the years before 1858 with a view to culling out all the facts and the comments relating to the movement for statehood.

[23] *Terr. Sess. Laws*, 1856, ch. 58.

[24] *Daily Minnesotian*, Feb. 26, 1856; Folwell, *Minnesota*, pp. 125-26; *Minn. in Three Cen.*, 2:474.

highly pleasing to Gorman and his friends, but not so to the Democratic majority of the legislative assembly who put through a resolution denouncing the action of the president in dismissing him.[25] Warren appears to have been close to Rice both in political and railroad matters, and it is not impossible that the latter spoke through Warren in the matter of statehood. At any rate, Warren found no difficulty in getting the Rice organ, the *Pioneer and Democrat*, to publish his letters and endorse his views.

Having been in the east during the winter of 1855-56, possibly at Washington with Rice for a part of that time, Warren returned to Minnesota early in May, 1856, and, laboring under the misapprehension that the Legislature of 1856 had passed a measure to submit the question of a constitutional convention to the voters that fall, he prepared several public letters to present the arguments favorable to statehood. The first one, written under date of August 3, was published in the *Pioneer and Democrat* on August 6. Another followed August 14. There was none in September, but on October 2 a third appeared and on December 22 a fourth.[26] Others followed in 1857 but they dealt largely with the question of boundaries. These letters reviewed the arguments for statehood already current in Minnesota but it is difficult to believe that they had any great influence on the course of events. They did, however, make it appear that there was some popular demand for the new step, and they also served to prepare the public mind for the events of the winter of 1856-57. The first of the letters gave the *Pioneer and Democrat* an opportunity to explain on August 9 that it favored a north and south division of the territory by a line down the Red river and due south to the Iowa line. This was a reversal of its position six months earlier but in conformity with Rice's own views and with the bill for an enabling act which he presently introduced into Congress.

The condition of relative quiet which prevailed in the newspapers was completely misleading as an indication of the actual state of affairs. It is impossible to read many of the records of the time without thinking of the summer and fall of 1856 as a time of great political activity, though not of great talk. It was a time of apparent pause when real work was being done off-stage, a time for the drafting of measures and the laying of plans. A peculiarity of the whole proceeding was not only that the developments were chiefly taking place behind the scenes, but that when the play began again to be set in motion it was on two widely separated stages,—at Washington and in St. Paul. It is necessary to follow both to understand the subsequent action.

[25] *Council Journal*, 1856, p. 122; *House Journal*, 1856, pp. 148-49, 169, 200.

[26] There were also several shorter and spicier letters signed "St. Paul" published in the same columns.

4. MR. RICE PLANS THE FUTURE STATE. Rice did not return to Minnesota in 1856. The session of Congress lasted until late into the summer that year, and as his term had yet another year to run he had no need to look immediately to his "political fences." More important still, there were in the making at Washington events of great concern to Minnesota which required his presence in that city. Since he could not come to Minnesota, the leading men of the territory packed their bags and went to Washington. Governor Gorman went early in the summer but soon returned. Joseph R. Brown went and stayed until late into the winter, returning to take his place in the territorial assembly after its session of 1857 had begun. Various reports show that at the end of 1856 and early in 1857 there were in Washington Colonel Nobles, General Shields, Major Hatch, H. L. Moss (one of the incorporators of the St. Peter Company), Thomas Wilson of Winona, H. T. Welles and Richard Chute of St. Anthony and Minneapolis, "Mr. Huff from Winona, Major Watrous from Lake Superior, J. W. Lynde from Leech Lake, and other gentlemen."[27] Mr. Welles, who arrived in Washington about December 1, 1856, reports that "A formidable delegation from Winona had preceded us," and that "Another party soon appeared from the Root river district."[28] Apparently many of these men were there inspired with but one thought and hope, the procuring of a railroad land grant. No doubt they were interested in statehood for Minnesota, too, for that went hand in hand with the other matter, but the railroad question came first. They wanted to see that a grant was made for the construction of railroads in the territory, and each one wished to make sure that his own district or his own corporation, as the case might be, should not be slighted.[29]

In the previous session of Congress there had been introduced a bill for a grant of land to the "Pacific Railroad." This was a scheme apparently backed by "eastern capitalists," so-called, who maintained an active lobby in Washington. Their plan was reported to be to get a land grant for railroads to run through Minnesota territory west and northwest from Winona, and southwest from Lake Superior, and on to the Pacific. Ben. Perley Poore, the Washington correspondent of the *Pioneer and Democrat* at this time, denounced the bill and the propaganda in its favor as an attempt to acquire by underhand methods "nearly four hundred million acres of land," and to turn

[27] *Pioneer and Democrat*, Jan. 15, 1857; Welles, *Autobiography*, 2:53 ff.; *Rep. Deb.*, p. 422.
[28] Welles, *op. cit.*, 2:55.
[29] A number of railroad corporations had already been incorporated by the Minnesota legislative assembly in anticipation of a railroad land grant. It is clear that the most important of them were represented in Washington in 1856-57. H. T. Welles and Richard Chute were members of the group of men, including Edmund Rice, brother of the delegate in Congress, who were organized a few months later as the Minnesota and Pacific Railroad Company, which received the grant of lands for the roads from St. Paul to Breckenridge and from St. Anthony to St. Vincent. General Shields was one of the incorporators of the Minneapolis and Cedar Valley Railroad Company, organized in 1856; Mr. H. D. Huff was an incorporator of both the Transit Railroad Company (1855) and the Root River Valley and Southern Minnesota Railroad Company (1855). It was to these four companies that the legislative assembly presently transferred the federal railroad land grant.

Minnesota over to land speculators.[30] He gave some account of the methods of "King Lobby," and praised Delegate Rice for having refused to play the game. Rice must have seen what would have been the effect on the prosperity of his home city, St. Paul, of a railroad system which almost completely passed it by in favor of other towns in the territory. It is very likely, therefore, that he had good reasons for opposing this measure, and that he was not at all sorry to see it defeated.

At the same time, Rice could not follow a purely negative policy. The time had come for some very definite action with reference to the future of Minnesota. The division of the territory and the erection of one portion of it into a state could not be long delayed. Along with the creation of a new state would probably come a grant of land for railroads. The danger was that the enemies of St. Paul would steal a march upon its friends, get Congress to grant land for the building of roads from Winona and La Crescent westward, leaving St. Paul off to one side, and follow that with a bill for an east and west division of the territory which, if adopted, would place St. Paul so far from the center of the state as to deprive it of all rational arguments for remaining the capital. The plans for state-building naturally included a railroad system as one important element. The land grant for the roads should fall entirely within the boundaries of the proposed new state. The enabling act and the act granting the railroad land should supplement each other, and the boundaries authorized for the new state should control the extent of the grant and the routes which the roads would follow.

Rice was too shrewd a politician and business man not to sense the danger to St. Paul and to the proposed new state of Minnesota which lay in the plans of the Winona-St. Peter group. Bound up with this danger was also the risk to his own political fortunes. Should he allow leadership on the statehood question to pass from him, the delegate in Congress, to the other group, he would be taunted in the election of 1857 with having neglected the interests of the territory, and more than that, with failure. If Minnesota were to continue a territory beyond 1857, that is if he failed to get the enabling act through at once, the opposition might easily become too strong for him, elect one of their own men as delegate to Congress, and take away in this manner the great advantage which he still had over them. Did he, on the other hand, permit their plan for the division of the territory and for a railroad land grant to pass, his chances of promotion to higher political office from the new state thus formed would be very small indeed.

What instructions he had from the people of Minnesota to proceed at once to request an enabling act and immediate statehood for Minnesota do not appear. At the beginning of the year Governor Gorman had advised the people of the territory to go slowly in the matter, to await a more robust

[30] *Pioneer and Democrat*, Jan. 15, 1857.

development.[31] The *Pioneer and Democrat,* which was close to Rice, had supported this position. The legislative assembly itself defeated one proposal for the calling of a constitutional convention, and it failed to memorialize Congress for an enabling act. The most tangible mandate which Rice could have adduced was probably the positive demand by Congress that Minnesota begin to pay its own way.[32] As to the division of the territory by a north and south line the case was somewhat different. The legislative assembly of 1856 had defeated Mr. Rolette's proposal to divide the territory by an east and west line at 45° 10′ north latitude, though the editor of the *Pioneer and Democrat* had at the time, perhaps in a fit of absent-mindedness, expressed himself as favorable to that plan. There is no reason to doubt that the most cogent arguments and the most influential newspapers were on the side of a north and south partition.[33]

All of these considerations aside, it is of interest to note that it was Rice whose plans were first divulged. On December 24, 1856, he introduced into the House of Representatives a bill to enable the people residing in the eastern portion of Minnesota territory to form for themselves a constitution and state government preparatory to their admission to the Union. The provisions of this bill made arrangement for a north and south division of the territory along the line of the Red River of the North, Lake Traverse, and the Big Sioux river to the boundary line of Iowa.[34] The fifth section of the bill provided also one of the most munificent land grants yet given to any state.[35] Aside from the fact that there was no provision for payment of the expenses of the constitutional convention, the terms of the bill could hardly have been more attractive to the people of Minnesota.

But Rice had also another string to his bow. It seems to have been his plan to make the adoption of the north and south division of the territory practically unavoidable. At the same session of Congress he brought in another bill, providing in this case for a land grant to the territory for the building of railroads. That is to say, the grant was made nominally to the territory of Minnesota; actually not a mile of the railroads proposed to be built under his bill would have fallen outside of the state boundaries as also pro-

[31] See p. 47.

[32] See p. 43.

[33] Among the individuals who argued most effectively during the winter and spring of 1856-57 for a north and south line were J. E. Warren, J. W. Taylor, J. M. Berry, and C. C. Andrews. Of the newspapers there may be mentioned the *St. Paul Advertiser* (non-political), the *Pioneer and Democrat* (St. Paul, Democratic), and the *Daily Minnesotian* (St. Paul, Republican). The arguments upon this subject constitute a considerable literature and one not unworthy of study.

[34] The western boundary line proposed by Rice began where the Red River of the North crosses the Canadian boundary and ran thence up the main channel of the Red River of the North and the Bois des Sioux river to Lake Traverse, "thence up the centre of said Lake to the southern extremity thereof, thence in a direct line to the junction of Kampeakee Lake with Tchtn-kas-an-data, or Big Sioux River, thence down the main channel of said river to the northwest corner of the state of Iowa." *Pioneer and Democrat,* Jan. 7, 1857. See map, p. 48.

[35] See. p. 64.

posed by him. That was not all. It is possibly even more interesting to observe that four of the five railroads were to have their termini in St. Paul and St. Anthony, towns themselves as yet unconnected with the east by either railroads or telegraph lines. The fifth road was to run westward from Winona and La Crescent by two branches converging near Oronoco and from thence was to continue westward as one line to the Big Sioux river, south of 45° north latitude. This line would cross two of the lines running into St. Paul and St. Anthony, giving easy transportation to these points.[36]

When read together, the two bills thus briefly described show the entire program of Rice and his followers. They probably represented, also, the desires of a majority of the people of Minnesota in 1856. The primary aim of the plan was unquestionably to build a state which would combine within its boundaries agricultural resources, a great lumbering industry, and possibly mineral resources as well, instead of a state founded solely upon agriculture; and at the same time to make a state sufficiently large to become important, and so bounded as to give it direct access to water transportation northward through the Red River of the North, and eastward via the Great Lakes, as well as southward via the Mississippi. Vitally important to the plan was also the purpose to guarantee to the St. Paul-St. Anthony-Stillwater region the same supremacy in commerce, industry, and politics, as it already had, by directing the development of the new state from this area as a center. "Consolidation" was apparently the keynote.[37] Instead of a state like Iowa, which lacked a single dominant commercial center within itself, and was, therefore, dependent upon an outside city, Chicago, Rice planned, how consciously we cannot say, a state which was to be bound closely together through the converging of all its chief railroads near the junctions of the St. Croix and Minnesota rivers with the Mississippi, a small region in which it was already planned to locate the capitol, the university, and the state prison. At the center of all was to be his home city, St. Paul.

5. THE LEGISLATIVE ASSEMBLY OF 1857. The news of the introduction of Rice's bill for the enabling act did not reach St. Paul until January 1, 1857, just before the meeting of the legislative assembly. Tidings concerning the railroad land-grant bill came later. On January 7, 1857, the territorial legislative assembly met in St. Paul. The council was controlled by the Democrats by a narrow margin; the house had passed into the control of the Republican party. A week after convening they were addressed in joint session by Governor Gorman.[38]

[36] One reason for the inclusion of this line of railroad in Rice's bill must have been the desire to win for the measure the support of the east and west line faction then in Washington.

[37] See the Washington correspondence signed "P" (Ben. Perley Poore) in the *Pioneer and Democrat*, Jan. 26, 1857.

[38] Jan. 14, 1857; see supplement to *Pioneer and Democrat*, Jan. 15, 1857.

The governor devoted substantially a third of his message to an argument in favor of statehood. The points he made fell roughly under three headings, those relating directly to the finances of the territorial and state government, those dealing with land grants, and those which put forward the political advantages which statehood would bring. He pointed out that the only direct pecuniary advantage in remaining a territory consisted in the approximately $30,000 appropriated annually by Congress. To offset this, he averred, the state could raise an equal amount by simply continuing the existing territorial tax of ten cents upon every hundred dollars of taxable property. Furthermore, Congress was becoming reluctant to continue these annual appropriations, and on the other hand the money was not being spent with economy. Let the money but come out of the taxpayer's pocket, being voted by the people's own representatives in the state legislature, and there would soon be more careful spending of the revenues. Finally, under this head, came the question of public credit. "While a territory we have no credit as a government, if such credit should be desirable to develop our resources; as a state, we may command such means as may be deemed indispensable to our welfare."

Very closely related to the question of finances was that of land grants. Certain lands had already been "reserved" by act of Congress to the territory for the use of the schools. "While we remain a territory, our school lands must lie idle for the want of power to appropriate them where needed for educational purposes." Besides these lands already set aside, Gorman had visions of additional grants. "When we are admitted into the Union as a state, the swamp and overflowed lands can be claimed for state use, and not until then. ... Upon our admission as a state, we shall probably receive a donation of public lands equal to the amount received by Iowa and Wisconsin, say five or six hundred thousand acres, for purposes of internal improvement or otherwise," he argued, and he urged speed that the state might still have the best lands to choose from. On top of all, he was convinced that five or ten per cent of the revenue from federal public-land sales in the territory would also come to the state for purposes of internal improvements, and this amount he felt would "fully compensate for many years for all the appropriations from the national treasury for such purposes." In a day of many real-estate agents, few indeed could have outdone Gorman in depicting alluring prospects to the people of the coming state.

Finally may be reviewed the political arguments. Not only would the people become capable of electing all their local officers, but for the first time they would be able to elect genuine representatives to sit in the halls of the national Congress. The state would be entitled to two senators and at least two representatives, each possessed of full standing and voting power in their respective houses, to take the place of the single non-voting delegate then

sitting in the lower house. Great projects were soon to come up in Congress, and it was highly desirable that Minnesota should be able to wield her whole power and influence to obtain decisions favorable to herself. Particularly he mentioned the plans for a Pacific railroad, a link in the "road to India," with her "600,000,000 people." Minnesota should have senators and representatives in Washington to see to it that a northern route, through Minnesota, should be chosen for this railroad, in order that Minnesota might traffic directly with these magnificent and imperial regions of the Orient.

Another portion of his address possessed far more political interest than the solid and cogent arguments for statehood. Twelve months earlier Gorman had pleaded for a policy of delay. At the beginning of 1857 he was, by contrast, in such haste for the coming of statehood that he did not want the people to wait for Congress to act. He argued that the legislative assembly should itself take immediate steps for taking a census of the territory and for holding a constitutional convention apportioned upon that census as a basis. If this were not done, if no action were taken until after Congress had acted, the people would be sure to find that Congress had somehow trammeled their freedom of action. What he hinted at was the fact that Congress might fix a boundary which the people did not want. He favored an east and west division; Rice's bill, already before Congress, provided for a north and south line.

What Gorman here expressed was the argument for "squatter sovereignty." There were "precedent and high authority" for his plan of procedure. "It has been settled by the definitive action of both branches of Congress, that their authority is not a necessary prerequisite to authorize a territory to form a state government, nor indeed, is the authority of the territorial legislature itself, positively necessary to enable the people to hold a convention, form a constitution, and ask admission into the Union." He cited Benton, Buchanan, President Jackson, Strange, King, Niles, "and most politicians of the North at the present day" as concurring in his view. It was clear from what Gorman said that he and his friends recognized the necessity of haste. Rice had stolen a march on them. Should Congress come to the support of the Rice plan for statehood, the proposed east and west line would be as good as dead. Unless the people and the government of the territory did something immediately to forestall him, Rice would soon have them committed without their consent to the boundary he had selected. It would be of little avail to argue for different boundaries once Congress had fixed them. Unfortunately for the friends of the east and west line, Rice had the strategic advantage in the struggle. He had the ear of Congress; it was from him that Congress expected suggestions as to legislation.

Minnesota was far removed from the place where the decision was to be made, yet something could be done even there. In quick succession there followed a series of acts which were designed to show what were the desires

of the people of the territory. Gorman had no sooner recommended the calling of a squatter-sovereign convention than both houses of the legislative assembly proceeded to work on bills to that end. There followed the passage by both houses of a memorial to Congress demanding that the people of the territory, acting in a constitutional convention, be permitted to set the boundaries of the state, and deploring any attempt by Congress to decide this question for them.[39] A petition for the organization of a state and an east and west division of the territory had already been prepared in the Winona region and sent on to Congress.[40] Then, as the legislature delayed in the matter of calling a constitutional convention, due to the differences between the houses on questions of detail,[41] and the news from Washington all seemed to point to the success of the Rice measures, the Gorman-Winona-St. Peter group, stirred to a frenzy of activity in the face of defeat, decided to save what they could from the wreck of their plans by the passage of a bill for the immediate removal of the capital to St. Peter. This was the most spectacular stroke of the whole session, and as is well known, it resulted in the defeat of the east and west line faction.[42] The circumstances of their defeat

[39] *House Journal*, pp. 63, 70-71; *Council Journal*, pp. 39, 50, 51-54. This memorial is not published in the territorial session laws of 1857. It will be found in the *Pioneer and Democrat*, Jan. 21, 1857.

[40] *Rep. Deb.*, p. 423.

[41] Folwell states that this act was passed. Folwell, *Minnesota*, p. 133. The facts are somewhat as follows: Mr. C. W. Thompson, a Republican, of Houston county, introduced a bill into the council on January 23 "to provide for taking the census and the formation of a State Government in Minnesota." *Council Journal*, p. 57. The bill had a twofold purpose: first, to bring about an apportionment of delegates to the convention which would be fair to southern Minnesota; and second, to have the convention called under the sole auspices of the territorial legislature, according to true "Squatter Sovereign" principles, in order that the people might pass directly upon all important matters, including the boundary, instead of being bound by a congressional enabling act. It was, therefore, entirely in line with Gorman's suggestions, and gave fresh evidence of his close affiliations with the Republican east and west line faction of southern Minnesota. The *Daily Minnesotian* strongly opposed the bill, but it passed, after having been amended to provide for Pembina's representation, by a final vote of eleven to four. *Council Journal*, pp. 58, 66, 68, 84; *Daily Minnesotian*, Feb. 3, 6, 9, 1857; *Pioneer and Democrat*, Feb. 6, 1857. In the meantime the house had been at work upon a different bill for a constitutional convention, and news had come from Washington of the contents of Rice's bill for an enabling act. Upon receiving the council bill the house appointed a special committee of one member from each council district to study the whole problem. This committee apparently worked upon the principle of trying to draft a law conforming in all essential respects with Rice's bill for an enabling act. This was in line with a suggestion of the *Pioneer and Democrat* that unless this were done "there is every prospect that we will behold next summer, two distinct Conventions, called to frame a Constitution for the State of Minnesota, in session in this city." Feb. 14, 1857. (Prophetic words!) The result was that the house committee made sweeping alterations in the council bill, making it over almost into a new bill. *House Journal*, pp. 112, 141, 203, 228. As thus amended the bill passed the house on March 4. *House Journal*, p. 230. The bill was then sent to the council for its approval of the amendments, but that body was at that time in the midst of its famous and farcical five-day session, awaiting the return of Mr. Rolette and the capital removal bill. No other business could be done by the council during this period, and the session ended soon after without any final action on the convention bill having been taken. The amended bill is still preserved for us. Minnesota Historical Society, *Minnesota Archives, Legislative*, 1857, *House Bills*, 291-394.

[42] The bill was passed, after a fashion, but the presiding officer of the council refused to sign it in the usual way. *Terr. Sess. Laws*, 1857, ch. 1. Governor Gorman did sign it, but Judge R. R. Nelson declared in a decision directly upon the question some months later that the proceedings and the act were invalid. *St. Paul Advertiser*, July 18, 1857. The people of St. Peter awaited in vain the setting up of their city as the capital. One of the most readable accounts of the whole ridiculous proceedings is that in Hall, *Observations*, pp. 26-37. See also *Minn. in Three Cen.*, 2:494-99.

foreshadowed at the same time the disintegration of the hybrid group who favored it. Joseph Rolette, who but a year before had proposed an east and west line, had been won over by the other side.[43] Nay more, he had become so attached to the cause of St. Paul as against St. Peter that he resorted to one of the most unscrupulous tricks in the history of politics in Minnesota to defeat the St. Peter capital removal plan. His defection from the east and west line forces was the first of importance. Another, yet more important, was soon to follow.

6. THE PASSAGE OF THE ENABLING ACT. In the meantime, Rice had overcome great and unforeseen obstacles and had carried all before him in Washington.[44] The Winona-St. Peter lobby, while they played a lone hand to the end, were practically disarmed when Rice magnanimously and cleverly included their pet railroad project in his bill for a land grant.[45] This gave the land-grant bill the united support of all Minnesotans in Washington.[46] That the Winona-St. Peter group in Washington seriously proposed an east and west line for dividing the territory cannot be doubted.[47] Some intimations reached Minnesota that Senator Douglas, chairman of the Senate committee on territories, would not accept Rice's boundary proposal, that he favored "dividing the eastern portion [of the territory] into a state and territory."[48] In the end, however, but one slight change was made in the boundaries proposed by Rice. Thus amended the enabling act passed Congress and was

[43] Some remarks thrown out by Gorman in a speech in the Democratic wing of the constitutional convention later in the year afford, perhaps, a partial explanation of Rolette's change of front. *Dem. Deb.* pp. 298-99. Rice had apparently taken many Minnesotans by surprise when he included in the land grant bill the provision for a road to run from St. Anthony to St. Vincent in the Pembina country. There had been so little expectation of this grant that there was no railroad company organized and ready to take it over when the bill became law. Naturally the inclusion of this line greatly altered the views of the Pembina community. Formerly they had desired the political advantages of separate territorial existence, and they had, therefore, favored an east and west division of Minnesota territory in order to set up a separate territory in the north. If they could be given direct rail connections with St. Paul, however, through a north and south division of the territory, they would gain economic advantages immeasurably more valuable than separate political organization.

[44] Besides the difficulties of getting Congress to agree to a liberal railroad grant as well as a most munificent grant for the support of schools and state institutions, and of getting the numerous Minnesotans who were lobbying for their respective interests in Washington to agree upon the same bills, Rice had to face the charge that bribery was being resorted to to have the railroad land grant bill enacted. There followed an investigation which resulted in other findings, but it was not established that any Minnesotan was in any way directly implicated in trying to purchase support for the Minnesota railroad land grant. Welles, *Autobiography*, 2:55-64 *passim.*; *House of Rep. Comm. Repts.* 34 Cong., 3 sess., no. 243. (219 pp., appendices, and index.) Naturally the Minnesota bills were delayed pending the conclusion of the investigation. Later in the session another obstacle of a different nature had to be overcome. See pp. 61-62.

[45] The line from La Crescent and Winona to St. Peter and thence westward to the Big Sioux river.

[46] Welles, *op. cit.*, 2:55 ff.

[47] Thomas Wilson, in *Rep. Deb.*, pp. 20-21, 422; *Pioneer and Democrat*, Jan. 1, 14, 1857.

[48] Ben. Perley Poore ("P"), in *Pioneer and Democrat*, Jan. 26, 1857.

signed by the president on February 26.[49] Less than a week later, on March 3, the railroad land grant also became law.[50]

It will perhaps not be amiss to relate a little more fully the procedure in the passage of the enabling act under which Minnesota was destined to come into the Union.[51] It was introduced into the national House of Representatives by Mr. Rice on December 24, 1856. His bill provided for a division of the territory by a north and south line from the Canadian boundary up the Red River of the North to and through Lake Traverse to the foot of that lake and thence by a straight line to the point of junction of the Big Sioux river with Lake Kampeskee and thence down the Big Sioux river to the Iowa boundary.[52] He had omitted the provision as to the concurrent jurisdiction of the state upon boundary waters and the clause of the Northwest Ordinance which provides that such boundary waters and navigable waters leading into them shall be common highways and free to all the inhabitants of the United States.

His bill was immediately referred to the House committee on territories which in the course of its deliberations decided to change the western boundary of the state by having the line run from the foot of Lake Traverse to and through Big Stone lake to its foot and thence by a due south line to the Iowa boundary. It also inserted section 2 of the enabling act as passed, which contains the provisions as to boundary waters mentioned above. With these modifications the bill was reported favorably to the House on January 31, 1857. To the surprise of the opposition Mr. Grow of Pennsylvania, the chairman of the committee, immediately called for the previous question upon the measure. Mr. Phelps of Missouri got the floor long enough to taunt the northern representatives with having themselves violated the Northwest Ordinance, which they had always held sacred in the discussions of slavery, by the creation of six states instead of five from the Northwest territory.

The vote upon the passage of the bill, which was taken almost immediately, was ninety-seven in favor of passage to seventy-five opposed. It has been pointed out by a special student of this measure that eighty-five of the ninety-seven favorable votes came from the North and that forty-eight of the opposing seventy-five votes were from the South. The Democratic and Whig parties each gave the measure a small majority. The members of the American party gave a large majority against the bill but the Republicans balanced this by a still larger majority in favor of the bill.[53] In explaining their votes upon the measure several members pointed out that they voted against it because it embodied the principle of alien suffrage and it is very evident that

[49] *Stat. at Large*, 11:166-67.
[50] *Ibid.*, 11:195-97.
[51] The best general account is by T. F. Moran, in *Minn. Hist. Col.*, 8:148-67.
[52] See map, p. 48.
[53] Moran, in *Minn. Hist. Col.*, 8:151, note; *ibid.*, 8:152, note.

the opposition to alien suffrage was at least the most important pretext if not the most important reason for opposition to the creation of the new state.

The bill as passed by the House of Representatives reached the Senate on February 2 and on the 18th was reported back without amendment by Senator Douglas as chairman of the Senate committee on territories. Three days later the measure came up for debate.

The Minnesota bill was accompanied by another for the empowering of the people of Oregon also to create a state government. The Senate committee had proposed an amendment to the Oregon bill to restrict the suffrage to citizens. They had left the Minnesota bill unchanged. The Minnesota situation with reference to this matter, as was partially explained by Senator Douglas,[54] was that the organic act of the territory had authorized the territorial legislature to establish suffrage qualifications subject to the provision that no alien should be allowed to vote until he had indicated his intention to become a citizen of the United States and had sworn to support the federal constitution and the organic act of the territory.[55] The legislative assembly had enacted that alien declarants who had resided two years in the United States and had taken the oath provided by the organic act, and also persons of mixed white and Indian blood who had adopted the customs and habits of civilization should be entitled to vote in the territory as fully as American citizens.[56] The enabling act intended merely to continue the existing electorate for the purpose of adopting a state constitution.

Senator Biggs of North Carolina offered an amendment to the effect "That only citizens of the United States shall be entitled to vote at the election provided for by this act."[57] Very strong support developed for this proposal. It seemed particularly wrong to many senators to permit aliens with little or no attachment to the country to participate in the creation of a new state. Senators Douglas, Seward, and others favored the bill as it stood, but the Biggs amendment was carried by a vote of twenty-seven to twenty-four. It was again a case of South versus North. Twenty-three of the twenty-seven votes for the Biggs amendment came from the South.[58]

The end of the session of Congress was less than two weeks away, and at this juncture the Senate and the House had not agreed upon the same bill for the admission of Minnesota. How hard Mr. Rice and other friends of Minnesota must have worked in the next few days to bring about the agreement of the two houses upon the bill can only be conjectured. On the day when the Senate passed the bill as amended Senator Hale of New Hampshire gave notice of his intention to move for a reconsideration. He carried out

[54] *Cong. Globe*, 34 Cong., 3 sess., p. 813.
[55] Organic act, sec. 5.
[56] *Rev. Stat. Minn. Terr.*, 1851, ch. 5, sec. 1.
[57] *Cong. Globe*, 34 Cong., 3 sess., p. 808.
[58] Moran, in *Minn. Hist. Col.*, 8:158, note.

this plan on February 24.[59] In making his motion he pointed out that the time left for the remaining work of the session was so short that, unless the bill passed the Senate in exactly the form approved by the House, the measure would be entirely lost at this session. It would be impossible to get the House to reconsider in time to have the bill passed and approved by the president before the close of the session. The motion to reconsider precipitated another long debate. All the rest of that day the battle over the question of alien suffrage in Minnesota was waged and at the end of the day the friends of the Biggs amendment forced an adjournment without a vote. The next day the debate was renewed and the motion for reconsideration was finally carried by a vote of thirty-five to twenty-one.[60] The Biggs amendment was then rejected and the bill was passed in the form previously approved by the House by a vote of thirty-one to twenty-two.[61] On the next day the bill became a law through the signature of the president.[62]

The debate over the question of alien suffrage on the 24th and 25th clearly demonstrated the fact that much of the opposition to the admission of Minnesota had other motives. The opposition based itself upon the question of alien suffrage for the simple reason that the true grounds for opposition were not such as could well be stated. Senator Thompson of Kentucky in an irresponsible and sarcastic speech, full of confused learning, made it clear that he was opposed to the creation of the state of Minnesota under any circumstances because it would mean that there would be a new northern state to make the balance against the southern states still greater than it had been before. This was undoubtedly the feeling of other senators though they did not indulge in such intemperate language as came from the lips of Senator Thompson.

Various writers have intimated that there was a great national significance in the passage of the Minnesota enabling act.[63] It has appeared to some as one of the more important of the battles between the North and the South for supremacy in Congress. The leading historians who have written of this period do not, however, attach so much weight to the Minnesota measure.[64] Northern supremacy had already been established before Minnesota applied for the authority to enter the Union. It is nevertheless true that the Republican party was largely responsible for the passage of the enabling act and that some of their leading organs felt this to be a great victory for the anti-slavery cause.[65]

[59] *Cong. Globe*, 34 Cong., 3 sess., pp. 814, 849.
[60] *Ibid.*, pp. 867, 872.
[61] *Ibid.*, pp. 872-77.
[62] *Stat. at Large*, 11:166-67.
[63] Moran, in *Minn. Hist. Col.*, 8:148-49; Folwell, *Minnesota*, p. 134; *Minn. in Three Cen.*, 3:29.
[64] Reference is here made to the works of McMaster, Rhodes, Schouler, T. C. Smith, and Von Holst.
[65] *Daily Minnesotian*, April 4, 1857, which reprints a five-column article from the *National Era* in which the Minnesota enabling act is spoken of as "the most important measure of this Congress."

It is interesting to observe that in the progress of the proceedings of the Senate upon the bill Senator Jones of Iowa proposed to reject the north and south division of the territory embodied in Rice's bill and to substitute an east and west division at the line of 46° north latitude. This amendment was rejected almost without debate.[66]

Throughout the proceedings in both houses nothing was said by either the friends or the opponents of the enabling act to indicate that the people of Minnesota were being given any power which was in the least unusual. It was later asserted in Minnesota that the enabling act permitted the state to come into the Union without the subsequent passage of an act of admission. In the language of the act itself the people within certain designated boundaries were "authorized to form for themselves a constitution and state government, by the name of the state of Minnesota, and to come into the Union on an equal footing with the original states, according to the federal constitution." This was construed in Minnesota as being ample authority for the election of congressmen and senators and for the setting up of a state government without any further action on the part of Congress.[67] The only passage in the congressional debates which throws any light upon this question is the statement made by Mr. Grow when he reported the bill to the House on January 31. When asked as to the contents of the bill he said "the bill is in the usual form; and indeed, in drawing it up, it was like taking a form-book, and drafting this bill from it, with the exception of the boundaries."[68] This the members of the House accepted as sufficient assurance that nothing unusual was contemplated.

7. THE SUBSTANCE OF THE ENABLING ACT. The enabling act was entitled "An act to authorize the people of the Territory of Minnesota to form a constitution and state government, preparatory to their admission into the Union on an equal footing with the original states." It possessed the surpassing merit of brevity.

The boundaries proposed for the state were identical with those which the state now has. Upon all boundary waters the state was to have jurisdiction concurrent with that of the other state or states concerned. Such boundary waters and the navigable waters leading into the same were to be common highways and forever free to all citizens of the United States, without tax or toll.[69]

In its first section the law authorized "the inhabitants of that portion of the Territory of Minnesota" embraced within the boundaries described "to form for themselves a constitution and state government by the name of the

[66] *Cong. Globe*, 34 Cong., 3 sess., p. 814.
[67] See pp. 134-36, 142.
[68] *Cong. Globe*, 34 Cong., 3 sess., p. 518.
[69] Enabling act, secs. 1, 2.

State of Minnesota, and to come into the Union on an equal footing with the original states, according to the Federal Constitution." The people referred to in this section were a somewhat more limited group than that mentioned in the title of the act; the area of the proposed state was much smaller than that of the territory. "The legal voters in each representative district then existing within the limits of the proposed state" were authorized to meet on Monday, June 1, "to elect two delegates for each representative to which said district shall be entitled according to the apportionment for representatives to the territorial legislature."[70] The election was to be conducted as if it were an election of representatives. The delegates were to meet on the second Monday in July (13) at the territorial capitol and there, before transacting any other business, they were to "determine by a vote whether it [was] the wish of the proposed State to be admitted into the Union at that time." If the vote of the convention favored admission, then it was authorized to "proceed to form a constitution, and take all necessary steps for the establishment of a state government, in conformity with the Federal Constitution, subject to the approval and ratification of the people of the proposed State."[71]

It finally devolved upon the convention, not the voters of the proposed state, to accept or reject a series of proposals, "which, if accepted by the convention, shall be obligatory on the United States, and upon the said State of Minnesota."[72] These proposals were as follows: First, that sections sixteen and thirty-six, or their equivalents, in each township should be "granted to said State for the use of schools." Second, that seventy-two sections of land should be "set apart and reserved for the use and support of a state university," "to be appropriated and applied in such manner as the legislature of said State may prescribe, for the purpose aforesaid, but for no other purpose." Third, that ten sections of land should be granted to the state for completing public buildings or for erecting new ones. Fourth, that the salt springs in the state, not over twelve in number, with six sections of land contiguous to each, should be conferred upon the state to be used or disposed of as the legislature might direct. Fifth, that five per cent of the net proceeds of the sales of federal lands within the state were to be "paid to said State for the purpose of making public roads and internal improvements as the legislature shall direct."

The condition upon which these five propositions were offered was simply "that the said convention which shall form the constitution of said State shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil

[70] *Enabling act*, sec. 3.
[71] *Ibid.*
[72] *Ibid.*, sec. 5.

to *bona fide* purchasers thereof; and that no tax shall be imposed on lands belonging to the United States, and that in no case shall non-resident proprietors be taxed higher than residents."

8. SPECIAL SESSION OF THE LEGISLATURE, APRIL-MAY 1857. Immediately after the close of the regular legislative session of 1857, Governor Gorman departed for the east bound apparently for Washington on private business. In the absence of letters or of any printed record, the purposes of his journey must be left to conjecture.[73] It is sufficient to know that it was while he was absent from the territory that he learned of the precise form in which the enabling act had been passed, of the extent and the nature of the railroad land grant, and of the action of Congress cutting off appropriations for the county sessions of the territorial district courts.[74] The concurrence of these acts and the problems they raised created a situation which seemed to call for immediate legislative action by the territory.

It should be said that the organic act of the territory gave the governor no power to convene extraordinary sessions of the legislative assembly. In addition the act made clear provision that when the governor was outside the territory he ceased to have the powers of governor. The secretary became acting governor during any such period.[75] These legal obstacles did not disturb Mr. Gorman, nor did the added fact that his term of office was so nearly at an end as to leave little doubt that a new governor would address any special session.[76] The time was one demanding action. He decided to act. Under date of March 16, 1857, he sent a call to the legislative assembly to meet in special session in St. Paul on April 27.[77] The purposes mentioned in the call were, *first*, to provide for the holding of courts, *second*, to arrange for the impending constitutional convention, and *third*, to carry out the provisions of the railroad land grant act by disposing of the lands.

The session opened under a cloud of doubt as to its validity. Committees were appointed in both houses to consider the question, and as the will to have a session was strong, it is not surprising that the decision was in favor of legality.[78] Meanwhile the work had begun, but it dragged painfully for several weeks without accomplishments.[79] The disposition of the railroad

[73] It is of some interest to observe that Gorman left Minnesota as a recognized member of the east and west line faction, and that he returned a few weeks later convinced of the necessity of adopting Rice's boundary plan. His defection was almost the death blow of the east and west scheme. *Dem. Deb.*, pp. 297-99; *Rep. Deb.* pp. 125-27.

[74] *Dem. Deb.* p. 298.

[75] Organic act, sec. 3.

[76] As a matter of fact, Governor Medary arrived in the territory in time to read a message to the special session.

[77] *Pioneer and Democrat*, April 7, 1857. Gorman was probably in Washington when he issued the call. *Dem. Deb.*, p. 298.

[78] *Council Journal*, p. 3; *House Journal*, pp. 5, 19-22. The *Daily Minnesotian* of May 8, 1857, contains the house-committee report.

[79] *Daily Minnesotian*, May 11, 1857.

lands, the most important business before the session, was also the principal source of difficulty. From the railroad routes designated in the land grant it was very clear that three existing corporations and one yet unformed had already been selected as the beneficiaries of the grant. This was very displeasing to other groups, who attempted in vain to bring about amendments acceptable to themselves. When this effort had spent itself the legislature proceeded to pass the bills, which were subsequently enacted as one law, conferring the lands upon the four corporations.[80]

During the slow process of settling the railroad question, a bill was introduced and passed in the House to provide for the expenses of the constitutional convention.[81] It went at once to the council where it was given a preliminary discussion and referred to a select committee of three.[82] As reported out of this committee, the bill had been enlarged by the insertion of sections 1, 2, and 7 of the act finally passed. Section 1 was a reënactment of that portion of the enabling act which fixed June 1 as the date of the election, but there was one significant difference.[83] The enabling act provided that "the legal voters in each Representative District, then existing within the limits of the proposed State" were to do the electing; the territorial act made provision that "the qualified electors of the Territory of Minnesota" should assemble to elect delegates. The enabling act would have excluded voters not resident within the proposed state; the other let them in.[84] Section 2 embodied the same and another idea not contained in the enabling act. It read as follows: "Every Council District in this Territory shall elect two Delegates for every Councillor it may be entitled to in the Legislative Council, and every Representative District shall elect two Delegates for every member they may be entitled to in the House of Representatives," with a proviso as to subdivisions of districts. Delegate Rice, who drafted the enabling act, knew the government of Minnesota territory and was undoubtedly aware of the meanings of the terms "representative district" and "representative" where he used them. It was argued in the territory, on the other hand, that there was ambiguity in the language. The will to have a large convention

[80] Folwell, The Five Million Loan, in *Minn. Hist. Col.*, 15:189-93; see also Welles, *Autobiography*, 2:66-68.

[81] *House Journal*, May 6, 1857, p. 24; *ibid.*, May 11, p. 31. The bill is recorded first as *H. R.* 4, but is later referred to as *H. R.* 3.

[82] *Council Journal*, pp. 20, 23.

[83] *Ibid.*, p. 30; enabling act, sec. 3.

[84] Why, it may be asked, did the council desire this change? The explanation seems to be that the majority in the council were Democrats, that the seventh or Pembina district was safely Democratic, and that if the enabling act were to be carried out in letter and in spirit, it would be necessary to cut down the Pembina representation, since most of the population in that district was outside the proposed state. To reduce the representation from Pembina, or to eliminate it entirely, would seriously endanger Democratic chances to control the constitutional convention. The change made by the council in the house bill was not, however, fully understood by the Republicans in either house.

finally overcame any doubts in the premises.[85] "Representative" was held to be a generic term, and to include all "representatives" of the people, both councillors and representatives in the narrower sense. The number of delegates was thus increased from the seventy-eight apparently provided for, being twice thirty-nine, to one hundred and eight, or seventy-eight plus twice fifteen.[86] Section 7, also added in the council committee, made the act effective from and after its passage. The council passed the bill as amended on May 22, 1857. St. A. D. Balcombe, Republican leader, alone voted against its provisions. The same day the house concurred in the council amendments without a record vote. On May 25 the governor signed the bill. This was just one week before the election for delegates to the convention.[87]

The validity of this act, in several particulars, is a matter open to the most serious dispute. In the first place it is open to question whether the session itself in which the act was passed, had any legal existence. There seems to have been no authority for calling it; yet it should be observed that Governor Gorman called it, Governor Medary recognized it, both houses agreed on the question of legality, the people never objected to what was done, and Congress took no action to rescind its pretended acts of legislation. The entire legislative output of the session was, in effect, ratified by Congress through its inaction.[88] Granting that the session itself was legal, it can hardly be denied that the provisions of the act now under consideration which related to paying the expenses of the convention were also valid.[89] Congress had authorized the holding of the convention but had made no provision for its expenses. While the convention might well have made this provision for itself, the legislative assembly was probably also empowered to do so under the power to pass laws on "all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this [the organic] act."[90] As to those clauses, however, which dealt with the area in which the elections were to be held and the number and the qualifications of the delegates to the convention, grave doubts may be expressed.[91] The enabling act had covered all of these subjects more or less completely and was self-executing. Insofar, therefore, as the territorial act conflicted with the enabling act in these matters, the latter was unquestionably supreme law. To the

[85] The practice in the northwest had favored constitutional conventions of moderate size. Iowa in 1844 had seventy-three delegates in her convention; in 1846 thirty-two; and in 1857 thirty-six. Wisconsin in 1846 had one hundred and twenty-five, and in 1847 sixty-nine. There was some jesting in Minnesota over the "multitude" who were to participate in the convention.

[86] It is a fact not easy to explain that the Republican majority in the lower house of the legislative assembly seemingly favored the smaller number, while the Democratic majority in the council favored the larger number, with separate representation for council districts.

[87] *Council Journal*, p. 56; *House Journal*, pp. 80, 90, 93.

[88] Organic act, sec. 6. "All laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect."

[89] That is to say, secs. 3, 4, and 5 of the territorial act.

[90] Organic act, sec. 6.

[91] Sections 1, 2, and 6 of the territorial act.

extent that the territorial act merely interpreted the enabling act without changing it, the former was mere superfluity.[92] The enabling act was complete in itself and required no legislation by the territorial authorities to carry it into effect, and perhaps not even to provide funds for the expenses of the convention.

All questions of legality aside, it is quite apparent that the Republican majority in the house of the territorial legislative assembly inserted section 6, prescribing a disqualification of federal appointees and commission holders from membership in the convention, in order to exclude some of the leading Democrats of the territory from standing for election, since the Democrats were the office-holding party at the time. On the other hand, the Democratic majority in the council, as has already been said, inserted sections 1 and 2 very probably from some supposed advantage to their party. On the eve of the great step from a dependent territorial status to full statehood in the Union, petty political considerations still ruled the day.[93]

[92] Cf. remarks by Coggswell and others in *Rep. Deb.*, pp. 48-51. Some of the Republican members of the constitutional convention seem to have doubted the existence of this act.

[93] The capital removal bill, which had passed in such an extraordinary manner in the previous session, was not seriously revived at the special session. Either its friends planned to take their stand on the legality of their former act, or else they knew that, with Gorman no longer governor of the territory, their chances of passing the bill in a more regular manner were gone.

CHAPTER IV

ELECTING AND ORGANIZING THE CONSTITUTIONAL CONVENTION

1. THE APPORTIONMENT OF DELEGATES. The first apportionment for representation in the legislative assembly of the territory was made by proclamation of the governor in 1849 and ratified by legislative act the same year.[1] The territory grew rapidly in population in the next two years and in 1851 it became necessary to reapportion representation.[2] The same process was carried out in 1855, the apportionment of that year standing practically unchanged through 1857.[3] One additional representative was, however, given by an act of 1856 to the fifth council district and allotted to the counties of Lake and St. Louis.[4]

The reapportionment of 1855 was brought about at a time when party divisions had hardly taken place and when sectional animosities had not reached that point of bitterness which characterized them in 1857, and it was consummated in all respects but one in an unusually fair manner. The exception was that in the act providing for the reapportionment the Pembina district was guaranteed one councillor and two representatives without any regard to the population of that district.[5] Everyone knew that the white population of Pembina was very small and that the representation allowed was really in excess of the deserts of that district. The remainder of the apportionment was carried out under the statute by a committee of five representing the two houses.[6] This committee was bound by the provisions of the law to apportion representation to ten of the eleven districts in exact proportion to their population. The work seems to have been done with a just consideration of the needs and claims of every section of the territory and there seems to have been no complaint of partisanship when the result was known.[7]

[1] *Terr. Sess. Laws* 1849, ch. 3, sec. 6.
[2] *Ibid.*, 1851, ch. 6.
[3] *Ibid.*, 1855, ch. 9.
[4] *Ibid.*, 1856, ch. 35.
[5] *Ibid.*, 1855, ch. 9, sec. 18.
[6] See the reports of the work of the apportionment committee in the *Daily Minnesotian*, Aug. 9, 1855, and in the *Daily Pioneer*, Aug. 10, 1855.
[7] Joseph R. Brown, who had helped to bring about a fairer apportionment in 1851 was also a member of the committee in 1855. He later spoke with pride of his success in getting a just apportionment of representation for the people west of the Mississippi. *Pioneer and Democrat*, Oct. 14, 1856. Cf. *Rep. Deb.*, pp. 225-26.

The fact that this apportionment was substantially fair in 1855 does not necessarily demonstrate that it was fair in 1857. During the spring and summer months of 1855, 1856, and 1857 there was a tremendous rush of population into Minnesota.[8] Tens of thousands of people came to settle in the territory in each of these years. The great bulk of the influx spread itself out over the southeastern counties and up the fertile valleys of the Minnesota and its affluents. The census of 1857 indicates that the region south of Stillwater, St. Paul, and St. Anthony, from Winona to a point westward of St. Peter, had by that year already become the most populous portion of the territory. It would seem, therefore, to have been only a matter of justice to have taken a new census and to have made a new apportionment when the constitutional convention was to be elected in 1857. This was the view of those living in southern Minnesota, at least, and for this they struggled during the regular legislative session of 1857, but in vain.[9] The party in power realized that if a reapportionment were made it would give a great advantage to the opposition, which was strong in the southern and eastern portions of the territory. In spite of the fact that the enabling act left the western and most populous half of the Pembina district outside of the proposed state, and that a scrupulous observance of the spirit of that act would have required at least that the representation from that district be reduced, the dominant group would not yield even on this point.[10] The election of June 1 to choose delegates to the constitutional convention was conducted under the apportionment of 1855, and the result was that the Democrats went into the election with a great advantage over the Republicans. That this was, in the main, perfectly legal, cannot be gainsaid, and it is a truism that it is customary for parties to take such advantages of each other if they can. But it handicapped the Republicans in their efforts to gain control of the constitutional convention.

A calculation based on the census of 1857 shows that the quota per delegate in the first, second, third, fifth, seventh, and eleventh districts, the districts in which the Democrats were likely to have the upper hand, was only 885 people. The districts in the southern part of the state, on the other hand,—the fourth, sixth, eighth, ninth, and tenth, in which the Republicans were likely to win,—averaged 1733 people per delegate elected. The Democratic group of districts contained a population of approximately 49,600, and they elected fifty-six delegates. The normally Republican districts had over

[8] Folwell, *Minnesota*, pp. 120-21. Cf. Robinson, *Early Econ. Cond. and the Devel. of Agric. in Minn.*, pp. 43-44. The census of 1849 showed only 4,780 people in the territory; in 1855 the apportionment committee estimated the population to be 49,600; and in 1857 the census showed 150,037.

[9] The bill introduced in the council in the regular session of 1857 by C. W. Thompson of Houston county for the calling of a constitutional convention had as one of its chief objects the aim of bringing about an apportionment of delegates which would be fair to southern Minnesota. It passed the council with an amendment which apparently guaranteed the Pembina district its usual representation, but was subjected to drastic revision in the house of representatives, and was returned to the council too late for action by that body. See p. 58, footnote 41.

[10] See p. 66, footnote 84. Cf. *Rep. Deb.*, pp. 223-26.

90,000 population, yet they were apportioned but fifty-two delegates.[11] Had there been a fair apportionment throughout the territory of the proposed state based upon a census taken early in 1857 the Democratic group of constituencies would have been entitled to a number of delegates slightly upwards of thirty-eight, whereas the Republican districts would have been able to elect almost seventy.[12]

2. THE CAMPAIGN, AND THE ELECTION OF JUNE 1. The enabling act, passed on February 26, became generally known throughout the territory during the month of March. Governor Gorman's call for a special session of the legislature was published at about the same time, creating the impression that legislation by the territorial assembly was needed before the election of delegates could be held. Since the election was set for June 1, and the terms of the expected legislative action, not completed until May 25, seem not to have been known in some districts until a day or two before the election, there was but a short time for the holding of a campaign.

Lack of time was coupled with inadequate organization of the parties. The Democrats, who had but recently found even the slightest necessity for anything more than nominal unity, were chided severely by their newspaper for their lack of interest and their disorganization. Perhaps this scolding was overdone. On the other hand, the Republicans, whose organization was more recent than that of the Democrats, and still incomplete, were the recipients of powerful aid from outside the territory. During the early summer Lyman P. Trumbull, Owen Lovejoy, Edwin M. Stanton, and Charles Hughes, of New York; Galusha A. Grow, of Pennsylvania; and William Bross, of Chicago, worked diligently in the territory to build up the Republican organization.[13]

A person of inquiring mind might well be puzzled over the feverish activity of the Republicans. Was there, perchance, some danger that Minnesota would adopt a slave constitution? Were there great national issues at stake? Did the Republicans, perhaps, differ radically from their opponents on the proper organization of a state government? And the answer to all must be, that of issues there were none. So far, at least, as the newspapers

[11] The counties west of the Mississippi, south of St. Anthony, and as far west as the great bend in the Minnesota river, or in other words the counties of southeastern Minnesota, were considered at the time as being the stronghold of the Republican party. They have, therefore, been classed as "normally Republican" for the purposes of this discussion. See map, p. 76.

[12] It is here assumed that a census taken in the spring of 1857 would not have shown such striking discrepancies as were brought out by the federal census in the summer of that year. As a matter of fact, the latter census proved the southern part of Minnesota to be grossly under-represented. This was essentially an injustice to that section and not to the Republican party, since both parties cut into each others' strongholds to an extent sufficient to increase the Democratic and decrease the Republican quota per delegate. For example, the Republicans carried Chisago county, with its four delegates and a population quota per delegate of only 440.

[13] *Daily Minnesotian*, St. Paul, May 16, 1857, ff. Cf. *Minn. Hist. Col.*, 9:173.

of the time give evidence, there was no important preliminary debate on constitutional questions. Not even the boundary issue, important as it was, became a party question, for it really divided both parties. Democratic newspapers made an issue of the negro-suffrage question, but their charge that the Republicans as a party favored equal suffrage for negroes was not true.[14] The simple truth seems to be that this was almost entirely a prestige election from both the national and the local point of view. Each of the parties wished to be able to claim that Minnesota belonged in its camp, and to be in a position to command the votes of Minnesota's delegation to Congress. The campaign was nearly devoid of all ideas save that of carrying Minnesota for the party.

There was some dispute as to whether partisanship should be allowed to enter the struggle for seats in the convention. The *Daily Minnesotian* of St. Paul, Republican, settled this point to its own satisfaction in these words: "It is idle to talk about having no politics in the convention. It will be all politics." The *Minnesotian* purposed to lend its aid to "this desirable end." The slave power, it said, must be defeated.[15] Many Republicans and Democrats took the opposite view. They felt that the parties had better unite in an effort to bring Minnesota speedily into the Union. There would be ample time for party strife thereafter. In this view they were supported by a wholly extraneous consideration. The spring was late and cold; many farmers, newcomers to the territory and dependent for their success upon their first or second year's crops, would find it exceedingly inconvenient to leave their plowing and planting to attend the polls. In order not to alienate this vote at future elections by making undue demands upon it in this, party leaders from both sides met in several of the agricultural constituencies to nominate so-called "Citizens' Tickets" composed presumably of half Republicans and half Democrats. There being no other candidates, these "tickets" were elected, and the result was a sort of proportional representation. This was the case in the Cottage Grove district of Washington county, and in Mower county.[16] In this way the Democrats gained one delegate from

[14] Cf. *Dem. Deb.*, pp. 529-31. But in the Republican wing of the convention, negro suffrage was voted down, and the best that the radical minority could do was to get the convention to agree to submit the question to the voters separately at the constitutional election. *Rep. Deb.* pp. 349-66, 367-76, 551-52.

Despite the paucity of issues as between the parties and the politicians, at least one intellectual, Mr. J. W. Taylor, endeavored to arouse some interest in the questions of constitutional law and political organization which the convention would be called upon to settle. His views were too radical for popular acceptance, for among other things he recommended the abolition of the state senate, a limitation of legislative powers, the strengthening of the governor's position, and the conferment upon the legislature and the people of the power to recall the governor before the expiration of his four-year term. *Pioneer and Democrat*, May 24, 1857. Mr. B. B. Meeker of St. Anthony published his views on constitutional questions, and the Democratic central committee gave some advice on the same subject to the voters, but there was nothing unusual in what they proposed. *Pioneer and Democrat*, May 10, 19, 1857.

[15] *Daily Minnesotian*, April 6, 1857.

[16] *Pioneer and Democrat*, June 5, 6, 1857.

Mower county, whom they would otherwise not have had. The Republicans should perhaps have gained one in the same way from Washington, but the gentlemen elected both served with the Democrats.

There were a number of eleventh-hour nominations. In the scramble "bogus Democrats" were elected as Democrats, if there was any truth in the charges of the *Pioneer and Democrat*.[17] In the Glencoe district, Martin McLeod heard of his nomination only two days before the election. He was defeated by a close vote, despite the efforts of his friends, both Democratic and Republican. The chief cause of his failure seems to have been that his Republican opponents had their printed ballot in the voters' hands before the election.[18] The case of Mr. H. C. Wait of Stearns county was peculiar. He was apparently an estimable gentleman of uncertain politics. The Republicans gave him a nomination, thinking he was one of them. The Democrats thereupon refused to name him. When two days before the election, according to his own statement, he first heard of his nomination, he declared himself a Democrat. He was elected, but whether by the votes of Democrats or of Republicans does not appear. When the convention split into two bodies, he aligned himself with the Democrats, and the Republicans denounced him bitterly as a traitor to their cause.[19]

The electorate for this election consisted of "the legal voters," according to the enabling act.[20] The organic act laid down the essential requirements for voters; it permitted declarants as well as citizens to vote.[21] Already the territory contained considerable groups of Germans, Irishmen, and Swedes of too recent immigration to permit of their naturalization, but nonetheless able to vote as declarants.

The vote throughout the territory was generally considered to have been light. It was especially so in the agricultural districts. The *Pioneer and Democrat* said that "We do not think that in the country more than half the vote was polled."[22] The towns fared better. The Democratic strongholds of Stillwater and St. Paul, and the more doubtful St. Anthony, must have polled nearly a full vote.

Charges of election frauds were numerous, and fairly well authenticated. In St. Paul, according to the reliable *Advertiser*, over seven hundred illegal votes were cast, of which five hundred were cast in one ward. In this ward it was charged that a brutal mob took the polls and held them all day, voting their own members as often as they wished. The *Advertiser* averred that

[17] *Ibid.*, June 1, 1857.

[18] *McLeod Papers*, 1856-1857; letters of John McLeod, and Wm. S. Chapman, to M. McLeod, June 1, 1857; M. McLeod to J. H. Stevens, June 21, 1857.

[19] *Dem. Deb.*, pp. 71-72; *Pioneer and Democrat*, June 6, 25; July 16, 1857. This Democratic newspaper listed Mr. Wait as a Republican on both June 6 and 25.

[20] Sec. 3.

[21] Sec. 5.

[22] *Pioneer and Democrat*, June 6, 28, 1857.

H. R. Bigelow and Justus Ramsey, Republicans, would have been elected "by the disaffected Democrats" in place of Willis A. Gorman and William B. McGrorty, if fraudulent votes had not been cast.[23] The latter two were the very men whom the *Pioneer and Democrat* had denounced as "bogus Democrats" before the election. This newspaper admitted on July 1 that "irresponsible and unscrupulous men in the Democratic party" had been guilty of frauds, but it gave no names.[24]

The Republicans were also charged with grave malpractices. "Wagon loads of voters" were said to have been "transported from Rice county to Waseca on the day of the election, and at least two hundred illegal votes polled in the county."[25] In the case of T. H. Armstrong's claim for the seat of Boyd Phelps, the Democrats seem to have found a similar case as between Freeborn county and the town of Austin.[26] Colonizing seems to have been a favorite form of fraud.

The Pembina country, comprising the seventh council district, had probably changed little since 1850 when Sibley described Pembina as "a settlement on our side of the line of the British possessions" which contained "upwards of a thousand souls, principally persons of mixed Indian and white blood."[27] In this region a few fur traders dominated all politics. Elections were probably more or less a farce. It is, however, somewhat surprising to learn that a leading Republican should charge by a resolution introduced in his own convention, that no election whatever had been held in Pembina.[28] The six delegates from that district presented carefully prepared credentials, which are still preserved for us; and in these documents a perfectly regular and legal election is briefly described.[29] The Republicans appointed a committee to investigate the charge in the resolution which has been mentioned, but nothing seems to have been done.[30]

It is not easy to say upon what points the election turned. A Republican writing to Ramsey from Mankato reported that the Democrats in that region had spread the word that the Republicans were "Know Nothings," and that some "good Germans in Mankato were fooled this time."[31] The anti-liquor stand of the Republicans probably also served to alienate the Germans, who

[23] *St. Paul Advertiser*, June 6, 1857.
[24] *Pioneer and Democrat*, July 1, 1857.
[25] *Ibid.*
[26] *Dem. Deb.*, pp. 397-98.
[27] *Minn. Hist. Col.*, 1:41.
[28] *Rep. Deb.*, p. 88.
[29] Minnesota archives, Governor's office election records, 1849-1858, in the manuscript division of the Minnesota Historical Society.
[30] The Republicans enjoyed telling the story, probably of later date, that in territorial days the Democrats used to count first all the votes from the rest of the territory, ascertain how many votes were needed to carry the election, and then send word to the Pembina district, from which the returns were always tardy. The Pembina Democratic leaders, the story runs, always contrived to return enough votes to carry the election for their party. *Minn. Hist. Col.*, 9:210.
[31] I. T. Williams to Ramsey, June 4, 1857, in *Ramsey Papers*, 1857. The charge of Know-Nothingism was also used by the Republicans against the Democrats.

would otherwise have stood with the anti-slavery party. With others the charge that the Republicans stood for negro suffrage had some weight; an embittered voter in St. Anthony cast his ballot for "some white man." Where real issues were so completely lacking, the personalities of candidates must have been the deciding factor in many cases. Chance, or an early start, probably helped some candidates to win. The one thing which it is perfectly safe to say is that the problems of the nature and contents of a state constitution received pitifully little attention.

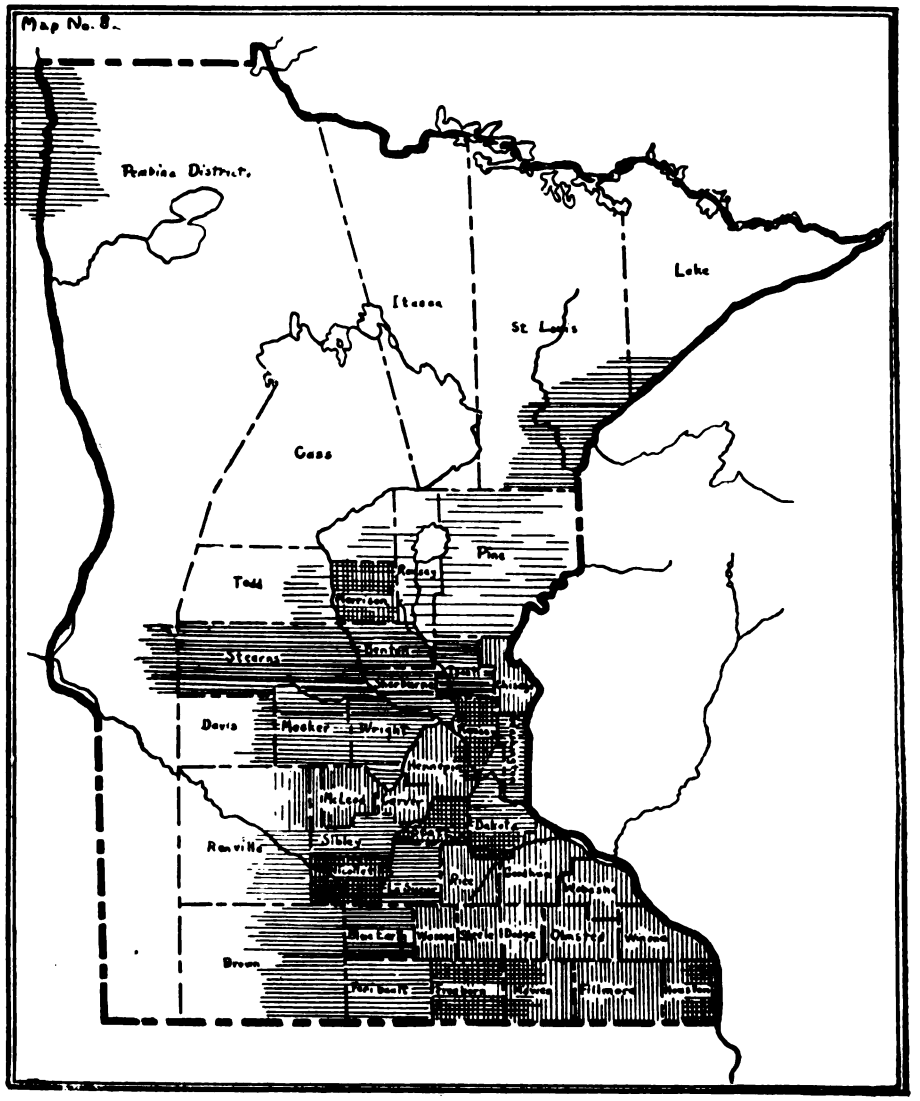
It is impossible to speak with certainty of the total popular vote, or to ascertain the popular majority. The returns were never adequately canvassed, and indeed a canvass would have been of little value in view of such complications as the running of citizens' tickets, the peculiar case of Mr. Wait, and the probable polling of large fraudulent votes in some districts. Nevertheless the Democrats claim to have received a popular majority of over sixteen hundred votes throughout the territory.[32] Granting that there was substance to this claim, it can possibly be explained by the fact that the Democrats were relatively strong in the large towns, where a high percentage of the voters participated, and that the Republicans were strong in the agricultural districts, where the vote was much lighter.

One thing is certain, and that is that fifty-eight Republicans received certificates of election as contrasted with only fifty Democrats. The latter lost one of the fifty, but finally added six more to their number, making fifty-five in all, by seating six persons who had not received official credentials, and who disputed the elections of six Republican credential holders. The Republicans, on the other hand, kept their fifty-eight delegates to the end, and added one who did not have credentials. Thus the total number who served in the two wings of the convention combined was not one hundred and eight but one hundred and fourteen.

3. THE ATTEMPT TO ORGANIZE THE CONVENTION. Due to the poor communications throughout the territory, the returns from the election of June 1 came in very slowly. Upon the basis of purely local reports, the *Pioneer and Democrat* of St. Paul early boasted that the Democrats had carried the election. As the news began to arrive from the southern portions of the territory, however, it became evident that the election would be very close and might even go in favor of the Republicans. Each side became extremely anxious and nervous over the result and it is probably true that both sides in their anxiety to win took advantage of technicalities in the law to help their own side.

Since the convention would have full power over its own organization, and since those who held credentials would alone be empowered to participate

[32] *Dem. Deb.*, pp. 16, 17.



MAP NO. 8. RESULTS OF THE ELECTION, JUNE 1, 1857. Vertical shading indicates counties carried by the Republicans, horizontal shading counties carried by the Democrats, and both together indicate counties from which were sent divided delegations. The county lines are based upon a map published in 1857 by J. H. Colton, New York, 1853, [1857].

in the opening session, it became the object of each side to gather in as many credentials as possible. In the St. Anthony district, which was entitled to six delegates to the convention, the contest was very close. In the days before the campaign, the St. Anthony *Express*, a Democratic newspaper, had advised the voters of its party to be very careful when voting to indicate whether they were voting for councillor delegates or representative delegates.[83] Even after the legislature had passed the act providing that every district should elect two delegates for each representative and two for each councillor to which it was entitled, there was some question whether the convention itself would not, in organizing, exclude the councillor delegates. Since St. Anthony was at one and the same time a council district and an undivided representative district, it was desirable, according to the *Express*, to make absolutely clear upon each ballot the position which the candidate voted for was supposed to fill. But though the Democratic newspaper of St. Anthony gave the advice, the Democratic politicians refused to follow it. The Republicans, on the other hand, took warning and on the ballots which they printed, they designated certain candidates as standing for election from the council district and others as standing for election from the representative district. In the election, therefore, the Republican voters voted for delegates for specific places, whereas the Democrats voted for six candidates without any other designation than that of "delegate." It devolved upon the register of deeds of the county to issue certificates of election and the register of deeds of Hennepin county was the Reverend C. G. Ames, a Republican. He took it upon himself, very likely upon the advice of others, to declare that certificates could be issued only to those who ran for a specific position either that of councillor delegate or that of representative delegate, and upon this basis he gave certificates to six Republicans. On the basis of actual votes cast he should have issued certificates to four Democrats and two Republicans, since St. Anthony constituted one undivided district for the election of both councillors and representatives.[84] There was no justification for insisting upon a distinction so fine as that between councillor delegates and representative delegates. A similar case arose in Houston county where a Republican candidate was given a certificate in preference to the Democratic candidate who had a larger vote. One Democrat in Hennepin county, Mr. R. P. Russell, was given a certificate over his Republican opponent for the same reason that four Republicans were given certificates in St. Anthony. Mr. Russell refused, however, to accept the certificate. He said that his Republican opponent had received more votes and was actually entitled to the credentials.[85]

The action of Mr. Ames in Hennepin county was denounced by the Democratic newspapers throughout the territory, and even the Republicans found

[83] *Rep., Deb.*, p. 302.
[84] *Dem. Deb.*, pp. 13-15.
[85] *Rep. Deb.*, pp. 27, 28-33, 52-53; *Dem. Deb.*, pp. 46-47.

some difficulty in justifying what had been done. The Democrats charged the Republicans with an intention of violating the wishes of the people by fraud and even if necessary by violence, and they warned them that they would not tolerate Republican control of the coming convention. The Republicans, on the other hand, many of whom were new to the ways of politics, feared greatly that the Democrats would cheat them of their victory. The Democrats controlled not only the territorial government but also the city government of St. Paul, where the convention was to be held, and it was the fear of the Republicans that the Democrats would somehow gain control of the convention and refuse to seat some of the Republican delegates.[36]

Spurred on by their anxiety to gain control of the convention for themselves, the Republicans began to arrive in St. Paul several days before the day set for the convention. On the evening of Saturday, July 11, they were already present in sufficient numbers to hold a caucus in one of the St. Paul hotels. They attempted in vain to get in touch with the Democrats to come to some agreement as to the hour for opening the convention, and as to the preliminary procedure. The Democrats were much slower in arriving. It is reported that the six delegates from the Pembina district were still at Little Falls when their credentials were being reported to the Democratic convention.[37] Certain it is that there is no way of telling from the Democratic debates just how many members were present at the beginning, nor even as late as July 27 when the members were sworn in. Nevertheless there were enough Democratic delegates in St. Paul to carry on some preliminary negotiations with the Republicans. On Sunday night, July 12, at the Fuller House, a group of Republicans came across ex-Governor Gorman who told them that the Democrats were about to go into caucus in one of the rooms of the hotel.[38] The Republicans claim to have made the offer at this time and to have signed a paper to the effect that they would agree upon 12 m. as the hour for the calling to order of the convention.[39] This signed paper was taken by Gorman into the Democratic caucus, but was not signed by the Democrats, and the Republicans did not see it again. Instead, about 11 o'clock that evening, ex-Governor Gorman handed the Republicans a resolution adopted by the Democratic caucus saying that they would "meet at the usual hour for the assembling of parliamentary bodies in the United States." The Republican fears were only increased by this reply. They were men with little parliamentary experience, at least many of them, and they had no way of knowing what was the usual hour. They were afraid that this was simply a Democratic trick to take advantage of them and one of them later recalled

[36] *Rep. Deb.*, p. 30. There seems to be little doubt that their fears while possibly warranted, were caused principally by the utterances of a few irresponsible newspapers.

[37] *Ibid.*, p. 296.

[38] *Ibid.*, p. 30.

[39] *Ibid.*, pp. 30-31, 75.

a case where a Democratic legislature in Ohio had met at midnight.[40] Not knowing what to expect, the Republicans decided to be upon their guard and a number of them therefore turned their steps toward the capitol and were fortunate enough to find that the council chamber was open. There they gathered about midnight and there they remained until daybreak on Monday morning.[41] At that time they began to go out a few at a time to get their breakfasts and presently to return again to the capitol.

Monday, July 13, 1857, was a day of historic significance: it was the anniversary of the passage of the Northwest Ordinance. It was just seventy years before that the Congress of the Confederation, in the closing weeks of its existence, had enacted this famous charter of liberties for the pioneers of the great Northwest. Under its terms in the course of two generations Ohio, Indiana, Illinois, Michigan, and Wisconsin, had successively risen out of the wilderness and had taken their places as sovereign states in the sisterhood of the Union. There remained of the old Northwest territory but one region which had not attained statehood, the country which we have called Minnesota east, and now, on the anniversary of the ordinance, the chosen delegates of the people were assembling in St. Paul to prepare a constitution for the state of Minnesota, which would include the last remaining portion of the Northwest territory. The first meeting of the constitutional convention might well have been given over to the solemn observance of the day and to the serious contemplation of its meaning. Partisan politicians, who had in the past few weeks already done much that was a reproach to the name of Minnesota, had other plans for the day.

Fairly early in the morning the doors of the hall of the house of representatives were opened and some of the Republicans began to take seats there to await the opening of the session. This was the hall in which it had been agreed tacitly that the convention was to be held. As the hour of noon approached, the number of Republicans in the hall steadily increased, but the Democrats were strangely absent. In the course of the morning, it is presumed, the Republicans completed the signing of the paper in which they requested Mr. North, one of their delegates, to call the convention to order.[42] The Democrats, they later learned, were in caucus during the morning in the office of the secretary of the territory and at some time before noon they drew up a new resolution addressed to the Republicans in which they resolved to "confirm the position of the Democratic members last evening," and to "concur in the proposition to meet at 12 o'clock m. of this day, the usual hour for

[40] *Ibid.*, p. 31.

[41] *Ibid.*, pp. 31-32. Several of the accounts say that the Republicans spent the night in the hall of the house of representatives, where the convention was to meet, and held it through the next morning. In fact, the Republicans did not enter the hall of the house until some time after daylight on the morning of the 13th.

[42] *Ibid.*, p. 119.

the assemblage of parliamentary bodies in the United States."[43] Here for the first time the Republicans found out what the Democrats meant by "the usual hour."

Mr. Thomas Foster, one of the Republican delegates, reports that during the morning, an employee of the Democratic territorial administration entered the hall of the house of representatives with a small hand ladder, mounted to the hall clock and went through all the motions of taking it apart, regulating it and setting it "a-going according to their own time."[44] Whether or not it was the Democratic intention to tamper with the clock does not clearly appear.

The Democrats remained out of the hall and apparently in caucus until from seventeen to fifteen minutes before twelve. This is a fact which some of the Democrats disputed but the evidence from the report of their proceedings in the *Pioneer and Democrat* of the next day and also the admission by Mr. Sherburne, one of the Democratic delegates, seems to establish the fact that they did actually enter the hall before the time set for the calling of the convention.[45] When they came in, they came as a body, numbering, according to their own claims, forty-five delegates.[46] The Republicans claimed that they had with them a number of people who were not delegates. At the head of this group, which came in quickly and as one body, was Mr. Charles L. Chase, secretary of the territory and one of the Democratic contestants from the St. Anthony district. Mr. Chase stepped swiftly to the speaker's platform. The Republicans seem to have been taken by surprise at the quickness with which this occurred. Mr. North, of the Republican group, also mounted the speaker's platform, but apparently was a little bit behind Mr. Chase. While Mr. Chase was calling the convention to order, Mr. North was doing so also and at the same time without pausing Mr. North nominated Mr. Thomas Galbraith to be president pro tem of the gathering. While these measures were proceeding, Mr. Gorman from the floor moved that the convention adjourn until 12 o'clock m. the next day. Mr. Chase from his side of the speaker's platform, put the question on Mr. Gorman's motion and all the Democratic reports are unanimous in saying that all the Democrats voted to adjourn and that some of the Republicans voted in the negative. This was the basis upon which the Democrats claim that the Republicans were committed to the Democratic organization. While the Democrats on their side of the hall were carrying through the motion to adjourn, Mr. Galbraith was declared by Mr. North to be elected president pro tem of the convention and Mr. Galbraith mounted to the chair. Almost at the same time,

[43] *Rep. Deb.*, pp. 30-32, 75-76; *Dem. Deb.*, p. 77.

[44] *Rep. Deb.*, p. 32.

[45] *Pioneer and Democrat*, July 14, 1857; *Dem. Deb.*, pp. 77-79. The Democratic report of the proceedings does not indicate the hour when the convention met on July 13.

[46] *Pioneer and Democrat*, July 14, 1857; *Dem. Deb.*, pp. 34-75, 79.

according to the various reports, the Democrats marched out in a body as they had marched in. The Republicans, under the presidency of Mr. Galbraith, proceeded to form a permanent organization. Fifty-six members with credentials were sworn in that day, the same who had signed the paper asking Mr. North to call the convention to order, and the first business of the convention was taken up.[47]

It is evident from the accounts which the Democrats and their friends subsequently gave of this first day's proceedings, that the Democrats aimed at one thing, and one thing only, and that was to capture the organization. From the unanimity with which they acted at every point during the minute or two they were in the convention hall, it is clear that they had thoroughly rehearsed their part for that day. Even such a level-headed man as Mr. Sherburne spoke with great satisfaction a few days later of the fact "that we had legally and fairly and formally, the organization of the convention."[48] Indeed, from everything that occurred during those first few days in St. Paul, beginning with the evasive reply of the Democrats to the Republican proposition and going on through their violation of the promise to meet at 12 o'clock, their selection of Chase, a territorial official, to preside and to lend a greater show of authority for what they did, it is perfectly clear that the Democratic group were bent primarily not upon getting down to the work of the convention, but upon winning control of the convention away from the Republicans. They were attempting by tricks of their own to overcome the Republican advantage gained through the trickery of issuing certificates to Republicans who had not actually been elected by majorities. On the other hand, it is fair to say that the Republicans did not feel that they had to resort to deep laid plans to gain control. They already had in their organization a majority of properly accredited delegates and even though some of

[47] The reports of the first day's proceedings are numerous and conflicting. In the Democratic wing of the convention, Messrs. Flandrau, Gorman, Setzer, Brown, Sherburne, Curtis, Stacy, and Sibley, all of whom were present on the first day, in addition to others who were not, made speeches giving more or less complete accounts of the proceedings. In the Republican wing, Messrs. Foster, Coggswell, Balcombe, McClure, and North, as well as others, did likewise. The leading speeches on each side were by Gorman and Balcombe, who hated each other heartily since Gorman had forsaken the east- and west-line group. Gorman's speech is reported to have lasted three hours, and it is altogether a crowning example of bombast and futile rhetoric. The best of the Democratic accounts were those by Sherburne and Stacy; the best on the other side were by Foster and Coggswell. By all odds the most reasonable newspaper account was that in the *St. Paul Advertiser* on the 18th. Of the non-contemporaneous accounts, that by Flandrau, a participant in the events, is valuable because it corroborates what is said in the text below as to the Democratic plan to "capture" the organization by tricking some Republicans into voting upon Gorman's motion to adjourn. Flandrau, *Hist. of Minn.*, 1900 ed., pp. 111-12. There is a manuscript narrative of the events apparently written by Mr. Benjamin C. Baldwin, a member of the Republican wing, in the manuscript division of the Minnesota Historical Society. Of the other more recent accounts, that in Hall, *Observations*, pp. 14-23, is entertaining, and those in Folwell, *Minnesota*, pp. 135-41, and in *Minn. in Three Cen.*, 3:36-56, are very readable. If the account which is here given is, on the whole, no more satisfactory than others, the author can only say that where the participants in the proceedings are themselves so utterly unable to agree as to the actual occurrences, it must be an almost insuperable task for anyone else to give a perfectly accurate and just relation of what happened.

[48] *Dem. Deb.*, p. 79.

the credentials had been acquired in ways which were open to question, they were prepared to stand upon the right of every holder of a certificate to take part in the preliminary organization. This the Democrats would not have agreed to, since it meant that they would have no opportunity to win the contests which they intended to bring against four of the delegates from the St. Anthony district and one from Houston county. It is not surprising, therefore, that the Republicans should have appeared a little more righteous in their actions during these first three days than did their opponents. It is now, of course, too late to pass judgment upon the events of those days and there is little to be gained by so doing, yet it seems clear that if the Republicans had adjourned with the Democrats on the first day, thus recognizing the organization under Mr. Chase and even if that organization had refused to honor the credentials of five of the Republican delegates, the Republicans would still have had a majority in the early days of the convention and would have been able to regain control of the organization after the first day. They refused, however, from the outset to recognize any validity in the actions of the Democrats on that day.

Looking at the whole proceedings, it would appear that the constitutional convention of Minnesota never had a real meeting as a whole. It is true that for a minute or more about fifteen minutes to 12 on July 13, the greater number of the delegates of both parties were in the same room. However, their minds never met and they never agreed upon the same organization. From what we can gather from the fifteen or twenty almost contemporary accounts, the Republicans formed one group in the convention hall who recognized only what was being done by North and Galbraith to bring about an organization. The Democrats formed an almost entirely separate group whose eyes were upon Mr. Chase and whose ears were turned to hear one motion and one only, and that was Mr. Gorman's motion to adjourn. It appears that these two groups did somewhat overlap at the fringes, and that some of the Republicans in their confusion at the suddenness of the events did actually vote on Gorman's motion to adjourn cannot be doubted, but that this bound them to a continued adherence to the Democratic organization of the convention is absurd upon the face of it. Informality in procedure can and should be overlooked.[49]

[49] The principal contention of the Democrats was that the adjournment of the convention, pronounced by Mr. Chase, was absolutely binding upon everyone in the room, and that nothing could be done legally by "the convention" until the regular hour next day. There is an interesting decision by the supreme judicial court of Massachusetts, handed down in 1910, which is directly upon this point. The president of a city council had declared the council adjourned, and had departed from the hall, but a majority of the members remained, reorganized, and went on with the business. In this case the court held the action of the majority entirely lawful. Pevey *v.* Aylward, 205 *Mass.* 102; 91 *N. E.* 315; (1910). Among other things the court said: "The president's declaration of adjournment had no effect to bring the meeting to an end when the vote declared was promptly doubted. The meeting continued without being adjourned, and took action which was equivalent to a decision that the motion to adjourn was not carried."

It is necessary to say a few words concerning the qualifications of the delegates in the convention. The Republicans believed from the start that their Democratic opponents were violating the laws in a number of particulars in their effort to get a majority of the convention. After the two groups began to meet in their separate conventions, the Republicans took a very consistent and straightforward position with regard to the qualification of members. They gave seats to every delegate who came forward with proper credentials and they allowed these members to keep their seats until some contest was brought against them. On the other hand, they did not go out of their way to pass upon the qualifications of men who had not presented their credentials to the Republican convention but had presented them to the other wing. Thus some of the most important questions of eligibility were left undecided.[50]

One of the points at issue involved the right of the Pembina delegation to sit in the constitutional convention. The enabling act provided "that the inhabitants of that portion of the territory of Minnesota" which is embraced within the proposed state limits were to have the right to form for themselves a constitution and state government and further "that on the first Monday in June next [1857] the legal voters in each representative district, then existing within the limits of the proposed state, are hereby authorized to elect two delegates for each representative to which said district may be entitled according to the apportionment of representatives to the territorial legislature." The Republicans insisted that in view of the fact that practically all the population of the Pembina district lay outside of the proposed state limits, it should not be entitled to full representation in the convention.[51] The territorial legislature, however, enacted that "every council district in this territory" should have the right to elect delegates to the convention and it was impossible for the Republicans to get a reapportionment from the legislature.[52] There can be no doubt that the Democrats in the legislative assembly played politics and nothing but politics when they refused to make the territorial act for the constitutional convention conform to the terms of the enabling act. The Democrats knew that they were sure of the six delegates from the Pembina country and they did not intend to sacrifice this advantage in advance. But the Republicans further asserted that not only did the territorial act violate the enabling act in that it allowed all voters in the territory to participate in the elections, but they also alleged that the votes cast for the Pembina delegation were cast very largely by persons living outside the proposed state, and that there were very few even of these

[50] *Rep. Deb.*, pp. 53-64, 66.
[51] *Ibid.*, pp. 300-2; *Dem. Deb.*, pp. 47-50; *Pioneer and Democrat*, July 12, 1857.
[52] See p. 66, note 84.

votes.[53] Indeed, one Republican made the charge that there had been no election whatever in the Pembina district, and another report was published that only eleven votes all told had been cast in the whole district for delegates to the constitutional convention.[54] Five of these, it is alleged, were cast by men living west of the Red river who journeyed to the eastern side of the river on the day of the election for the purpose of casting their votes.

Another charge which the Republicans made has some substance also. They insisted that no federal office-holder could take his seat in, or be eligible to, the constitutional convention. In the enabling act it was provided that the election of delegates should be "held and conducted, and the returns made, in all respects in conformity with the laws of said territory regulating the election of representatives."[55] Under the organic act of the territory which was the fundamental law regulating elections to the territorial legislature, it was provided that "no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly."[56] Construing these two together, the Republicans averred the conclusion would have to be reached that federal office-holders could not be elected delegates.

The Republicans also made objection to at least one Democratic delegate. Mr. J. P. Wilson of Pembina, on the ground that he did not have a local residence in the district from which he was elected.[57] They assumed in this case also that the provisions of the organic act relative to the qualifications of members of the territorial council and house of representatives applied to delegates to the constitutional convention. Section 4 of the organic act provided that "the members of the council and of the House of Representatives shall reside in and be inhabitants of the district for which they may be elected respectively." It is alleged in Mr. Wilson's case that he was and always had been a resident of Minneapolis. The St. Paul *Times*, which was not always reliable, even went so far as to say that he had never been near Pembina in his life.[58]

In connection with the charges which the Republicans made in a general way against the qualifications of some of the Democratic delegates, it is interesting to observe the terms of the act of the territorial legislature which provided for the payment of the expenses of the convention. According to this act, the qualifications of delegates to the constitutional convention were to be "the same as the qualifications for members of the House of Representatives of the legislative assembly."[59] Admitting that the act was valid,

[53] *Rep. Deb.*, p. 301.
[54] *Ibid.*, pp. 301-2.
[55] Enabling act, sec. 3.
[56] Organic act, sec. 8.
[57] *Rep. Deb.*, p. 301.
[58] *Ibid.*
[59] *Terr. Sess. Laws*, extra sess., 1857, ch. 99, sec. 6.

though even the Republicans did not assert that it was, there can be no question that the Republicans had grounds for objecting to the seating of federal office-holders and non-residents in the convention.[60] The question arises, however, whether the act had any validity whatever. Certainly the Republicans themselves did not acknowledge the legality of that section which permitted delegates to be elected from the entire territory rather than from within the bounds of the proposed state.

But if the territorial act was invalid, then the question arises as to whether the enabling act itself forbade non-residents and office-holders under the federal government from being elected to seats in the convention. The only provision of the enabling act which can be construed in this way is that quoted above relative to the holding of the June 1 election.[61] The Democrats contended that this provision related solely and exclusively to the method of conducting the election. The Republicans insisted that it had a broader meaning, and that it laid down the rules also as to what persons were eligible to election. It is now too late to pass upon this question.

The Republicans remained in session throughout the day on Monday, July 13. The next morning at nine o'clock they repaired again to the hall of the house of representatives to enter upon their deliberations.[62] They continued occupied throughout the morning and about twelve o'clock were disturbed by the appearance of Secretary Chase at the entrance to the hall.[63] He demanded possession of the hall "for the use of the constitutional convention." President Balcombe of the Republican wing replied that that body was already in possession of the hall and he refused to give it up to Mr. Chase. Thereupon Chase withdrew and turning to the Democratic group who had followed him up to the door, he is reported to have said "The hall to which the delegates adjourned yesterday is now occupied by a meeting of the citizens of the territory who refuse to give possession to the constitutional convention." The omnipresent Mr. Gorman thereupon moved that "the convention adjourn to the council chamber."[64] This was the smaller room of the two in which the territorial legislature had held its meetings and was located in the west wing of the capitol building. It was to this room that the Democrats then withdrew and from that time until the end of the convention, the two groups continued to meet separately.

The old capitol, in which these meetings were held for a period of over forty days, was destroyed by fire in 1881. It appears, however, that the building was small and not too well constructed. When ex-Governor Gorman grew excited one day in his denunciation of the Republican wing of the convention, it appears that his words could be heard by the body sitting at the

[60] See pp. 67-68.
[61] Enabling act, sec. 3.
[62] *Rep. Deb.*, p. 27.
[63] *Ibid.*, p. 28; *Dem. Deb.*, pp. 3-4.
[64] *Ibid.*, p. 4.

opposite end of the building.[65] Clearly they were not separated from each other by any great distance. Furthermore, throughout the greater part of this period the conventions met daily at the same hours morning and afternoon and it must have been necessary for the members to have rubbed elbows with each other very many times as they came and went through the same entrance. That the proceedings must have become very painful to them at times cannot be doubted but it appears that none of them ever took a light or humorous view of the situation. It was only years afterward that several of the members had reached that point of mellowness where they could look upon the whole proceeding as a farce.[66] During those hot days of July and August, 1857, both bodies maintained their positions with great stiffness. Each claimed to be the only legitimate constitutional convention and each denounced the other for being responsible for the split that had occurred. Individual members maintained friendly relations with each other. There were no blows exchanged and there is even some evidence that they held casual intercourse from time to time with reference to the procedure of the respective conventions. Officially, however, even to the end, each body refused to give any recognition to the other. It was this fact which made compromise so difficult.

[65] The following is an extract from a letter by B. E. Messer, who sat in the Republican wing of the convention, to John H. Stevens, dated July 23, 1857: "The storm is not over. At this moment I hear the thunder from the Council Chamber. Gorman is and has been speaking for the last hour and more in the most excited manner, most of which so far as I have heard is a tissue of falsehoods. But let them do their worst we trust the people will e'er [ere] long be undeceived and put in possession [of] the *facts*." *Stevens Papers*, Minnesota Historical Society.

[66] Flandrau, *Hist. of Minn.*, 1900 ed., p. 112. Folwell speaks of it as a "roaring farce." *Minn. Hist. Col.*, 15:403.

CHAPTER V

THE CONVENTIONS AND THE COMPROMISE

1. THE MEMBERSHIP OF THE CONVENTIONS. It is commonly believed that the members of the Republican wing of the convention were younger and less experienced than the Democrats, and this is to some degree true.[1] There were, however, other noteworthy differences between the conventions in the matter of personnel which the histories do not mention.

In the first place, it is fair to say that most of the Republicans who had seats in the convention were late-comers to the territory.[2] Very many of them seem to have been immigrants of the years 1855 and 1856. The Democratic wing, on the other hand, had a larger number of members who had cast their lot with Minnesota in the earlier territorial days. It is also interesting to notice that the conventions differed in respect to the states from which the members had been drawn. Of the Republicans, forty-four per cent or nearly half had been born in New England and the majority of these seem to have come to Minnesota directly from the states of their nativity. Of the Democrats only twenty-three per cent claimed New England as their home. About an equal number of each convention came from the Middle Atlantic states, to be exact, thirty-one per cent of the Republicans and thirty-four per cent of the Democrats. On the other hand, only eight per cent of the Republicans had been born in the states formed from the Northwest territory, while twenty-three per cent of the Democrats had come from the same group. About an equal number of each convention were foreigners by birth, thirteen per cent of the Republicans, and twelve per cent of the Democrats.

In age there was no great difference between the members of the two groups. The average age for the Republicans was thirty-six and two-tenths years, for the Democrats thirty-seven and nine-tenths. The youngest Republican was twenty-three years old and the oldest was fifty-four; the youngest Democrat was twenty-six and the oldest was fifty-three. Certainly these differences are not of such importance that they could have had great influence upon the work of the two groups.

In occupations and interests, however, there seems to have been a marked dissimilarity. A number of the Democratic group were public officials, Indian agents, and traders with the Indians. There was apparently none such among

[1] Folwell, *Minnesota*, p. 140.

[2] The following paragraphs must be read as embodying tentative deductions rather than final conclusions, since all the important facts are not to be found in the available records. A table of biographical information printed at the beginning of the Republican debates proved to be of great value, since it enabled the author to get some small bits of information about each of the Republican members. The figures concerning the Democratic members are based upon a knowledge of the biographies of only thirty-five of their number; as to one third of the whole number of Democratic delegates nothing of importance could be learned.

the Republicans. The Republicans, on the other hand, contained a much larger group of farmers and small merchants and millers, and there were also four men among the Republicans who claimed to be ministers and three others at least who had been trained for the ministry. The Democrats did not boast a single minister in their ranks.

In experience in public affairs the Democratic group had a great advantage over their rivals, at least as concerns the affairs of Minnesota. The Republicans, being recent immigrants, had had very little to say. It is perhaps not too conservative to say that if county, town, and municipal offices be excepted, not a dozen members in the Republican wing had held any public position. Their inexperience was soon to show itself in the work of their convention. From this point of view the Democratic members were a very different group of men. Among them sat ex-Governor Gorman, who had just resigned, Henry H. Sibley, who had been delegate to Congress for four years, Lafayette Emmett, the attorney general for the territory, a former territorial treasurer, the secretary of the territory, several territorial judges, an Indian agent or two, and at least a dozen who had sat one or more terms in the territorial legislature.

2. THE PROCEDURE OF THE REPUBLICAN CONVENTION. With the exception of a few days, the Republicans held two sessions daily, one beginning at nine in the morning and running on into the noon hour and the other beginning at two-thirty in the afternoon and continuing until after five.[3] The Reverend E. D. Neill, the historian of Minnesota, acted as chaplain for the Republican wing, opening each morning session with prayer. The Republican attendance was very good. It appears that on only one occasion was it necessary to discontinue business for lack of a quorum.

Furthermore, the Republicans proceeded at once to business. By the terms of the enabling act it was provided that the first business of the convention was to "determine, by a vote, whether it is the wish of the people of the proposed state to be admitted into the Union at that time."[4] This business had to be done before the convention could proceed to draft a constitution. On the very first day, after the members had been sworn in and officers had been chosen, the Republicans proceeded to the consideration of several different resolutions designed to express the wish of the people to be organized as a state.[5] Since there was still some hope that the Democrats would join them in their deliberations, and as they did not wish to appoint committees until this matter was decided, they passed a resolution on Friday the 17th postponing the appointment of committees until Monday, July 20.[6]

[3] For a typical day, see *Rep. Deb.*, pp. 307, 325, 336.
[4] Enabling act, sec. 3.
[5] *Rep. Deb.*, pp. 11-26.
[6] *Ibid.*, p. 64.

This day came, but the Democrats still continued obstinately by themselves. The committees were, therefore, appointed to prepare drafts of the various articles of the constitution and the work began.[7] The very next day the committee on preamble and bill of rights presented its report.[8] During July 21, 22, and 23 there was but one daily session and that in the morning, in order to permit the committees to prepare their reports. On July 24 the afternoon sessions were resumed and from that time until the end, the Republicans applied themselves assiduously to their task.

The discussions in the Republican convention gave evidence of a high order of intelligence among the delegates but showed at the same time that the members had less grasp of the problems of state government as well as of methods of parliamentary procedure than had the Democrats. They did a great deal of their business in committee of the whole and in convention and relatively less in the separate committees. One reason for this was the fact that they had created too many committees and had permitted them to overlap upon each other's spheres and to come into conflict with each other. This process was wasteful and disorderly and caused considerable bitterness. Two committees covering somewhat the same field would bring in different reports and propositions. Some reports had to be rejected and others were seriously modified.[9] It was apparent throughout that the Republican members refused to be led and that each man insisted upon having his voice heard in connection with almost every proposition. Possibly this was due in part to the fact that the Republicans did not have as many and as outstanding leaders as did the Democrats.

More than their opponents also the Republicans exhibited traits of radicalism and of idealistic impracticality. A number of things which they proposed were designed to bring about a more democratic form of government than existed at that time in any state. They were great believers, for example, in the popular referendum and entertained a proposition to permit the legislature to refer any measure at will to the people.[10] A number of them were sticklers for the ideal of a brief constitution. Mr. Mills brought in a resolution to the effect "that the object of a constitution is to organize a government, prescribing the nature and extent of the powers of the several departments thereof; and that to engraft any legislative enactment thereon would be anti-Republican. Further, that a bill of rights should only be declaratory of general fundamental principles."[11] There can be no question as to the soundness of the proposition, but when it came to writing the constitutional provisions themselves, the members had so many different propositions which they desired to have included that the net result, had all the

[7] *Ibid.*, p. 68.
[8] *Ibid.*, pp. 78-80.
[9] *Ibid.*, pp. 89, 91-92, 96, 98, 100-1, 106-7, 111, etc.
[10] *Ibid.*, pp. 86, 204-5.
[11] *Ibid.*, pp. 152, 168. See also pp. 260, 273.

provisions been put together, would have been a longer document than the Democrats produced.[12] Another phase of the Republican procedure, differentiating it somewhat from the Democratic, was the fact that some of the members seemed entirely irreconcilable and incapable of compromise. The question of boundaries for the state and that of negro suffrage and various other matters were brought up again and again after they were supposed to have been settled.

3. THE PROCEDURE OF THE DEMOCRATIC CONVENTION. The Democrats were unable to proceed at once to the business of a constitutional convention. There was a delay of many days before they could proceed to their work. The actual difficulty was that they had, even on paper, only fifty-four members and they needed somehow to recruit one more member before they could claim to have a majority of the convention. In the meantime certain repairs had to be made in the council chamber and this gave an excuse for adjournment for a number of days.[13]

Finally on the ninth day of the convention the committee on credentials presented its report.[14] It had at this time satisfied itself that fifty-four members entitled to seats in the constitutional convention were prepared to act with the Democratic wing. In addition the committee had "unofficial evidence that Mr. Thomas Armstrong has received a majority of from forty to fifty votes for delegate to this convention from the county of Mower, but owing to the want of regularity in the evidence of that fact, your committee are not at present prepared to report upon the case, but will be prepared to do so as soon as official evidence can be obtained, which will be in a few days." This the committee deemed sufficient to constitute a convention, particularly in view of the fact that the fifty-four or fifty-five delegates whom they could claim represented, as they said, "a majority of 1635 of the popular vote of the territory."

Following the reading of this report, Mr. Flandrau introduced a resolution denouncing the Republican convention as "without the authority of law or of parliamentary usage, and revolutionary in its character."[15] It was this resolution which precipitated a series of speeches running through this and the next three days, the general tenor of which was a denunciation of the Republican organization and a justification of what the Democrats had

[12] Neither convention entirely finished its work; neither gathered all of its conclusions together into one draft. This work has been done for the purpose of this monograph by the author, and as is shown in chapter VI, *infra*, the Republicans had proposed a number of sections over and above what was necessary to make up a constitution.

[13] *Dem. Deb.*, pp. 7, 10, 12.

[14] *Ibid.*, pp. 12-16.

[15] *Ibid.*, pp. 17-18.

done.[16] On the afternoon of Monday, July 27, the twelfth day of the convention, the Democratic wing finally got down to the first business of the convention, namely, that of adopting a resolution expressing the wish of the people to be admitted into the Union. Up to this time nothing had been done by the Democrats except to organize their group and to denounce their opponents. Seventy-seven of the first one hundred pages of the Democratic debates are given over to a consideration of the conduct of the Republicans.

The Democratic wing proceeded to the work of drafting a constitution from July 27 to August 11 with a membership of only fifty-four delegates. On the day last named, the twenty-fifth day of the convention, the committee on credentials finally brought in a report declaring that Mr. Armstrong had actually been elected over Mr. Lyle, who was then seated in the Republican wing, by a majority of thirteen votes.[17] This conclusion had been arrived at by the committee following some entirely *ex parte* proceedings and upon the basis of a charge that there had been illegal votes cast for Mr. Lyle. It is interesting to observe that the Republican convention at no time made any investigations of the various charges of fraudulent voting throughout the territory. Had this subject been opened up by some outside, impartial body, it is not at all unlikely that the Democrats would have lost as many members as they gained and possibly more.[18] Of course the Republicans, who had already taken advantage of the technicalities with reference to the distinction between councillor delegates and representative delegates and who already claimed fifty-nine legal delegates, found no occasion to go into the question of fraudulent voting.

The Democrats had one difficulty which the Republicans did not have to face, and that was difficulty in keeping a quorum present to do business. They kept no full record of attendance and it is difficult to ascertain the exact number who were present from day to day. The Republicans of course charged that this was due to the fact that they did not have as many legally accredited delegates as they claimed and it appears from a study of the votes upon the various propositions that the Democrats did indeed attend very poorly.

One reason for this may be found in the fact that the Democrats did most of their work in committee and put relatively less stress on the procedure of the convention as a whole. They had fewer committees and smaller ones than did the Republicans and they devolved more power upon them. Furthermore, the boundary lines between their several preserves were fairly distinct and there was little conflict among them. Mr. B. E. Messer who sat in the Republican wing, seems to have been correctly informed when he wrote the following words to Mr. John H. Stevens: "The Democrats, it is

[16] *Ibid.*, pp. 18-96.
[17] *Ibid.*, pp. 397-99.
[18] See pp. 73-74.

said, will push their constitution through by perfecting the whole thing in their standing committees, so that when it comes before the convention but little time will be needed to complete the whole. The Democrats will always follow their leaders without a word. I wish the Republicans were as well drilled, but such is not the case."[19] Comparing the volume of the Democratic debates with that which issued from the Republican convention, it appears that there was almost if not quite twice as much debate in the Republican convention upon constitutional questions as there was in the Democratic. The whole proceedings of the Republicans ran to nearly if not over 450,000 words, whereas the Democratic proceedings are approximately 250,000 to 300,000 words; but a larger part of the Democratic than the Republican proceedings is devoted to matters other than constitutional. This would seem to bear out the general impression gained from a reading of the debates that the Democratic convention made relatively less change in the reports of the committees than did the Republicans.

4. THE MOVEMENT FOR A COMPROMISE. Within the territory the proceedings of the first day which resulted in a division of the convention into two bodies were very well understood, and the first response of the newspapers and apparently also of the members of the respective parties took the form of commendation of what had been done. Each group received assurances from their own partisans of support to the bitter end. No sooner, however, had the news reached the east than the leaders on both sides began to see that a mistake had been made. The occurrences in Minnesota looked entirely too much like what had been happening in Kansas. The more level-headed and conservative leaders of both parties in the east and south seem to have deprecated the course which events had taken in Minnesota. Strong pressure was soon brought to bear upon the citizens of Minnesota and particularly upon the conventions, to bring about a solution of the difficulties of the convention. Certain members apparently feared that there would be anarchy in Minnesota as there had been farther south. Gorman pointed out that "the split in the convention may affect the capitalists of the territory disadvantageously. It is feared that the credit of the territory may be injured."[20] "It is not true, Mr. President," said Sherburne in the Democratic convention, "that we are in a state of anarchy. It is not true that there is ill feeling or ill blood between the members of the respective conventions: nothing but a feeling of kindness exists. Everyone deprecates the position in which we find ourselves. Every man I meet in the street uses the same language. And this feeling is not confined to the territory; men in the east who

[19] *Stevens Papers*, Minnesota Historical Society, letter of Messer to Stevens, July 31, 1857.
[20] *Dem. Deb.*, p. 357. See also letter from John Elias Warren, in *Pioneer and Democrat*, Aug. 9, 1857.

are doing business here—men who are interested in our welfare, and who have the means of knowing the public sentiment from day to day, tell us that the people misunderstand the position in which we are placed, and that it is necessary, for the purpose of making ourselves understood, that we should adopt some measure by which we should show to the world that we are men and not children, and that we can meet together according to parliamentary usage."[21]

It was not long, therefore, before there came to be talk in the territory of some compromise which would bring the two conventions together. Speaking in the Democratic convention on August 8, one member said he had heard of such a movement a week before.[22] We have Gorman's word on the same day that he had discussed the matter with "Judge Mantor" of the Republican wing some time before, and it is evident that many had become convinced early in August that something should be done to settle the differences of the two conventions.[23] It was especially undesirable to have two constitutions submitted to the people on separate days. It was agreed that it would be somewhat better to have two submitted on the same day, and best of all to have a compromise by which the two conventions could submit the same constitution to the people at a single election.

On the morning of Saturday, August 8, Mr. Sherburne introduced into the Democratic wing the compromise resolution which was ultimately the cause of bringing about an understanding.[24] He asserted that he had thought of the project of submitting such a resolution for the first time the evening before and while he was alone.[25] He had not discussed the matter, he said, with any person and he took full personal responsibility for what he did. His resolution stated that

> Whereas, the persons who were elected by the people of this territory to represent them in a constitutional convention, having met at this capitol on the day appointed by law for such meeting, and having disagreed upon some immaterial questions which arose in the course of forming a temporary organization, separated and formed two distinct conventions, in numbers nearly equal, and are now forming two separate and distinct constitutions, to be presented to the people: and,
>
> Whereas, proceedings so extraordinary in their character will have a tendency to injure the reputation of our people—to lessen the confidence of the other states in our integrity, stability and patriotism, and place us in a false position before the world: therefore,
>
> Resolved, That a committee of five be appointed by the president of this convention to confer with a committee of an equal number (if appointed) of the duly elected members of that portion of them who are acting separately from us; and that it shall be the duty of such committee to consider and agree upon, if practicable, and report some plan by which the two bodies can unite upon a single constitution to be submitted to the people.

[21] *Dem. Deb.*, pp. 350-51.
[22] *Ibid.*, p. 358.
[23] *Ibid.*, p. 357.
[24] *Ibid.*, p. 350.
[25] *Ibid.*, p. 360.

When the resolution had been read Sherburne spoke very briefly in explanation of his purpose.[26] He had no doubt, he said, that the body with which he was serving was the constitutional convention. This, it will be recalled, was at a time when the Democrats counted only fifty-four members, and three days before they mustered in the fifty-fifth. Since the Democrats were in the right, he argued, they could afford to be magnanimous and to extend the olive branch to the illegitimate body sitting at the other end of the capitol. His object was to set the territory and the future state right in the eyes of the outside world.

He had no sooner explained the object of his resolution than the storm broke upon his head. Delegates Setzer, Meeker, Streeter, Stacy, Baker, and Butler took turns in denouncing the proposition.[27] It looked to them like a complete surrender of the Democratic position, a bending of the knee to the Republican organization. Setzer closed his second speech against the proposition with these words: "If gentlemen here determine to appoint a committee to go and beg other men to acknowledge us, I want no further connection with the constitutional convention." Several members responded, "Nor I! Nor I!"[28] Delegates A. E. Ames, Gilman, Warner, and Brown appeared not entirely satisfied with the wording of the resolution, but favored its purpose.[29] Ex-Governor Gorman was, besides Sherburne, the staunchest supporter of the resolution as offered. He had discussed the matter, he said, with the merchants and other substantial men of the city, and he knew that they were afraid that what was being done was injurious to the territory.[30] This business took up the entire morning session. At ten-thirty the resolution was indefinitely postponed by a vote of 23 to 19 and the convention adjourned until Monday.[31]

It would appear that over Sunday the Republicans held conferences as to their course of procedure. Just at the close of the session on Monday morning, August 10, Mr. Galbraith submitted to the Republican convention the identical resolution which Sherburne had submitted to the Democrats on the Saturday before, with one exception.[32] Galbraith's resolution omitted the word "immaterial" before the words "questions which arose in the course of forming a temporary organization." This was indeed an unfortunate word in Sherburne's resolution and would better have been omitted by him too. When this resolution had been read to the Republicans, there was, according to the record, not a word of debate or discussion, and the resolution was unanimously adopted.[33] At this point the Republicans stood

[26] *Dem. Deb.*, pp. 350-51.
[27] *Ibid.*, pp. 352-58.
[28] *Ibid.*, p. 358.
[29] *Ibid.*, pp. 351-54, 358-59.
[30] *Ibid.*, pp. 356, 357.
[31] *Ibid.*, p. 361.
[32] *Rep. Deb.*, p. 410.
[33] *Ibid.*, p. 411.

committed to compromise upon a basis outlined by one of the leading Democrats, whereas the Democratic organization stood opposed even to this plan. President Balcombe of the Republican wing immediately nominated Delegates Galbraith, McClure, Stannard, Aldrich, and Wilson as this committee.

In the meantime it appears that there had begun some devious negotiations between the two bodies. In a report which Gorman presented to the Democratic wing some days later, it appears that after the defeat of the resolution in the Democratic wing on August 8, a Democratic caucus had been held to consider ways of approaching the Republicans unofficially.[34] The vote of the Democratic convention he construed as an assertion that the Democrats as a constitutional convention could not recognize the existence of the other convention. They were nevertheless willing to bring about a compromise behind the scenes and unofficially. They sent word to Mr. Galbraith of their desire for such caucus negotiations and set a time and place for meeting with an equal number of Republicans. There they waited for two hours or more, but no Republicans appeared.[35] This was apparently on Tuesday. The Republicans, meanwhile, were holding a caucus of their own in which they apparently decided to send a communication directly from the Republican convention to the Democratic enclosing the resolution which they had adopted on Monday. This plan was accordingly carried out on Wednesday.[36] Once the communication had been placed in President Sibley's hands there was nothing for him to do but appoint a committee to consider the communication.[37] This committee was headed by Gorman and included also Brown, Holcombe, Setzer, and Kingsbury. A part of the Democratic report is given above. The Democratic committee expressed itself as very much injured at the treatment accorded them by the Republicans in refusing to enter upon secret negotiations with them. Gorman's report continued with an assertion that the Democratic committee was the only committee of conference and conciliation as yet appointed.

> The Republicans, to our knowledge, have neither appointed a committee as a caucus, or in any other capacity. We are ready to meet any committee of the Republican party who have been elected to the convention, *no matter how appointed*, if they propose to deliberate with us, as such committee, for the welfare of our future state, and to avert any threatened danger to our public or private tranquillity. ... We have the welfare of our territory and future state at heart. We earnestly hope that no future calamity may befal our people. But we feel that we are the only rightful constitutional convention, and we will not officially consent to recognize any other, but all can be easily reconciled if the Republicans will meet our caucus committee, and when met, all amicable arrangements made and concluded, be reported to each party in caucus, and then

[34] *Dem. Deb.*, pp. 480-82.
[35] *Ibid.*, p. 481.
[36] *Dem. Deb.*, pp. 421-22. The *Pioneer and Democrat* denounced the Republican resolutions as insulting to the Democrats. Aug. 14, 15, 1857.
[37] *Dem. Deb.*, p. 422.

acted upon calmly, and in that statesman-like spirit which we hope and trust may characterize the deliberations of us all. If each party act as the convention, the most perfect equality must exist, each must be recognized by the other as a constitutional convention which necessarily involves a contradiction of the position taken by each. Therefore, if this is not done, we are acting, at best, but as a caucus.[38]

The report of the committee closed with a resolution "That this constitutional convention cannot receive any communication of any body of men assuming to be the constitutional convention of this territory, by which the legal character of this convention can be called in question." This resolution was unanimously adopted by the convention.[39] It is very clear that the Republicans had stolen a march upon the Democrats in adopting Sherburne's resolution for compromise. Had the Democrats adopted it at the time it was offered to them, their position would in no wise have been compromised.

The movement for a compromise was now apparently blocked. So far as direct negotiations between the two conventions were concerned, they seemed out of the question after the Democrats had twice decisively defeated them. The only possible avenue was that which Gorman's report pointed out, namely, the unofficial caucus negotiations, which he so dearly cherished. One of the difficulties up to this point seems to have been that Secretary Babcock in communicating the Republican resolutions to the Democratic convention, had addressed Mr. Sibley as "presiding officer of that portion of the delegates to the constitutional convention assembled in the council chamber of this capitol" and that he had signed himself as secretary of "the constitutional convention assembled in the hall of the House of Representatives."[40] The resolution also which the Republicans adopted instructing the secretary to transmit the original compromise resolutions used similar language.[41]

Gorman's report was submitted on Friday, August 14. Just what happened in the next few days is not entirely clear. That there must have been some caucus negotiations between the two groups cannot be doubted. On Tuesday morning, August 18, the first business before the Democratic convention was the reading of a communication from Balcombe to Sibley.[42] This communication, dated also August 18, read as follows:

St. Paul, August 18, 1857.

Hon. H. H. Sibley, President.—SIR: The convention over which I preside did, upon the 18th day of August, adopt a resolution for the appointment of a committee to confer with a similar committee of the convention over which you preside to consider and agree upon, if practicable, and report some plan by which the two bodies can unite upon a single constitution to be submitted to the people.

In pursuance of said resolution, I have appointed Messrs. Galbraith, McClure, Aldrich, Stannard, and Wilson, such committee, and would respectfully ask the appointment of a similar committee on the part of the convention over which you preside.

Yours most respectfully,

ST. A. D. BALCOMBE, President.

[38] *Dem. Deb.*, pp. 480-82.
[39] *Ibid.*, p. 482.
[40] *Ibid.*, pp. 421, 422.
[41] *Rep. Deb.*, p. 410; *Dem. Deb.*, p. 422.
[42] *Ibid.*, p. 521.

What authority Balcombe had for the sending of this communication is not clear, nor is there anything in the Republican proceedings for August 18 which corresponds to the wording of the resolution he mentions. The Sherburne resolutions adopted on August 10 would probably have given warrant for the communication but in that case the date in the body of the letter must be wrong. The only other explanation possible is that the Republicans in caucus and not as a convention gave Balcombe the authority of which he speaks. The committee members named are identical with those who were appointed following the adoption of the Sherburne resolution on August 10.[43]

Following the reading of this communication to the Democratic convention, and on motion of Mr. Gorman, a recess of one hour was taken.[44] The Democrats apparently went into caucus once more to decide on a plan of action. When the convention reassembled, Mr. A. E. Ames offered the following resolution:

> Resolved, That the president of this convention is hereby authorized to appoint a committee of five, to confer with a committee appointed by the convention, holding sessions in the representative hall of this capitol, upon the subject designated in the communication just received, and that the president is hereby authorized to communicate the action of this, to the convention over which the Hon. Mr. Balcombe presides.

Mr. Gorman immediately demanded the previous question upon the adoption of the resolution.[45] Mr. Setzer and Mr. Baker attempted to block action, but in vain. The vote was taken and thirty-three favored the resolution as against seven who opposed.[46] The irreconcilable seven included delegates Baker, Barrett, Day, Setzer, Taylor, Tenvoorde, and Wait, of whom Baker, Taylor, and Wait subsequently failed to sign the compromise constitution. The Democratic convention had at last gone on record as recognizing the convention at the other end of the capitol but it will be observed that the resolution was so worded as not to recognize the Republicans as the constitutional convention. President Sibley soon after announced the appointment of delegates Gorman, Brown, Holcombe, Sherburne, and Kingsbury as the Democratic members of the committee of compromise.[47]

Certain of the Democrats were still entirely opposed to what had been done. On August 21 a resolution was introduced to require the conference committee to report "at one o'clock p. m." with no date given.[48] This resolution was adopted. As this occurred on a Friday afternoon after one o'clock and as it was not customary for the Democrats to hold Saturday afternoon sessions, it is difficult to see any purpose in the resolution except to attack the whole compromise idea. On August 27 when the compromise committee

[43] Cf. *Rep. Deb.*, p. 411.
[44] *Dem. Deb.*, p. 521.
[45] *Ibid.*
[46] *Ibid.*, p. 523.
[47] *Ibid.*
[48] *Dem. Deb.*, pp. 557-58.

was just about to report, Setzer made a motion to discharge the committee.[49] The motion was laid on the table. At four o'clock the same afternoon Sherburne appeared in his seat in the council chamber to report to the Democratic wing the success of the compromise committee in agreeing upon one constitution.[50]

5. THE WORK OF THE CONFERENCE COMMITTEE. The committee held its first meeting in the office of the secretary of the territory on the afternoon of August 18.[51] The mere fact of its meeting constituted a long step toward compromise, but there were hard days yet ahead. Many obstacles had to be overcome and some of them seemed insuperable. Several of the Republican members of the committee later charged that it was Gorman who was the principal trouble-maker, that he was determined that the two conventions should not agree upon one constitution.[52] Gorman, on the other hand, asserted that the Republican committee members, particularly Thomas Wilson, were guilty of a disposition to retard business and to make it more difficult.[53] That there was great personal bitterness between the two men named cannot be denied, nor is it possible to believe that they kept their good humor under trying circumstances as well as the other eight members.

The committee proceeded with its work for nearly a week without serious strife. From day to day they received from the two conventions engrossed reports of the new decisions reached as to various articles and sections of the proposed constitution. With these materials they worked, harmonizing diverse proposals where they could, and selecting the better of two different provisions when they could not use both. Sometimes they added new clauses, and in several cases they left out things already agreed upon in both conventions. How far the work of fitting the different clauses into one constitution had gone at the end of the first week it is not possible to say. Galbraith said that the work of preparing the final report of the compromise committee to the conventions had "only fairly commenced" on the morning of the 26th.[54] This was the day after the incident narrated below, and one day before the report was submitted to the Democratic convention.

On the 24th the compromise committee reached a crisis in its labors. The *Pioneer and Democrat* carried the information the next morning that "Without separating, we believe, the compromise committees yesterday came to the conclusion that they would be unable to agree on one constitution; and will probably proceed to the preparation of a plan of voting on the [two]

[49] *Dem. Deb.*, pp. 587, 595-96.
[50] *Ibid.*, p. 597; *Pioneer and Democrat*, Aug. 28, 1857.
[51] *Ibid.*, Aug. 19, 1857.
[52] *Rep. Deb.*, pp. 562, 564-65, 573.
[53] *Dem. Deb.*, pp. 587-90.
[54] *Rep. Deb.*, p. 567.

constitution[s] on the same day. 'Nigger suffrage' was the rock the committees split upon."[55] Such was indeed the case, and it is interesting to observe that complete secrecy was not preserved. Day after day the committee had put aside this question, but at last they "arrived at a certain point where this question had to be met directly in the face."[56] When they finally faced it, they could not agree on its solution. "The whole idea of submitting one constitution" was practically given up.[57] In despair the committee proceeded on the 25th to consider ways and means of submitting two constitutions on the same day. The hopelessness of this solution was also soon made apparent.[58] It is a fair inference that they were upon the point of breaking up in total disagreement when there occurred the personal altercation between Wilson and Gorman in the committee room.[59] The effect of this affray, while it was very painful to the participants and called for some bitter newspaper editorials, both Republican and Democratic, was like that of a thunderstorm in clearing the air. It must have suggested to the remaining members of the committee the horrid spectacle of Minnesota given over to a whole series of physical encounters and possibly even to bloodshed if they did not set their house in order and that quickly. It was but a step to border warfare and anarchy.[60] Both parties were trying to void off the charge of ruffianism, so frequently made earlier in the summer. Abroad Minnesota was already being looked down upon because of the conduct of the constitutional conventions. Word was coming in from friends throughout the land that the conservative elements in both parties expected the Democrats and Republicans to agree upon one constitution so as to bring the new state quickly into the Union.[61] And here was the committee on compromise itself, the chosen few who were to come to an agreement, giving themselves over to physical strife. It was unquestionably with a sense of shame and renewed determination that the committee, now relieved of the presence of the two who had engaged in the combat, returned to its arduous labors.[62]

One important question at dispute at this point was whether the separate question of negro suffrage should be submitted to the voters along with the constitution, as had been proposed by the Republicans.[63] The amending clauses proposed by both conventions provided for such difficult processes that the radical Republicans had small hope of getting a constitutional amendment at any later date to bring about negro enfranchisement. It was apparently on August 26 that McClure proposed the following proviso in the article

[55] *Pioneer and Democrat*, Aug. 25, 1857.
[56] *Rep. Deb.*, p. 573.
[57] *Ibid.*, pp. 573-74; *Dem. Deb.*, p. 587.
[58] *Rep. Deb.*, pp. 561-62.
[59] *Ibid.*, pp. 560-65; *Dem. Deb.*, pp. 587-90.
[60] Coggswell scoffed at this idea. *Rep. Deb.*, p. 571.
[61] See pp. 92-93.
[62] *Pioneer and Democrat*, Aug. 27, 1857; *Rep. Deb.*, p. 567.
[63] *Ibid.*, pp. 573-74.

on the elective franchise: "Provided, nevertheless, that nothing in this constitution shall be so construed as to prevent the legislature at any time from passing a law extending the right of suffrage; but that no such law should take effect until it was submitted to a vote of the people and be approved by a majority of the votes cast upon that subject."[64] This was, in effect, a proposal that there be a separate and especially easy method of amending the article on the elective franchise. It was a substitute for the proposal to submit the negro-suffrage question separately along with the constitution.

"When that proposition was submitted," relates Mr. McClure, "my friend Brown, a member of the committee from the other wing, said that that did seem actually democratic, that there could be no objection to it. It was then proposed by him that we should so amend the article upon amendments to the constitution so as to just get what we wanted; and in doing that, Mr. President, we got a great deal more than we would have asked for, and a great deal more than the Democrats probably now think that we did get."[65] He described the amending process formerly under discussion, pointed out its difficulty, and placed in contrast with it the simple amending process which had been adopted as a compromise and substitute. It permitted a single legislature by a simple majority to submit any constitutional amendment to the voters, and it made such amendments effective as a part of the constitution if they were voted for by a majority of the electors voting on the question. This compromise provision constituted the easiest amending process which had been devised up to this time by any state in the Union.[66]

"Now, what did our friends in favor of negro suffrage sacrifice by that?" continued Mr. McClure in his exposition.

> They sacrificed the privilege of submitting to the people, as a separate proposal, at the time of the adoption or rejection of this constitution, the question whether the right of suffrage shall be extended to those in whose veins runs African blood. They know, I know, and everybody knows, that that would have been voted down by an overwhelming majority, and that no vote could have been taken upon it again. When they had once voted, their power would have been exhausted. Then they have simply sacrificed the privilege of giving a minority vote in favor of that proposition; for not one of them will say that it could pass. Every Democrat in the whole country would vote against it, and a large majority of the Republicans would vote against it; hence it could not pass.
>
> Now let us see what our friends upon that side gain by it. Why if they are prudent, . . . they will never propose such an amendment until the public mind is educated up to that idea, that they will be pretty sure that they will get a majority. . . . They have gained this point, then, that whenever they think the question can be passed by the people and they have a majority of the legislature which will propose such an amendment, it can be voted upon, and if it obtains a majority of votes, it becomes a part

[64] *Rep. Deb.*, p. 574.
[65] *Ibid.*
[66] See ch. VIII, *infra*.

and parcel of the constitution. Now that can be done at any time hereafter, . . . It may be that the people may want to extend the right of suffrage to women, to Indians, or to negroes; and under this provision they can extend it to any class they think proper.[67]

It was this compromise, proposed on the 26th by McClure and Brown, which finally cleared the way for agreement upon one constitution. During that day and the next the members of the committee continued with their labors; and on the morning of Friday, the 28th, apparently before the meeting of the conventions at the hour of nine, the committee had another session in which further changes in the draft constitution were made.[68] At four o'clock on the afternoon of the 27th Mr. Sherburne appeared in his seat in the Democratic convention with a report of progress.[69] He said the committee "have been at work as assiduously as they could, for the last twelve hours, in perfecting a constitution to be submitted to the convention . . . only a little mechanical labor is now required to perfect our report."[70] The report, including the sections of the constitution agreed upon, was then read.[71] Early the next morning the Republican convention received the same report.[72]

It appears from what was subsequently said in the conventions that, following the settlement of the negro suffrage question by a compromise on the amending clause, the second great difficulty arose over the schedule provisions for the districting of the state for the first state elections.[73] The Republicans of southern Minnesota were particularly bitter against the discriminations existing in the apportionment of members of the territorial legislature. They intended to change the districts and the apportionment to their own advantage, and they had pledged themselves to their constituents to that end. It was their plan "to carve up this territory in such a manner as to secure two members in congress; and not only that, but to carve it up so that we could secure a majority of the first legislature, and, by so doing, secure two senators in the United States senate—that we might send to the halls of the national legislature men who would represent Republican views and sentiments."[74] The Democrats were equally committed to the scheme of making the districts and the apportionment such that their candidates would the more easily win, and so that they would control the legislature, the judiciary, and the delegation to Congress.

When the conference committee reported its findings to the several conventions, it was attacked very bitterly in both wings for having yielded too much to the other convention in these matters. A glance at the facts will

[67] *Rep. Deb.*, pp. 574-75.
[68] *Dem. Deb.*, pp. 602-3; *Rep. Deb.*, p. 567.
[69] *Dem. Deb.*, p. 597; *Pioneer and Democrat*, Aug. 28, 1857.
[70] *Dem. Deb.*, p. 597.
[71] *Ibid.*, p. 599.
[72] *Rep. Deb.*, pp. 565 ff.
[73] *Dem. Deb.*, pp. 596, 597, 600-13, *passim*; *Rep. Deb.*, pp. 561, 570-80, *passim*.
[74] *Ibid.*, pp. 571-73.

be of some value.[75] The single district plan for electing congressmen was then in vogue. The quota for representatives, fixed in 1850, was in excess of ninety-three thousand population. Additional members were, of course, allowed for major fractions. To be entitled to two representatives in 1857, Minnesota should have had over 140,000 population; to be entitled to three, it should have had in excess of 230,000. Conforming to these general principles, and estimating the population of Minnesota conservatively, the Republicans planned for the election of two congressmen at the first state election, subsequent to the adoption of the constitution, and divided the state into two districts for that purpose, one consisting of the three southern tiers of counties, which contained fully half of the population of Minnesota as revealed a short time later by the federal census, and the other consisting of the remaining counties of the state, including Hennepin, Ramsey, and Washington. This was an entirely fair arrangement, and would have given the Republicans one congressman from the first district, and the Democrats one from the second district. The Democrats, on the other hand, insisted upon the election of three congressmen, for which there was not the least warrant at the time, considering the population of the territory, and provided that they should be elected at large, which was counter to the acts of Congress and the prevailing practice. The reason for this stand was that they were fairly confident that they had a slight majority in Minnesota as a whole, and hoped to be able to elect the entire delegation.

The plans for state legislative districts and the apportionment of members among them are also of interest. The Republican plans were made for a small legislature, the Democratic plans for a larger body. They are not entirely comparable, therefore. On the basis of the census of 1857, which was then being taken, it is clear that the Republican plan would have given the predominantly Democratic counties one fifth less representation than they were entitled to, the Republican counties one fifth more, and the doubtful counties one seventh less than their deserts. The Democratic plan called for giving the Democratic counties one seventh more representation than they were entitled to, the Republican counties one tenth less, and the doubtful counties one tenth less.

The rival proposals for districting for judicial purposes followed similar lines. The Democratic plan provided for five districts, only one of which would go to the Republicans, and this one was so constituted as to include over one third of the state's population. The other four would be almost certain to go Democratic, and three of them, the first, fourth, and fifth together contained less population than the one Republican district. The second district, in southwestern Minnesota, where the Democratic margin of safety

[75] The following statement of facts and inferences has been drawn from a variety of sources, but principally from the debates of the two wings of the convention, the census of 1857, and the constitution finally agreed upon by the conference committee and the conventions.

was small, included over a fourth of the population of Minnesota. The Republican plan called for six districts, of nearly equal population, of which the Democrats would be likely to carry three and the Republicans three.

In the compromise committee the Democrats won a substantial victory over their opponents, though they made some slight concessions. In the matter of electing the first congressmen, the Democratic arrangement for the election of three members from the state at large was adopted. It is difficult to understand why the Republicans should have yielded upon this point, but undoubtedly they over-estimated their strength throughout the proposed state. The legislative apportionment adopted was a compromise between the rival claims and reasonably fair; it gave the Democratic counties slightly more than they could justly claim, the Republican counties exactly what they were entitled to, and the doubtful counties slightly less than their deserts. In making the judicial districts the Republicans gained the form and the Democrats the substance. Six judicial districts were established, as the Republicans had planned, but their boundaries were so drawn that only two, and these the largest, would fall to the Republicans. The other four were almost certain to go Democratic. The disproportions in size were such that the two Republican districts contained over half the population of the state, and therefore more than the four Democratic districts combined. Undoubtedly the Republicans were ignorant of the actual population of their own counties, while the Democrats were suspicious of all Republican claims.

As to other matters agreed upon by the compromise committee to go into the constitution, we cannot do better than quote the "comforting assurances" which Sherburne made to the Democratic convention when he brought in the committee report. His generalizations were a little too sweeping, and in another chapter they can be checked up, but in the main he was correct.[76] He said,

> I will state that every proposition has been adopted substantially, from beginning to end, from our constitution. I do not know of a single change to which any gentleman can reasonably object.

A few minutes later he made a somewhat more detailed statement.

> I wish to say to the convention that the committee have endeavored to keep themselves informed as to the action of both wings of the constitutional convention. While they have endeavored to agree among themselves as to what was proper and right, they have, at the same time, kept themselves informed of what was being done, and have endeavored to conform to the wishes of the two conventions, as far as they could. Now, sir, . . . I do not stand here to give any direction as to the action of the convention; but I do say that there is no such change in the constitution which has passed this convention, as need, in the slightest degree, disturb the equanimity of our friends. There is no change of importance. It is true we have changed phraseology; we have changed sentences; we have sometimes stricken out one word and put in another, for the purpose of compromise; but I undertake to say that no vital principle—no one which a

[76] See ch. VI, *infra*.

Democrat who looks to principle alone would consider as more than cypher, has been sacrificed. Our friends upon the other side—and I give them credit for it—have adopted our articles almost altogether. It was magnanimous in them—I do not say it tauntingly. I repeat, sir, that there is nothing in this report which need frighten any member of this convention."[77]

6. THE COMPROMISE CONSTITUTION IN THE CONVENTIONS. The reception of the report in the two conventions was not cordial. To both parties it was a bitter thing to be compelled to accept compromise where they had hoped for complete victory. The Republicans acquiesced with somewhat better grace than did their opponents. Galbraith, in submitting the committee report, assured his colleagues that there were things in the constitution reported "which no member of our committee approves," but that it was probably "as good a constitution as we could get under the circumstances." He was convinced, and the committee was convinced, "that the adoption of one constitution is paramount to all other questions, in order to avoid a prospective state of anarchy." He hoped that bygones would be bygones.[78] Coggswell made an acrimonious attack upon the report, dwelling especially upon the sacrifices which had been made in the matter of negro suffrage and the apportionment. To this his former law-partner, McClure, made a very reasonable response.[79] Wilson protested against the arrangement of judicial districts, the arrangement for electing members of Congress, and the location of the university.[80] McKune saw in the report "the sacrifice of almost everything" for which he had worked.[81] There were other protestants. On the other hand several expressed genuine approval of what had been done.[82] Not a single amendment to the report was suggested. Protesting to the end, Coggswell saw that his opposition would be of no avail. "This is a dose that has got to go down," he said, "and we might as well shut our eyes and open our mouth and take it." It went down. The final vote was forty-two to eight, only Billings, Coggswell, Davis, Gerrish, Hanson, Holley, McKune, and Robbins voting in the negative.[83]

In the Democratic convention the struggle was much more bitter. No sooner had the preliminary report been read on the afternoon of August 27 than an amendment was offered to the section establishing judicial districts.[84] Early the next morning the conference committee corrected the judicial districts by making Ramsey county a separate district.[85] This satisfied the

[77] *Dem. Deb.*, pp. 597, 599.
[78] *Rep. Dem.*, p. 568.
[79] *Ibid.*, pp. 570-77.
[80] *Ibid.*, p. 578.
[81] *Ibid.*, p. 580.
[82] See the remarks of Secombe, North, Messer, and Mantor, *ibid.*, pp. 578-79.
[83] *Ibid.*, p. 582.
[84] *Dem. Deb.*, p. 600.
[85] *Ibid.*, pp. 602-3.

proposer of the first amendment, but another delegate immediately offered another.[86] Gorman acted splendidly in this crisis. He had had no part in the final compromise of the committee but he was firmly convinced of the necessity of submitting only one constitution to the voters. "We have reached a crisis in our proceedings," he said. "If the report of the committee of conference is to be amended by this convention, we may safely calculate on sitting here for weeks before we can finish our labors. . If we are to open the door by the adoption of a single amendment to this report, no one can predict when we shall end."[87] The reply to this by one of the irreconcilables was that "We do not want to submit any constitution which is the joint work of the two bodies."[88]

Other amendments were proposed. One member found that foreigners were discriminated against in the article on the elective franchise, because of the longer residence required of them than of citizens.[89] Others found new objections to the judicial districts, and one proposed an amendment to the legislative apportionment. At this point an adjournment was taken until the afternoon for the purposes of "private consultation" in reference to the report.[90] This had its effect in checking the flow of amendments. When the convention reconvened all the amendments were voted down, the previous question was called for on the report, and it was adopted on the afternoon of the 28th by thirty-eight to thirteen.[91] The negative votes included five of the six from the Pembina district, the delegation from which was entirely dissatisfied with the judicial apportionment; and the votes of Baasen who opposed the longer residence requirement for alien voters; and those of Murray and Taylor of St. Paul, and Setzer of Washington county, who were opposed to any compromise.

The latter gentleman had expressed fully the views of the bitter-enders. He replied to Gorman's appeal for adoption of the conference report in the following manner:

> Sir, this committee has followed the doctrine which was laid down by a distinguished gentleman of this convention in Democratic caucus that since the Black Republicans have sacrificed their principles, we can afford to sacrifice the offices. The apportionment adopted by that committee will give nigger worshippers the legislature and two United States senators. The gentleman asks if we cannot sacrifice our individual opinions for the good of the whole. Sir, I am a Democrat for the good of the whole. Gentlemen take a good deal of credit to themselves for having sunk all partizan feeling in this matter. For one, I will not sink my partizan feeling, nor abandon the duty which I owe to the country, for the preservation of the union, by pandering to any party who are trying to dissolve the union. This is the position which I take and this is the highest good which I contend for. A portion of this convention have contended

[86] *Ibid.*, pp. 603-4.
[87] *Ibid.*
[88] *Ibid.*, p. 604.
[89] *Ibid.*, pp. 604-5, 607-11.
[90] *Ibid.*, pp. 613-14.
[91] *Ibid.*, pp. 614-15.

from the beginning that the true policy of the Democratic party was to submit two constitutions to the people, to make a clear issue before them and to express the fanatical ideas of the men who are assembled in a different convention in this capitol. If we abandon this proposition, we surrender the whole field to them. As I have already remarked, the apportionment laid down in this report increases the population of every Republican county, and cuts down the population of every Democratic county, and that I am not disposed to do for the sake of submitting one constitution. Sir, the Republicans would not have been so ready to yield up their principles and everything they have to stand upon if they were not sure the loaves and fishes would fall to their share. They can afford to sacrifice something for the sake of obtaining the legislature and two United States senators. I say that this camp meeting, as they have been called in the other end of the capitol would never have consented so utterly to subvert all manliness and decency by giving up every position they have taken without compensation. The gentleman has well remarked that we have reached a crisis in our proceedings. We stand upon the brink of a precipice. If the report of this committee is adopted, then farewell Democracy in Minnesota; we ourselves have dug the grave that is to bury us.[92]

The complete answer to this outburst was suggested in the reply made by Mr. B. B. Meeker. It was his understanding that "the apportionment adopted by that committee is almost identically the apportionment agreed upon by this convention, and assented to by the gentleman from Washington."[93] Indeed, the charge that the Republicans had exacted an apportionment favoring their party in return for a sacrifice of all their principles, is quite unfounded. The surprising thing is that the Republicans either knew so little about what they were actually entitled to, or insisted so little upon it, as to consent to an apportionment which favored the Democrats in the election of congressmen, the legislature, and the first six judges of the district courts.

7. CLOSING THE WORK OF THE CONVENTIONS. On Friday and Saturday, August 28 and 29, both conventions were exceedingly busy adding the final touches to their work. On the morning of the 28th the Democrats passed a resolution ordering the printing of 2,000 copies of their debates.[94] A similar resolution had been introduced in the Republican wing the day before, and was adopted in the afternoon of the 28th despite the argument of one member that it was useless to print their deliberations since they had nothing to do with the constitution adopted.[95]

Various resolutions were passed by both conventions for the appropriation of money to increase the pay of several of their officers, for the translation of the constitution into German, Swedish, and French, and for various other minor matters. The most important question which was to be settled, however, was that of finding some way to pay the per diem allowance and the

[92] *Dem. Deb.*, pp. 605-6.
[93] *Ibid.*, p. 606.
[94] *Ibid.*, p. 602.
[95] *Rep. Deb.*, pp. 559-60, 583-84.

mileage of the Republican members. It was already known about St. Paul that the Democratic treasurer of the territory was not disposed to honor any certificates issued from the Republican convention for this purpose. The Democrats at this point entertained a resolution apparently designed to get the Republican members out of their predicament. On the afternoon of the 28th, Mr. Gorman offered the following resolution: "Resolved, that if the auditor and treasurer of this territory declines to recognize the organization of the convention presided over by Hon. St. A. D. Balcombe, that Hon. H. H. Sibley, president, and J. J. Noah, secretary, sign certificates for such members of that convention as were elected to the constitutional convention; provided, that they be presented for such purpose and to include the printing for that body."[96] In explaining his resolution he said he was confident that the auditor and treasurer would not recognize the Republican convention's warrants and since it was only a matter of dollars and cents he hoped no one would object to the adoption of the resolution. Some of the members immediately pointed out the meaning of what Mr. Gorman had proposed. It practically took advantage of the straits of necessity to which some of the Republicans had been reduced to compel them to give up their organization and to come to Mr. Sibley with a petition that he sign their warrants. Mr. Sibley himself stepped down from the chair long enough to say that he was not willing "to be saddled with the onus of deciding which gentlemen have been and which have not been elected to this convention."[97] Several members pointed out that some way ought to be found to pay the Republicans without either recognizing their organization or unnecessarily insulting them. Mr. Brown expressed the opinion that the separate organization of the convention in two bodies had really been an economical arrangement for the territory. "He ventured to say that if both parties had remained in the same convention, there would not have been two articles of the constitution adopted by the first of January next, and the expense would have been double that of both conventions now."[98] The Gorman resolution went over until the next morning when Mr. Meeker moved to postpone the consideration of it "until the fourth day of July next."[99] This motion was adopted by a vote of thirty-eight to seven and the resolution was thus indefinitely postponed. In the afternoon of August 29 the committee on credentials of the Democratic wing reported that it had "satisfactory evidence of the legal election of the following named delegates."[100] The list included fifty-three of the Republican members. Those excluded were the four contested delegates from St. Anthony, Mr. Coe, and Mr. Lyle. They offered a resolution, therefore, that

[96] *Dem. Deb.*, p. 617.
[97] *Ibid.*, p. 619.
[98] *Ibid.*, p. 620. Mr. Balcombe of the Republican wing held a similar view. *Rep. Deb.*, p. 596.
[99] *Dem. Deb.*, p. 625.
[100] *Ibid.*, p. 631.

these approved delegates be paid their three dollars per day and mileage. But this resolution was laid on the table by the convention and a few minutes after the convention adjourned.[101]

It was on the afternoon of the last day of the convention that the Republicans first received conclusive evidence that their certificates were not going to be honored. Delegates Davis and Mills had made application to the treasurer's office and had been politely informed by that official that he would not recognize certificates coming from the Republican body.[102] Mr. North immediately proposed a resolution respectfully requesting the territorial treasurer to pay all their certificates.[103] A heated debate ensued, in the course of which it was very evident that the few irreconcilable members who had all along opposed any compromise with the Democratic wing were not a little pleased to find their predictions coming true. The members of the conference committee assured the Republican members that there had been a tacit agreement in the conference committee that the Republicans, as well as the Democrats, would be paid, and they were very heated in their denunciations of the Democrats for the breach of their promise. Mr. Coggswell, who had opposed compromise, twitted the other members of the convention who had put faith in the Democratic promises. He said "Now, Mr. President, if that agreement has been violated, it is just what we might expect from that quarter. It was only what has been continually practiced by that body ever since the thirteenth day of last July. It is not the first time they have violated agreements and openly insulted parties treating with them," and he went on to recall some of the delinquencies of the rival organization.[104] The resolution was, however, passed by a vote of twenty to fifteen and very soon after came the final adjournment of the Republican wing also.[105]

It must have been with very much mixed feelings of joy, anger, and regret that the various members departed to the different parts of the territory. Some of the more idealistic of the Republican members appear to have been very deeply disappointed in the final outcome. Mr. Messer of the Republican convention who wrote several letters to John H. Stevens during this period expressed himself near the end of the convention as

> tired and heartily sick of this political intrigue and trickery. And if I once get out, I mean to stay out. Everything goes wrong. A man to be a successful politician must thrust his conscience into prison and bar the door. I protest against the whole thing. We have contended and stood out week after week, and for what? Moonshine and I doubt whether we get even that. Nothing but darkness with scarce a star of any magnitude to gaze upon. Questions of local interest have taken possession of every

[101] *Dem. Deb.*, pp. 631, 632.
[102] *Rep. Deb.*, p. 590.
[103] *Ibid.*
[104] *Ibid.*, pp. 593-94.
[105] *Ibid.*, pp. 595, 596. As a matter of fact neither the Democrats nor the Republicans received any money until 1858. Cf. *Pioneer and Democrat*, Sept. 4, 1857; *Sess. Laws* 1858, ch. 25.

one almost, or ambition for office, while moral principle is bartered for policy, expediency, that principle which ruined, as I think, ... the whole Whig party and which will ruin any party which trusts to policy for success.[106]

Perhaps others did not take the outcome with such a feeling of despair as did Messer but it is well known that there were members in both conventions who went home thoroughly disgusted with the whole proceedings. Some refused entirely to sign the constitution and while it is not on record that any of the members directly opposed the constitution before the people it is difficult to understand how some of them could well have supported it.

8. THE TWO ORIGINALS OF THE CONSTITUTION. On the afternoon of Friday, August 28, both conventions adopted the report of the conference committee.[107] The effect of this action was to substitute the constitution agreed upon by the conference committee in place of all the articles and sections of the constitution severally agreed upon by the two conventions up to that time. The work which the conventions had been doing simply gave way to the results produced by the conference committee.[108]

The next day was Saturday. The sessions had already lasted seven weeks. The members were tired and disgusted and they wished an immediate adjournment so that they might go home. Late on Friday afternoon, therefore, the Republican convention adopted a resolution authorizing the committee on conference "to employ a sufficient number of copyists to enrol the constitution, and have it prepared for authentication by members of this convention early tomorrow morning."[109] This resolution was sent at once to the Democratic convention which adopted another resolution authorizing its members on the conference committee to coöperate with the Republican members "in superintending the enrollment of the constitution."[110] The work had to be done, therefore, in one night. More than that, it was necessary to prepare two complete copies of the constitution written out in long hand; for Sibley, the president of the Democratic wing, had resolutely refused to sign the same document with Balcombe and his organization.[111] Many more on both sides entertained similar feelings. It was no small task, therefore, which had to be performed by lamplight that night. It appears from a study of the two documents that the work of copying was divided among a number of men. There are eight distinct handwritings in the document signed by the Republicans, and an equal number in that signed by the Democrats. Unfortunately some of the copyists were possessed of little

[106] *Stevens Papers*, Minnesota Historical Society, letter of Messer to Stevens, Aug. 20, 1857.
[107] *Dem. Deb.*, pp. 614-15; *Rep. Deb.*, pp. 582-83.
[108] *Rep. Deb.*, pp. 582-83.
[109] *Ibid.*, pp. 584-85.
[110] *Dem. Deb.*, p. 617.
[111] *Rep. Deb.*, pp. 577-78. President Balcombe of the Republican wing denied that he had refused to sign the same document with Mr. Sibley.

skill in writing and were lacking in knowledge of spelling or punctuation or both. It is evident also that no careful comparison of the two resulting documents was made. There are in all two hundred and ninety-nine differences in punctuation between the two documents, not counting a number in sections 10, 12, and 14 of the schedule, and a number of others which are doubtful. It is true that most of these are of little or no significance, yet it is impossible to say when in a particular case a difference in punctuation may not change slightly or even considerably the meaning of a section. In addition to the differences in punctuation, there are five cases in the body of the constitution and two in the schedule where one version uses the singular form of a noun and the other the plural. There are three cases in the constitution proper and two in the schedule where one version omits a word used in the other. There are also three cases in the constitution proper and one in the schedule where the two documents use slightly different words and there is one case in the constitution proper and one case in the schedule, the latter of no importance, where one document omits a phrase given in the other.[117]

The separate effect of each of these little differences is in most cases trivial. The cumulative effect of all is more weighty. Since both original versions are of equal validity, no court having as yet decided which document shall be referred to, and since these two originals differ from each other in over three hundred minor respects, it is impossible today to print an absolutely correct text of the state constitution.[118] It is very likely that there is no other state in the Union in exactly this predicament.

To conclude from what has been said that we have no constitution in this state, is, of course, absurd on the face of it. Substantially the two documents are the same. The people in voting for the constitution thought they were voting on the same document and Congress in admitting the state to the Union assumed that the two versions of the original constitution were identical in meaning. Further, the courts have gone on enforcing the constitution since the foundation of the state government without having raised any question as to the existence of the constitution. Where there are minor differences in the two original versions, they can, if the question ever arises, be harmonized by judicial interpretation. As a general rule the small discrepancies are of such trivial importance that they will not weigh heavily in the scales.

9. THE CONVENTION DEBATES. It has already been said above that both conventions made provision for the publication of their debates. The Democratic debates published in a volume entitled *The Debates and Proceedings*

[117] See the table of footnotes printed with the corrected text of the constitution, appendix 1, pp. 270-75.

[118] It was one of the purposes with which this study was undertaken to prepare an edition of the constitution as nearly perfect as the conditions would permit. It is possible to say, at least, that the version of the constitution printed herein is the most nearly perfect of all existing reprints. See appendix 1, pp. 207-75.

of the Minnesota Constitutional Convention, etc., were published by Mr. E. S. Goodrich, territorial printer, at the *Pioneer and Democrat* office, St. Paul, in 1857. This is a volume of 685 pages, including several appendices. The Republican proceedings printed in a volume entitled *Debates and Proceedings of the Constitutional Convention for the Territory of Minnesota*, etc., were printed in the office of George W. Moore, the owner and editor of the *Daily Minnesotian*, a Republican newspaper, in St. Paul in 1858.[114] This is a volume of 625 pages including several appendices and contains altogether a great deal more matter than is to be found in the Democratic debates. These two volumes are herein referred to briefly as *Democratic Debates* and *Republican Debates*, respectively.[115]

There can be no question that the debates of both conventions contain a great deal of very valuable historical material. Anyone wishing to study the political, economic, and social conditions of the times will pick up many valuable bits of information from these two volumes. Furthermore, they give us, in almost complete form, the speeches of a great number of the leaders in the political and business life of the territory and the state. They are, of course, also unsurpassed by any other source for the light which they throw upon the political ideas of the people of the time. The state is, indeed, fortunate to have both records preserved in such well printed and well bound form.

The question arises, however, as to the value of these debates as aids in the interpretation of the constitution itself. This question has been considered several times by the state supreme court and it must be said that there has been no consistency in the attitude which the court has taken on this question from time to time. In the case of the Minnesota and Pacific Railroad Company *v.* Sibley in 1858, Chief Justice Emmett laid it down as a general proposition that "in construing a constitution or law, the history of its passage through the convention or legislature is often of great assistance, and the history of this amendment to the constitution, during its progress through the two branches of the legislature, fully sustains the position, that the state had no priority of lien as to these first mortgage bonds."[116] It will be observed, however, that the constitutional provision here considered was not one which emanated from the constitutional convention itself but was the first amendment adopted to article 9 in 1858.[117] This passage does not, therefore, throw much light on the immediate problem.

The general position here taken by Chief Justice Emmett in this early litigation before the supreme court was maintained by him as much as six years later in a case arising in 1864.[118] Referring in his decision in this case

[114] See Bibliography, p. 303 for the exact citations of these volumes.
[115] Abbreviated "Dem. Deb." and "Rep. Deb."
[116] 2 *Minn.* 13 (Gil. 1).
[117] See pp. 185-87.
[118] Crowell *v.* Lambert, 9 *Minn.* 283 (Gil. 267), (1864).

to the fact that the courts of New York in certain cases "looked freely into the debates of the convention which framed their constitution, in order to gather therefrom the intention of that body, in adopting the clause they were endeavoring to construe," and referring also to the passage in the Minnesota case cited above, the Chief Justice continued:

We need not explain here the dual character of our constitutional convention; we will be sufficiently understood, when we refer to one as the convention presided over by the Hon. Mr. Sibley, and to the other, as that presided over by the Hon. Mr. Balcombe. To premise, then, the whole of the article on the judiciary, which was adopted by the joint committee of the two conventions, and which now forms the sixth article of the constitution, is, with the exception of the tenth section, identical with that which was passed by the convention over which Mr. Sibley presided; and we must look, therefore, to the debates in this convention, rather than the other, for light in regard to the meaning and intent of the different sections of the article.[119]

Following this general statement, Justice Emmett included in his opinion a series of quotations drawn from the Democratic debates. It is interesting to observe that Mr. Emmett had himself been a member of this convention and that the party to which he belonged very generally took the attitude that the Democratic convention was entirely, or almost entirely, responsible for the constitution which was adopted.

At the next term of the court, however, Chief Justice Emmett had been succeeded by Chief Justice Wilson. The latter had been a member of the other or Republican wing of the convention, whose work, it will be recalled, was very largely rejected by the compromise committee, whereas the Democratic convention proposals were very largely adopted. In a case arising in the supreme court in 1865 before Chief Justice Wilson and his associates, attorneys attempted to argue that the debates in the convention which framed the constitution should be considered in construing the document itself.[120] To this Chief Justice Wilson made the following reply:

It is also urged that the debates in the convention that framed the constitution, show that the construction claimed by plaintiff is the correct one. If such debates could ever properly be resorted to as aids in interpretation, it seems quite obvious that such rule could not properly be followed in this case. The convention that framed this constitution divided on the first day of the session, forming two organizations, and afterwards a joint committee of each reported a constitution that each wing adopted, and which is now the constitution of our state. As well might we resort to the debates in a committee room, as to the debates of either wing of said convention to show what was meant by the language used in the constitution. But we think such debates should not influence a court in expounding a constitution in any case. Eakin *v.* Rawb, 12 *Serg. & R.* 352; 3 *How. U.S.* 1; *Sedgwick Stat. and Con. Law,* 489; id. 241; Bank of Pennsylvania *v.* Commonwealth, 19 *Penn. St.* 144; The Southwark Bank *v.* The Commonwealth, 26 *Penn. St.* 446.[121]

[119] Crowell *v.* Lambert, 9 *Minn.* 283 (Gil. 276).
[120] Taylor *v.* Taylor, 10 *Minn.* 107 (Gil. 81), (1865).
[121] *Ibid.*, pp. 126-27 (Gil. 99).

Since that day it appears that there have been very few references by the supreme court to the debates of either convention. In a case arising in 1903 Justice Brown spoke of the framers of the constitution and their intentions with reference to the taxation of the property of seminaries of learning, but he did not actually cite the debates nor rely upon them for his conclusions.[122] In a case decided in 1908, Justice Lewis made the following statement: "By referring to the constitutional debates it is apparent that the framers of the constitution were dealing with the question whether or not it was advisable to prevent members of the legislature from holding any other than the legislative office, which might be created by the legislature, or the emoluments of which might be increased during the session they were members, or within a year after the expiration of the term."[123] It is not clear from this passage whether Justice Lewis referred to the Democratic or the Republican debates or both. The passage is interesting merely as indicating that some of the justices may still look upon the debates as throwing some light upon the meaning of the constitution.

When all the facts are considered, however, it is impossible to escape the conclusion that the debates in the two wings of the Minnesota constitutional convention have for legal purposes far less value than is ordinarily the case with constitutional debates. It is clear from what the members of the compromise committee said in reporting their final conclusions to the several conventions, that they worked somewhat independently of both conventions.[124] The whole effort of the compromise committee was directed toward the adoption of one compromise constitution. In laboring toward that end the committee put in provisions which neither convention had adopted. They changed many proposals of both conventions. There was indeed much truth in the remarks of Mr. Robbins of the Republican wing in objecting to the publication of the debates. He could not see what the object was in publishing debates which had no reference whatever to the constitution which had been adopted. He said: "We may have discussed articles similar to them, but to say that our debates have any reference to this constitution, seems to me to be erroneous."[125] He spoke probably with more truth concerning the Republican debates than with reference to the Democratic debates. But still Mr. Sherburne in the other convention, while he claimed that the Democratic articles had been adopted "almost altogether" had admitted that the conferees had endeavored primarily "to agree among themselves as to what was proper and right."[126] While he assured the Democrats that there was no difference of importance between what the Democrats had proposed and what the committee had adopted, nevertheless the record shows, and he also admitted, that

[122] State *v.* Bishop Seabury Mission, 90 *Minn.* 92; 95 *N. W.* 882, (1903).
[123] State ex rel. Olson *v.* Scott, 105 *Minn.* 513; 117 *N. W.* 845, (1908).
[124] *Dem. Deb.*, p. 599; *Rep. Deb.*, pp. 567-69. See also ch. VI. *infra.*
[125] *Rep. Deb.*, p. 583.
[126] *Dem. Deb.*, p. 599.

there were many changes in phraseology and even in whole sentences and sections which made the meaning of what was actually adopted considerably different from the meaning of the provisions which the Democrats had discussed.[127] No attempt has been made, therefore, in this monograph to give an abstract of the debates of the several conventions upon the various topics discussed. The debates themselves are in print and their indexes are reasonably adequate for ordinary purposes.

[127] See ch. VI, *infra*.

CHAPTER VI

THE COMPROMISE CONSTITUTION

1. GENERAL NATURE OF THIS CHAPTER. It will be remembered that Mr. Sherburne in reporting the compromise constitution to the Democratic convention reported that it was made up of the Democratic provisions "almost altogether."[1] It was not long before the Democratic newspapers of the territory expressed themselves in almost jubilant tones with reference to the decisive victory they had won over the Republican wing. The *Pioneer and Democrat* of St. Paul said there was one thing about the constitution gratifying to every Democrat and that was that "the convention has taken care to banish from its articles every provision implying a sympathy with the fanatical dogmas of the Black Republican party of the day. It is a States' Rights National Democratic Constitution. What greater eulogy can be pronounced upon its framers than this?"[2] The Democratic platform a short time afterwards asserted that the proposed constitution was "Democratic in its essential features."[3] It is of interest to observe, however, that the only point specifically mentioned upon which a Republican constitution would have differed from a Democratic was on the matter of negro suffrage and possibly also on the question of resistance to the fugitive slave law, and that not even the Republican convention had proposed to put these propositions into the framework of government. The constitution which the Republicans had almost completed drawing up would have been in almost every particular as "Democratic" as was that which the compromise committee adopted.

Folwell makes the generalization that "Both parties were quite content with the constitution; the Democrats for what they had conserved, the Republicans for germs of future development."[4] This probably puts the whole matter in the briefest possible form. The Republicans gained an amending process which was so simple that they would be able as soon as they gained control of the state government to make whatever changes they saw fit in the constitution. On the other hand, they really lost nothing in accepting such a large portion of the Democratic material in the constitution, and they postponed for only a few years the submission to the people of the question of permitting negroes to vote.

At the time when the compromise committee proceeded to its work, neither convention had completed its draft of a constitution. The compromise committee had to work with partially finished material and some of the various

[1] See pp. 103-4.
[2] *Pioneer and Democrat*, Aug. 30, 1857.
[3] *Ibid.*, Sept. 17, 1857.
[4] Folwell, *Minnesota*, p. 141.

committee reports proposing articles which were to become part of the several constitutions had not yet been passed when the compromise committee proceeded to its work. Except in the debates there is nowhere preserved the record of the results which each convention had accomplished at the time of the appointment of the compromise committee. In order, therefore, to ascertain the truth as to the claims made by the Democrats that it was their constitution which was adopted, it was necessary to go through each volume of the debates from beginning to end in order to piece together from the committee reports, the amendments, and the debates, the materials which were probably turned over to the conference committee. This work was done by the author with considerable labor and when the conclusions of the several bodies had been ascertained the original constitution of 1857, the Democratic materials, and the Republican materials were arranged in three parallel columns with similar provisions standing opposite each other upon the same page.[5] In this way and only in this way was it possible to ascertain just what the compromise committee did with the various materials turned over to them by the two conventions. The following pages in this chapter give only a summary of the results of the work of this committee, but they will not only serve to show the contributions of the two conventions to the constitution and their different views upon constitutional questions, but will also provide a meager digest of the original constitution.

While the great issues upon which the Democratic and Republican parties of 1857 were divided were national and political rather than local and constitutional, it will not do to say that there were no real differences in their views upon state constitutional questions. It is true there were no fundamental divergencies and no absolute contradictions, but such as they were, the differences were of considerable significance and taken altogether it must be admitted that it would have made a great deal of difference to the incoming state whether it adopted all of the Republican or all of the Democratic provisions or whether it worked out a compromise between the two. In brief it may be said that the Republicans appear in nearly every instance as the radical, libertarian party, careless of the existing order. The Democrats, on the other hand, were the party that had learned by experience and had come to value the established order of things. They were not so trustful of the people nor of their elected officers. In ideas they appeared older and more conservative than the Republicans. Indeed, it is fair to say that if we exclude the puritanical views of the Republican group, that which remains of their program is more closely allied to the policies of Jacksonian democracy than were the principles upon which the Democratic party based its appeal for popular approval.

[5] All persons interested may consult this work in the files of the Bureau for Research in Government, Library, University of Minnesota.

It will be of interest, therefore, to take up the constitution of Minnesota as it came from the hands of the compromise committee, and as it was ratified without amendment by the two conventions, to ascertain in detail the extent to which the proposals of the two parties were embodied in this instrument. At the same time it will be well to notice the proposals of the two parties which were not embodied in our fundamental law.

2. PREAMBLE. It may seem today to be a matter of no importance whether the preamble of the constitution takes one form or another; it is, in a legal sense, not an enforceable part of the constitution. For example whether it does or does not recognize the Deity cannot have any effect upon the conduct of the people or the law of the state. It is important, however, in view of the differences that existed between the parties in 1857 to observe the following facts: It is the Republican preamble which became the preamble of our constitution. This preamble specifically recognizes God as the source of our civil and religious liberties. There was a motion made and supported by several members of the Republican convention to strike out this clause, but the motion was defeated by a decisive vote. The Democrats, on the other hand, although they discussed their preamble at length, at no time entertained a motion by which it would be amended to recognize God. They discussed and seem to have adopted another amendment stating the purpose of Minnesota in adopting a constitution to be admission to the federal Union and at one time seem to have been on the point of asserting the absolute right to admission.[6] Just what debate upon this point took place in the committee of compromise is not clear, but it was the Republican form of the preamble which came to be adopted.

3. ARTICLE I—BILL OF RIGHTS. The bill of rights shows more completely perhaps than any other article of the constitution the serious intention of the committee on compromise to make a real fusion of the Democratic and Republican materials into one constitution. It was worked out apparently with very great care and it is so nicely pieced together from the materials of the two conventions that it is difficult to say which body is mainly responsible for its provisions. The order of the sections follows in the main that proposed by the Republicans, who had drawn very heavily upon the Wisconsin constitution of 1848.[7] There was but one provision in the bill of rights finally adopted for which the Republicans did not have at least an equivalent and often the

[6] J. R. Brown was most insistent upon asserting the right of the people of Minnesota to be admitted into the Union. *Dem. Deb.*, pp. 204-11, 276-81.

[7] In other respects, too, as for example in their proposals for the organization of the legislative department, the Republicans chose the Wisconsin constitution as their model. This is a point not easy to explain, since very few of the Republicans appear to have lived in Wisconsin.

identical form of words.[8] On the other hand, the Democrats had no equivalent for section 8 of the bill of rights as adopted, no provision for exemptions for debtors, no prohibition of religious tests for voters, no specific prohibition of the use of public funds for religious purposes and no prohibition of property tests for the suffrage and for the holding of office.[9] The guarantee of jury trial in cases in law "without regard to the amount in controversy" was proposed by the Republicans.[10] From this point of view, therefore, it would seem that the Republicans had slightly the better of it on the bill of rights. However, when we study the excluded materials, we find that if the Republicans had had their way they would have guaranteed resident aliens full property rights, forbidden duelling, guaranteed the right to writs of error, guaranteed the right to bear arms, and asserted that the criminal code must rest on principles of reformation and justice. All of these proposals the committee on compromise rejected. The Democrats would have pledged to the public-school system all property escheating to the state and this was also excluded.

The bill of rights gives some evidence also of the broad interpretation which the committee on compromise put upon its own powers. Both conventions had adopted almost identical provisions guaranteeing the right of peaceful assemblage.[11] These sections the compromise committee either did not know about, or neglected to consider, or did consider and reject. As the constitution was reported to the two conventions without being printed and distributed among the members, no one chanced to notice the omission and the constitution was adopted without guaranteeing this right.

Furthermore, in section 13, the Democrats originally provided that damages in case of condemnation of property must be "first paid or secured." This phrase was stricken out by the Democratic convention on August 25 and it had never appeared in the Republican materials and had not even been proposed in this form. Nevertheless it appears in our original constitution, the explanation being that by August 25 the committee on compromise had completed a tentative bill of rights embodying this phrase.

4. ARTICLE 2—ON NAME AND BOUNDARIES. In this article section 1 is of Democratic origin, although the Republicans had an equivalent in different language.[12] Section 2 is practically identical with sections upon the same sub-

[8] Sec. 2.

[9] Secs. 12, 17.

[10] Sec. 4.

[11] The Republican proposal was as follows: "The right of the people peaceably to assemble to consult for the common good and to petition the government or any department thereof shall never be abridged."

[12] The question of boundaries, so important in the months preceding the constitutional convention, took up much of the time of both wings. Many Republicans including Thomas Wilson, St. A. D. Balcombe, Amos Coggswell, and Lewis McKune, representing the interests of southern Minnesota, leaned strongly toward an east and west division of the territory. They brought the boundary question

ject in both Democratic and Republican materials. Section 3 is of Republican origin and there seems to have been no equivalent for it in what the Democrats proposed.

5. ARTICLE 3—DISTRIBUTION OF THE POWERS OF GOVERNMENT. This article is of Democratic origin. The Republicans somehow neglected this whole question of giving a separate statement to the distribution of the powers of government until, near the end of the proceedings of the convention, a similar but briefer provision was embodied in the article on miscellaneous provisions.

6. ARTICLE 4—THE LEGISLATIVE DEPARTMENT. It is fair to say that the Democrats had their way in practically all matters dealing with the structure of the government. This is true of the legislative department but more so of the executive and judicial departments. If the Republican materials relative to the organization of the legislature had been adopted, the legislature of the state of Minnesota would have consisted of two small bodies, the senate having from twenty-four to thirty-two members and the house from sixty-four to one hundred. The sessions would have been limited as they were later by amendment but to still shorter periods. The first session according to the Republican arrangement would have been limited to not over ninety days, any other regular session to not over sixty days, and any special session to a maximum of forty days. Since annual sessions were contemplated, however, these limits were not so stringent as those now prevailing. No law could have been revised, altered, or amended by a reference to its title alone; its provisions would have had to be published at length as reënacted or changed. Most interesting of all, perhaps, the legislature would have had the power to refer any one of its enactments to the people for their approval.[18]

up for debate on the first day of the convention, and not until a month later did the matter receive its quietus in the Republican wing. On August 13 the convention voted by 30 to 28 to submit to the voters the question of an east and west division at 46° north latitude, with the understanding that the proposition would be submitted to Congress if approved by the electors. The vote was promptly ordered to be reconsidered, however, and on the 14th the proposal was voted down by 31 to 26. In the Democratic wing the struggle was equally prolonged but it was not so easy to get votes for the east and west plan. Mr. Flandrau was most persistent in support of this division. A proposal to make Minnesota extend to the 46th parallel on the north and to the Missouri river on the west lost by 36 to 6; another, to make 45° 30′ the northern boundary, lost by 33 to 9. A third proposition to permit the voters to express themselves separately on making the line of 45° 15′ the northern boundary, with the approval of Congress, lost by 25 to 13, some northern as well as some southern delegates voting for this plan. The upshot was the acceptance by both wings of the convention of the boundaries proposed in the enabling act. To most of the members it seemed impolitic if not practically impossible to do anything else. This can be stated even more strongly by saying that a majority of the delegates were satisfied if not actually pleased with the boundaries proposed. *Rep. Deb.*, pp. 15-26, 37-39, 68, 88, 126-27, 221-29, 408, 412-17, 417-37, 439-40, 441-49, 452-54, 466-71, 521, 537-39, 558; *Dem. Deb.*, pp. 295-306, 525-29, 558, 631.

[18] This proposed section took the following form: "The legislature may submit to the people any act for their ratification or rejection, and such act so submitted shall, if approved by a majority of the legal voters at the appointed election, become a law." *Rep. Deb.*, pp. 86, 204-5.

It may be suggested that the Republicans had in mind the prohibition law of 1852 which, after approval by the electorate, was declared unconstitutional by the territorial courts.[14] Perhaps they looked forward to the passage of another prohibition law and its resubmission to the people. The proposed limitation on the length of the sessions corresponded to that which was common in the case of territorial governments at that time. The provisions as to the size of the two chambers were similar to those in the Wisconsin constitution.[15]

Speaking more in detail of what was adopted it should be noted that the last provision of section 11 reading "the governor may approve," etc., was of Republican origin and not in the Democratic materials. Section 24 was also Republican in its origin and had a very definite meaning in its original context. When it was lifted out of the Republican materials and set down among somewhat discordant Democratic provisions, it lost part of its meaning. The word "also" became totally meaningless in the new context. Sections 30 and 31 were also from the Republican materials and not in the Democratic.

To offset these Republican provisions inserted into the constitution, it should be said that the Republicans had no equivalents for the following provisions of the constitution drawn from the Democratic materials: section 12, the second sentence of section 17, section 18, section 20, section 21, and section 22. For a few others the Republicans had only partial equivalents.

Two other points should be noticed. The second sentence of section 13 requiring a majority of all members elected to the legislature to pass a law was not in the Democratic proposals and had been rejected by the Republicans. The committee on compromise assumed the authority to write it in. As to the term of office, both Democrats and Republicans had proposed one year for representatives and two for senators. The compromise committee in piecing out this article of the constitution left out both the Democratic and the Republican provisions on this point. This omission resulted in a very unusual situation and was the cause of some criticism of the Minnesota constitution in Congress as an unrepublican form of government. The representatives in the first state legislature were reported in Washington to be strutting the streets of St. Paul claiming the right to hold office for life. Some congressmen seem to have taken this matter very seriously.[16] In fact it was necessary in the course of a few years to amend the constitution to remove any doubt upon the subject of terms of office.[17]

[14] *Rep. Deb.*, p. 204. See p. 38.

[15] *Wis. Const.*, art. 4, sec. 2.

[16] Senators Trumbull (Ill.) and Pugh (Ohio), and Representatives Grow (Penn.) and Sherman (Ohio). See, for example, *Cong. Globe*, 35 Cong., 1 sess., pp. 1141, 1406.

[17] See p. 165.

7. ARTICLE 5—THE EXECUTIVE DEPARTMENT. The Democratic provisions on the executive department were all adopted and in almost identically the original words. As in several other cases the Republicans had shown themselves either inexperienced in the drafting of the constitution or willing to make radical experiments. They had had two committees in this field, one to deal with the executive department proper and the other to draft provisions for "state officers other than executive." This was an exceedingly disorderly arrangement, as it resulted in overlapping of the work of the two committees. When the committee on compromise received the materials of the two conventions it was found difficult to rewrite the Republican provisions into one harmonious article. This is perhaps the great reason why the Democratic provisions were adopted almost in toto.

In substance, however, there was no great difference between the Democratic and the Republican proposals beyond those which are now to be enumerated.

(1) The Republicans would have made the governor more completely the real executive head of the government. This would have resulted

(a) from section 1 of the Republican materials which provided that "The executive power shall be vested in a governor," etc.;

(b) by the provision in section 4 of the Republican materials that "He shall take care that the laws are faithfully executed," a provision which the Democrats had discussed and rejected but which became part of the constitution through action of the compromise committee;

(c) by the putting of the provisions relating to the auditor, the secretary of state, the treasurer, the attorney general and the superintendent of public instruction into a separate article entitled "state officers other than executive." The Democrats, it should be added, had adopted a series of provisions which made the governor a very weak officer indeed.

(2) The Republicans provided for electing a superintendent of public instruction in addition to the treasurer, the attorney general, and the secretary of state.

(3) The Republicans also proposed to make the secretary of state, the treasurer, and the chief justice of the supreme court a canvassing board for state-wide elections. A similar arrangement was later made part of the constitution by amendment.[18]

The committee on compromise made very few changes in the Democratic proposals for this article. The term of the auditor was changed from the Republican proposal of two years and the Democratic of four to three years, a genuine compromise. The governor's salary, which had been fixed

[18] See pp. 174-75.

by the Democrats at $1,500 per year and for which the Republicans had set no limit, was put at $2,500 a year for the first term by the compromise committee. The salary of the secretary of state for his first term was also fixed by the committee though neither convention had tried to determine this matter. It was set at $1,500. As other salaries had been stated in the Democratic proposals, which were chiefly adopted, it seemed logical to set the salary of the secretary of state also.

8. ARTICLE 6—THE JUDICIARY. The Democrats won a real victory in the matter of the organization of the judiciary. With the exception of certain modifications in detail, the Democratic proposals were adopted entirely. They proposed that the supreme court should appoint its clerk as well as its reporter.[19] They desired five instead of the six judicial districts which were established.[20] They desired also a five-year term for district judges, while a seven-year term was adopted, which was a year more than the Republicans had proposed. By their proposals the probate courts of the state would have had general probate power in addition to other specified powers. Thus also in other details there are slight differences between what the Democrats proposed and what was adopted, but essentially the article on the judiciary was the work of the Democratic wing.

A perusal of the Republican plans for the judicial department brings out clearly that the Republicans had no very consistent plan of organization and that in many particulars what they proposed was different from the scheme of judicial organization actually adopted. They proposed that there should be three supreme-court justices elected from three distinct districts for a term of nine years each. There was to be a supreme-court clerk elected by the people in each of the three supreme judicial districts for a term of three years each. They proposed also the establishment of six judicial circuits for the holding of circuit or district courts. They required two years of residence, American citizenship, and the ages of thirty and twenty-six years respectively for supreme-court and circuit-court judges but they did not require that the judges should be learned in the law. They made no provision with reference to the holding of incompatible offices by the judges nor with reference to their election to other offices while serving as judges. They provided that all judicial officers should be conservators of the peace in their respective districts. There was to be, according to their plans, a prosecuting attorney elected by the people in each judicial circuit. In addition to these important provisions the Republicans proposed a number of unnecessary sections with reference to details of judicial organization. It was very clear that the Republicans had not studied the problems of judicial administration as long and as

[19] The legislature has in recent years proposed amendments which embodied the plan of making the clerk appointive by the supreme court itself, but the voters did not approve the amendments in sufficient numbers to make the change effective. See p. 176.

[20] See pp. 102-3 for a discussion of the original system of judicial districts.

carefully as had some of the Democrats. It was, therefore, to be expected that the compromise committee would accept the Democratic proposals.

9. ARTICLE 7—THE ELECTIVE FRANCHISE. It is difficult to say in detail just what the Republican proposals with reference to the elective franchise may have been. The printed debates give only a part of the report of the Republican committee on the franchise and the newspapers add very little to what is printed in the debates.[21] It is clear, however, that when the committee on compromise came to discuss this matter, the Democratic proposals were made the basis for the article which was drawn up. The Republicans had proposed a period of six months' residence in the state and ten days in the district. The Democrats had proposed four months' residence in the state, but had set no definite number of days of residence required in the district. The compromise worked out fixed the periods at four months in the state and ten days in the district.[22] In the matter of negro suffrage it should be said that in spite of a very sharp struggle in the Republican convention the majority of that wing had insisted upon limiting the suffrage to white persons of proper qualifications, and this had been done also, as a matter of course, by the Democratic convention. By way of exception, however, both had made specific provisions that civilized Indians and half-breeds should be permitted to vote upon proof of their having attained the habits of civilization.[23] Furthermore, in the Republican convention, where few men dared to deny the right of the sovereign people to settle all questions directly, the minority had forced the convention to agree to submit at the time of the election for the adoption of the constitution the separate question of striking the word "white" from the constitution to be adopted. As has been said elsewhere, the Republican members of the committee on compromise made an earnest effort to get the committee to agree to the separate submission of this question. The effort was not successful and the best the Republicans could do was to get an agreement upon a very simple and direct method of amending the constitution.[24] The Republicans hoped to carry the state at an early election after the admission to the Union and they no doubt fully expected at that time to submit the question of negro suffrage to the people at the earliest election possible. It required, however, a number of years and several submissions to the people before this amendment was adopted.[25]

In the matter of alien suffrage the Democrats were more liberal than their opponents. They would have permitted any alien who had declared his intention to become a citizen and who had complied with the residence requirement of one year's residence in the United States and four months in the

[21] But see the *Daily Minnesotian*, July 31, 1857, for a summary of the Republican proposals.
[22] See pp. 229-30, for the provisions of the original constitution on this point.
[23] This provision, which became and is still a part of the constitution, was sharply criticized in Congress. *Cong. Globe*, 35 Cong., 1 sess., pp. 1514, 1947, 1953.
[24] See pp. 99-101.
[25] See pp. 178-79.

state to vote at any election. The Republicans in their proposals limited the right of aliens to vote to those who either were residents at the time the constitution was adopted or who had resided in the state for two years. It was the Democratic provision which was adopted.[26]

The Republicans also proposed that the legislature might at any time extend the privilege of the suffrage to other classes, with the proviso that "no such law shall have any force until it shall have been submitted to the people at some general election and approved by a majority of all votes cast on that subject at such election." This Republican proposal was not embodied in the constitution, nor was it necessary that it should be, in view of the fact that the constitution itself was made amendable in exactly this way.

10. ARTICLE 8—SCHOOL FUNDS, EDUCATION AND SCIENCE. In the case of this article also the Democratic proposals were mainly adopted by the committee on compromise. The Republican wing had entertained and discussed a long committee report outlining a complete school system.[27] It had become very evident in the course of their debates that they would be unable to agree upon even the fundamentals of the system to be embodied in the constitution. They accepted, therefore, a proposal to eliminate from their article on this subject all matters which could safely be left to the legislature and adopted as a substitute for the committee's proposal two fairly short sections in which they made it clear that they intended to do just two things: (1) to guarantee the state school fund against waste in any form; and (2) to prohibit the use of any part of the fund by any religious sect or sects.[28] Upon these matters they were in fundamental agreement and these provisions they adopted with little dissent. In their article on miscellaneous provisions they had also a section proposing that the regents of the university be elected by the people in the three supreme judicial districts of the state which they proposed.

Taking up the provisions written into the constitution in their order, it should be said that section 1 is a revision and abbreviation of the Democratic provision on the same subject. The first sentence of section 2 was mainly drawn from the Democratic proposals also. The second sentence of this section was also of Democratic origin, but was not essentially different from the provision on the same subject in section 1 of the Republican proposals. As to section 3, it is only just to relate that the Democrats originally proposed that the school fund should be divided among the various townships of the state instead of having one centralized state school fund. Sibley himself

[26] But even this provision was not liberal enough to the foreigner to satisfy Mr. Francis Baasen of Brown county. He argued that "to make a distinction between white men is invidious, and I consider it anti-Democratic. Sir, men coming here from South Carolina or from Connecticut are as ignorant of the peculiar institutions of our future State as those coming from Europe." *Dem. Deb.*, pp. 607-8.

[27] *Rep. Deb.*, pp., 167-68.

[28] A provision embodying the second principle later became part of the constitution by amendment. See p. 184.

favored this township arrangement, but other members, led by ex-Governor Gorman, were able to strike from the second and third sections of the Democratic provisions any words which would have authorized the splitting up of the school fund. The Republicans proposed that the school fund should be used to establish a school system throughout the state, making it very clear that they would not favor any township or district scheme. It was the Democratic provision which was adopted for this section. The fourth section of this article was copied verbatim from the proposals of the convention over which Sibley presided. It is the provision which guarantees that the University of Minnesota shall remain where it was established in 1849, namely, at St. Anthony Falls. It should be said, and it is a fact which will be noted again, that the Democratic wing of the convention alone was interested in carrying out the tri-city agreement by which Stillwater was to have the state prison, St. Paul the capitol, and St. Anthony the state university.[29] The Republicans naturally opposed this scheme since it kept all the state institutions east of the Mississippi and gave none to the southern and western portions of the state.

11. ARTICLE 9—FINANCES OF THE STATE AND BANKS AND BANKING. The victory of the Democratic convention over the Republican on this article was fairly decisive but not so sweeping as was the case with certain other articles. In general it is proper to say that it was the Democratic form of words which was adopted in almost every case. The Republicans succeeded, however, in getting several of their proposals into the constitution. They alone are responsible for the second part of the fifth section, which prohibits the incurrence of debt for works of internal improvement, and they seem to have forced the Democrats to compromise in the matter of the third provision in section 13. The Republicans had rejected a provision that the stockholders in banks should be subject to an unlimited liability and they had put nothing in its place, thus leaving this question to the legislature. The Democrats had adopted a provision for single liability "over and above the stock by him or her owned." The Republicans really insisted upon a high liability, though they rejected unlimited liability, and they seem to have been responsible in the committee on compromise for the writing in of the provision for treble liability.[30] Sections 3, 4, and 6 of the provisions finally adopted were entirely of Democratic origin. The Republicans had no equivalents for 4 and

[29] It is equally impossible to prove and to disprove the existence of a definite agreement among the three towns here named for the control of the territorial and state institutions, yet it is interesting that the Democratic wing of the constitutional convention, dominated as it was by the delegates of St. Paul, St. Anthony, and Stillwater, should have written the essential terms of this supposed agreement into its proposals for a constitution. See pp. 130-31; and see also *Minn. Hist. Col.*, 8:77-78.

[30] "Treble liability" here means a double liability over and above the par payment for the stock. The stockholder might lose all his initial investment and still be liable for double the par value of his shares. As a matter of fact this liability applies only to stockholders in state banks of issue, of which there are none in Minnesota. "Double liability," as the term is used farther on, means an additional one hundred per cent liability over and above the par payment for the stock.

6, and had provided a different list of exempted property in section 3. Sections 7, 8, 9, and 10 were drawn about equally from the Democratic and Republican proposals, although it is true that the words have a Democratic origin.

The committee on compromise again in the case of this article found it wise to write in words which neither convention had proposed, as for example the words "by general law" at the end of section 3, and they also made various minor compromises between the proposals of the two wings.

12. ARTICLE 10—OF CORPORATIONS HAVING NO BANKING PRIVILEGES. The important discussions in both wings of the convention as they concern this article dealt with the question of requiring all corporations to be created under general laws. There was a very strong sentiment in favor of forbidding special incorporations.[31] The statute books of the territory had been filled with laws creating corporations and granting special privileges to them and as one member expressed it, "The whole territory is flooded with these special charters."[32] The legislature seems to have had no more important function than that of granting special corporate privileges. The debate in the Democratic convention was especially lively and the Democrats finally agreed upon the following provision: "No corporations shall be formed under special acts." They refused to make an exception even of municipal corporations. The Republicans, however, permitted several exceptions to the rule. Their proposed section ran as follows: "Corporations for purposes other than banking may be formed by general laws; but shall not be created by special act, except for municipal purposes, and in all cases where in the judgment of the legislature the object of the corporation cannot be obtained under general laws." It is very clear that the Republicans were inclined to have more confidence in the legislature than were the Democrats. The committee on compromise accepted neither of these proposals but adopted what it may have considered a compromise in the following terms: "No corporation shall be formed under special acts except for municipal purposes."[33] An analysis of this section will show that it was satisfactory to neither of the conventions, since both had rejected the provision in almost these identical terms.

Section 1 of this article is practically the same as was proposed by both conventions but in its wording it is identical with the Democratic proposal. As regards section 3, on the liability of the stockholders for the debts of the

[31] This was the first constitutional question debated in the Democratic wing. *Dem. Deb.*, pp. 124-77, 221-22, *passim*. It consumed so much time that the leaders seem to have concluded to work out other problems more fully in the committees, in order to obviate the necessity for lengthy debates.

[32] *Dem. Deb.*, p. 129. See also the speech by Gorman, *ibid.*, pp. 140-43.

[33] These words are still a part of the constitution, but the last four, "except for municipal purposes," have in fact been annulled. See pp. 169, 198.

corporation, the Republicans would have left to the legislature the determination of the extent of the liability. The double liability provision which was adopted was that proposed by the Democrats. Section 4, which relates to the granting of rights of way to corporations and the obligation of common carriers to carry all goods produced in the state upon equal terms, was of Democratic origin exclusively. The Republicans had no equivalent section. All things considered the Democrats were more influential than the Republicans in the determination of the contents of this article.

13. ARTICLE 11—COUNTIES AND TOWNSHIPS. We come in this article to another instance of a distinct and emphatic victory for the Democratic proposals over the Republican. Every section in this article had its origin in the Democratic convention. It should be said, however, that the Republicans had originally considered a long report on the organization of counties and townships and that the report contained more or less of the substance of the first five Democratic sections.[34] This Republican scheme had included provision for the supervisorship system of county government and it had named all the important county and township officers and had, generally speaking, gone too much into detail. Once it was seen by the Republicans that they could not agree upon the terms of this lengthy proposal, they found an easy solution of their difficulties by the adoption of the old expedient of leaving it to the legislature. Mr. Colburn proposed as a substitute for the committee report that the legislature at its first session should provide by law for county and township organization.[35] To this substitute, which was adopted, the Republican convention added but one more section requiring that no county seat should be established or removed except by a vote of a majority of the legal voters of the county. Suffice it to say that the committee on compromise seems to have considered the Republican proposal too brief. It adopted the Democratic proposals in toto.

14. ARTICLE 12—OF THE MILITIA. Both conventions had under consideration at one time or another lengthy committee reports relating to the militia organization of the state. Both found it wise to reject these extended reports and to adopt brief and simple substitutes. The final Republican proposal, consisting of two sections, provided, first, that the legislature should establish and equip the militia and that in time of peace no conscientious objector should be compelled to do military duty but might be required to pay an equivalent for such service; and second, that all officers of the militia except the staff should be elected "by persons subject to military duty in their respective commands." Here again we see the extreme care which the Republicans took to protect

[34] The original Republican proposal will be found in *Rep Deb.*, pp. 166-67.
[35] *Ibid.*, p. 273.

the rights of the individual and, on the other hand, once personal liberty had been guaranteed, to allow the legislature full control in the matter of governmental organization. The Democrats also, finding it impossible to agree upon the terms of the military organization, adopted the brief provision which became a part of the constitution leaving the whole question to the legislature, and not even guaranteeing the rights of conscientious objectors or the right of the militia to choose its under officers.

15. ARTICLE 13—IMPEACHMENT AND REMOVAL FROM OFFICE. If the materials be not examined with a great deal of care, it will appear that the Democratic proposals on the subject of impeachment and removal were entirely adopted and that the Republicans had nothing to say about the contents of this article. The fact is, however, that the Republicans had, in a somewhat disorderly fashion, proposed various sections on impeachment and removal in the article on the legislature, and that their proposals substantially conformed to what the Democrats proposed, except in form. In some ways the Republican proposals may be considered to have been better than those coming from the opposite wing. Briefly, the Republican convention would have applied the impeachment process to all civil officers and not merely to the few named in the constitution. Officers under impeachment would have been protected by the requirement that two thirds of the senators elected must vote favorably to bring about a conviction. The oath of office for the senators when sitting as a court of impeachment and the organization of a prosecuting committee in the house were also prescribed in the Republican materials. It was further provided that the governor might remove a judge from office on the passage of a concurrent resolution by two thirds of the members elected to each house.[36] It was specifically provided also that the chief justice of the supreme court should preside over the senate during impeachments. It was finally proposed that no officer should be suspended or removed without having received notice of the charges against him and having been given an opportunity to be heard in reply. In short, the Republicans made the usual proposals with reference to the impeachment and removal process but went farther than the Democrats in the guaranteeing of the rights of the office-holders against improper removals and impeachments. In fact, they seem to have gone too far in the latter respect, for the committee on compromise adopted the more ordinary Democratic provisions instead. This whole article is not, however, of very great importance since it simply traverses once more the ground covered in article 4, section 14.

[36] *Rep. Deb.*, p. 219. "For reasonable cause, which shall not be sufficient ground for the impeachment of a Judge, the Governor shall remove him on a concurrent resolution of two thirds of the members elected to each House of the Legislature; but the cause for which such removal is required shall be stated at length in such resolution." Cf. *Mass. Const.*, part 2, chap. iii, art. 1.

16. ARTICLE 14—AMENDMENTS TO THE CONSTITUTION. On the face of the documents it is a fair statement that neither the Democrats nor the Republicans are responsible for the final provisions on the amendment and revision of the constitution. This article constitutes in fact the great compromise which the Republicans, who were in other respects mainly defeated in their proposals, forced upon the Democratic wing of the convention. One of the chief tenets of the Republican political creed was faith in the wisdom and justice of the people. They proposed, as we have already noticed, to give the legislature power to refer any matter to the people for their decision.[87] They proposed special referenda upon several other questions and they particularly desired that the people at the first election should be allowed to pass upon the question of negro suffrage.[88] When the Republican members of the compromise committee were forced to adopt one article after another in substantially the form proposed by the Democrats, they were thrown back upon their confidence that the Republican party would very soon carry the state and if at that time there should be a simple method of amending the constitution they would be able to get popular consent to a series of amendments which would make this Democratic constitution over into one which conformed more nearly to Republican views. Consequently, although they themselves had not proposed an extremely liberal or simple amending process, they insisted that the Democrats give them at least this much. Both the Republican and Democratic proposals on the method of amendment were entirely discarded, and instead thereof there was adopted a section which embodied the simplest and easiest method of amending a state constitution which has yet been put into effect in any state.[89] This great compromise of the convention resulted in the development of a new method of amending state constitutions. Both conventions had originally proposed that an amendment must be proposed by two successive legislatures and be finally ratified by the people in a subsequent election before taking effect. The Republican proposal would have required a majority of the members elected to each of the houses in each of the legislatures to propose an amendment but a simple majority of the voters voting on the question would have been sufficient to ratify such amendment. This would have been perfectly satisfactory if the Republicans had been able to have their proposed constitution adopted. The Democratic proposals, on the other hand, required only a simple majority vote in the two legislatures to propose amendments and a vote of "a majority of voters present and voting" at the election to ratify amendments. The scheme which was adopted required the proposal of the amendment by only one legislature and that by a simple majority, and permitted the ratification of amendments by a majority of the voters voting on the question at the next election.

[87] See p. 119.
[88] See pp. 99-101, 123.
[89] See pp. 147-48.

This, as has been said, was in advance of all the methods then in use among the various states.

The Democrats had, furthermore, made no provision whatever for the calling of constitutional conventions for the revision of the original constitution. The Republicans had proposed the submission of the question "Shall there be a constitutional convention?" to the voters in 1870 and every twentieth year thereafter. This Republican proposal was rejected and in its place there was inserted the provision which stands today in the state constitution. At the time of its adoption this provision was reasonably liberal and simple, for at that time elections came annually. At the present time, however, with our biennial elections, the scheme is somewhat cumbersome.[40]

17. ARTICLE 15—MISCELLANEOUS SUBJECTS. The committee on compromise made a slashing attack on the miscellaneous provisions proposed by both conventions. Both Democrats and Republicans had adopted articles exhorting the legislature to maintain institutions for the deaf, dumb, blind, and insane.[41] These provisions were entirely eliminated and appear nowhere in the constitution. The Democrats had also adopted a strong provision guaranteeing the separate property rights of married women and the Republicans had adopted a similar provision in connection with their bill of rights.[42] These proposals were so nearly identical that it would have been a very easy matter to have reached a compromise upon their terms. In fact, however, the committee on compromise apparently refused to consider the question at all. The Republicans had also adopted articles fixing the date of the beginning of the political year for the state, prohibiting persons convicted of infamous crimes, defaulters, and the givers or receivers of bribes at elections from holding public office, prescribing the oath of members of the legislature and of state officers, and specifying the method of electing United States senators. All of these proposals were rejected by the compromise committee. A few years later, however, an amendment was carried fixing the date of the political year as the Republicans had proposed.[43]

Coming then to the article as it was adopted, we have once more upon the face of things a Democratic contribution. The Republicans had no equiva-

[40] See pp. 145-47.

[41] The Republican proposal was as follows: "Institutions for the benefit of those inhabitants who are deaf, dumb, blind, or insane shall always be fostered and sustained by legislative enactments."

[42] These provisions were as follows: Democratic: "The property of married women, which they may have at the time of marriage, or may acquire during coverture, together with the rents, issues and profits arising therefrom, shall be subject to their exclusive control, and may be disposed of by them in the same manner as though they were unmarried; and shall be subject to all debts contracted by them before marriage, but shall never be liable to the debts of the husband." Republican: "All property both real and personal of the wife, owned or claimed before marriage and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property."

[43] *Minn. Const.*, art. 7, sec. 9.

lents for the first, third, and fifth sections. The first and the fifth, it is proper to say, embody together with section 4 of article 8, the terms of the so-called tri-city agreement.[44] In section 1 of this article the capital is guaranteed at least temporarily to the city of St. Paul and in section 5 the state prison is assured to the city of Stillwater. The Republicans, for reasons which have already been given, not only had no interest in carrying out this agreement, but were actually opposed to its appearing in the constitution. Section 3 which relates to the oath to be required of voters at elections was entirely of Democratic origin. The Republicans had partial equivalents for the relatively unimportant provisions in sections 2 and 4 but on the whole article 15 was of Democratic origin.

18. SCHEDULE. It was charged in the Democratic convention when the compromise constitution came up for adoption that the Republicans had sacrificed all their principles for the chance of winning the offices.[45] The same charge also appeared in this form: that the Republicans had carried the schedule provisions while the Democrats had written the constitution. This accusation was of course strictly a partisan charge. As has been shown above

[44] See p. 125.

[45] *Dem. Deb.*, pp. 596, 605-6. See pp. 105-6.

[46] See pp. 101-3.

NOTE.—THE SOURCES OF THE CONSTITUTION. It was a part of the original plan of this work to prepare a statement of the sources from which the various provisions of the original Minnesota constitution were drawn, with a view to ascertaining which state constitutions most directly influenced the Minnesota constitutional conventions. Much of the necessary work was done but the results were not so satisfactory as to warrant the completion of this part of the study. In the first place the constitutions of the northern states of that day from New York to Wisconsin and Iowa were all very much of a piece. To be sure each had its peculiarities, more or less important, but in the main their bills of rights, their provisions for the three departments, and even less weighty clauses and sections followed much the same general lines. Furthermore there appears to have been a fairly adequate law library already in existence in the capitol at St. Paul and there is little reason to doubt that the various committees of the conventions prepared their reports only after some hours at least of study of the constitutions of other states. The delegates were not servilely bound to follow one or another of a few clearly differentiated models, but had, rather, to make their selections from a number of constitutions differing in details and by shades of meaning rather than in fundamentals. Their work was largely eclectic, though by no means entirely so, and it required the ability to discriminate often "twixt tweedledum and tweedledee." Each convention went through this task more or less completely, selecting a group of provisions to come under each of the heads of a constitution, adapting them to local conditions, and working them as far as possible into a harmonious whole. Most of the Republican committees reported and had their reports printed before the Democratic committees on the same subjects presented their conclusions, thus giving the latter the advantage of a knowledge of what the rival convention had under consideration. While the work was still going on the conference committee took over all the materials of both conventions, subjecting them to another process of selection and adaptation. The result was that when the committee finally reported back a complete constitution that document was already several stages removed from the sources. Therefore, when the author of this study found that a certain clause bore a striking resemblance to clauses in the federal constitution and in several of the state constitutions, but was identical with no one of them, it was impossible for him to give a definite source for the Minnesota provision. There is little reason to doubt that if the work had been completed with Teutonic thoroughness some stray bits of valuable information would have been acquired, but on the whole the task did not seem worthy of completion.

It may be said, however, that the Minnesota bill of rights closely resembles that in the Wisconsin constitution (1848). Among the chief general sources of the constitution not to mention the remote Magna Charta and other famous English liberty documents, may be listed the Northwest Ordinance,

it had little basis in fact.[46] Viewed as a whole, the schedule of the compromise constitution is a skilful piecing together of the proposals of the two conventions, with several provisions proposed by neither. Superficially it bears a greater resemblance to the Republican than to the Democratic proposals, but in fact the Democrats gained more than appears upon the surface.

the federal constitution, the organic act, the enabling act, the Iowa constitution (1846), the Wisconsin constitution (1848), the New York constitution (1846) and the contemporary constitutions of Illinois, Indiana, Michigan, and Ohio. Practically all of these were mentioned at one time or another in the debates, and some of them frequently. Students who wish to pursue this investigation further should consult the best collection of state constitutions of that day: A. S. Barnes & Co., *The Constitutions of the Several States*, etc., 555 p., New York, 1857. See also Poore, *The Federal and State Constitutions*, etc., 2 vol., 1878, and Thorpe, *The Federal and State Constitutions*, etc., 7 vol., 1909.

CHAPTER VII

MINNESOTA ENTERS THE UNION

1. THE ADOPTION OF THE CONSTITUTION. Surprise has often been expressed that the vote of the people upon the adoption of the constitution should have been so nearly unanimous. According to the precinct returns there were 36,240 votes for the constitution and only 700 against it. According to the canvassers' returns there were 30,055 affirmative votes and 571 negative.[1] How did it happen, it has often been asked, that following such a bitter struggle between the Republicans and the Democrats both inside the conventions and out, and between those who desired an east and west division of the territory and those who desired a north and south division, between those who wanted negro suffrage in the constitution and those who did not, and following such an unsatisfactory compromise between the two conventions upon the text of a constitution, that not two per cent of the voters in the territory cast their ballots against the instrument? Certainly if one had listened to the mutterings of the discontented minority in each convention during the last three days of their proceedings, one would have gained the idea that the constitution would not be readily adopted by the people.

But the answer, though somewhat complicated, is not hard to find. In the first place, each party had taunted the other with the charge that it did not want Minnesota to achieve statehood and was trying to delay that consummation.[2] Consequently when a compromise constitution was finally agreed upon, neither party dared to come out against it. It is also to be remembered that the land grants to the new state were very favorable and that there were powerful interests connected with the railroad corporations and land companies who desired the state government quickly established so that they might proceed to do business with it and to receive its assistance. Moreover, the friends of the east and west division had been partly mollified by the splendid grant of lands for a railroad from Winona west through St. Peter to the Big Sioux river, and after their defeat in both conventions they had become convinced that for them the game was up.

These are some of the pertinent facts, but the most important one is yet to be given. Sections 16, 17, and 18 of the schedule contain in themselves all the explanation that is needed of the almost unanimous vote for the constitution. The Democrats in the conference committee had insisted upon holding the elections for state officers, for congressmen, and for or against the constitution all on the same day. They did not intend to give the Republicans time to strengthen their organization still further before holding the

[1] *Dem. Deb.*, p. 677; *Rep. Deb.*, p. 620.
[2] *Ibid.*, pp. 115-27.

first state election. Furthermore, they provided in section 18 that "in voting for or against the adoption of this constitution the words 'for constitution' or 'against constitution' may be written or printed on the ticket of each voter, but no voter shall vote for or against this constitution on a separate ballot from that cast by him for officers to be elected at said election under this constitution." This clause alone assured practically a unanimous vote. In those days candidates and groups of candidates printed their own ballots to be distributed among the voters. The campaign was on before the constitutional conventions had adjourned. Both Republican and Democratic organizations were determined to carry the state in this first election. How utterly ruinous to all chances of party success it would have been for either party or for any group of candidates to have printed a ballot at the head of which were printed the words "against constitution" and upon which appeared the names of men running for office under the constitution! It would have put the candidates in the position of running for offices which they hoped would not be created. It would have put them on record as against statehood. Naturally, no such ballots would be printed. Consequently, every voter who voted for officers under the constitution either had to vote "for constitution" or strike out the words "for constitution" printed upon his ballot, and write in the words "against constitution." This would put the voter in an absurd position and probably very few resorted to this device. The simple fact is that there was no separate clear-cut expression of popular approval or disapproval of the constitution. Under the circumstances no such expression was possible.[3]

2. THE FIRST SESSION OF THE STATE LEGISLATURE. On October 13, 1857, the voters of the proposed state not only adopted the constitution, as has been pointed out above, but they also, in accordance with the requirements of sections 16 to 19, inclusive, of the schedule of the constitution, elected three representatives to the national Congress and a full complement of state legislative, executive, and judicial officers.[4] On Wednesday, December 2, as required by section 6 of the schedule, the first legislature of the state assembled in the capitol at St. Paul.

There was considerable doubt from the outset as to the legality of the session. The state had not yet been admitted to the Union. The governor, lieutenant governor, and other officers-elect of the state had not taken office and were forbidden by the constitution to do so until after the admission of the state by Congress.[5] In the absence of Lieutenant Governor Holcombe,

[3] Cf. *Cong. Globe*, 35 Cong., 1 sess., p. 1141.

[4] The Democratic party was completely victorious, although the vote on the governorship was close enough to make Alexander Ramsey believe that he was actually entitled to be governor instead of Sibley. Folwell, *Minnesota*, 149; *Minn. in Three Cen.*, 3:57-58.

[5] The original constitution provided that "The term of each of the executive offices named in this article, shall commence upon taking the oath of office, after the state shall be admitted by congress into the union." Art. 5, sec. 7.

the senate chose a president pro tem and subsequently a "president of the senate."[6] The latter office was unknown to the constitution, and indeed the incumbent was so uncertain as to the exact position he occupied that he sometimes signed himself as "president" and at other times as "president pro tem."[7]

Another difficulty arose from the fact that the Republican minority in both houses objected strenuously to the entire proceedings on the grounds of legality. They could not comprehend in what position Minnesota stood if a *state* legislature were to pass laws to be approved by a *territorial* governor. To give point to their opposition the senate Republicans entered a "solemn protest against the recognition by this body, in any manner, directly or indirectly, of Samuel Medary, Esquire, Governor of the Territory of Minnesota, as the Governor of the State of Minnesota, or as being invested with any of the rights, authority, privileges, powers or functions of Governor of said State of Minnesota."[8] This protest was uttered in vain. The Democratic majority in both houses voted in favor of the joint session to hear Governor Medary's message, and after an examination of the question by a committee the senate accepted the majority report which sustained the legality of the session and the propriety of recognizing the territorial executive officers.[9]

From December 2 the legislature continued in session for nearly four months, doing a great deal of business. It passed altogether thirty-two general and ninety-two special laws.[10] Two of the former were proposed amendments to the constitution, both of which were adopted by the voters nearly a month before the admission of the state.[11] In addition to these labors it elected two United States senators, Messrs. Rice and Shields. Governor Medary having left the territory in the meantime, Secretary Chase signed the various acts first as acting governor and again as secretary. This was the time when Minnesota had a state governor-elect impatiently waiting to assume office, a territorial governor who had so little interest in the territory's affairs that he left his position there for more important business elsewhere, and a secretary of the territory acting at one and the same time as governor and secretary.[12]

The amendments to which reference has been made deserve a more extended notice. The financial difficulties which began in 1857 still lingered on in 1858. Railroad building even by the land-grant companies was simply out of the question unless the state should give them some very direct assistance.[13] The idea which was fostered was that the state should loan its credit

[6] *Senate Journal* 1857-1858, pp. 3, 6.
[7] Cf. *ibid.*, pp. 247, 264, 267, 270, 370.
[8] *Ibid.*, pp. 27-28. See also *House Journal*, 1857-1858, pp. 58-59.
[9] *Senate Journal* pp. 28-29, 62-67. But see the minority report, pp. 72-74.
[10] *Sess. Laws*, 1858, *passim*. The laws are not all printed in the order of their passage.
[11] *Ibid.*, ch. 1, 2. See pp. 173-74, 185-87.
[12] Cf. Hall, *Observations*, pp. 24-25.
[13] Folwell, in *Minn. Hist. Col.*, 15:193-95.

to the companies, without directly obligating itself to pay, and that the roads, thus bolstered up, should then borrow on state credit the money needed for railroad construction. But until the state was legally and formally organized it had no credit; this was exactly the sort of situation to which Governor Gorman had called attention a year before.[14] Congress was proceeding very slowly to the work of admitting Minnesota to the Union; no one knew when the admission would take place. A special committee of the House, appointed to investigate this matter, was unable to learn anything of importance concerning the delay.[15] There seemed but one thing to do, and though it smacked of revolution this was the course adopted. Two amendments were submitted at once, one to authorize the loan of state credit, and the other to empower the state executive officers to assume their respective offices on May 1, 1858, whether the state had been admitted at that time or not.[16] The amendments were adopted but they were not, as a matter of fact, put into effect until after the admission of the state. They did serve, however, to give congressional critics an additional point upon which to attack the procedure in Minnesota.[17]

3. CONGRESS AND THE ACT OF ADMISSION. It was on January 11, 1858, that President Buchanan, having received from Governor Medary a copy of the Minnesota constitution, submitted it to the Senate and at the same time notified the House of his action.[18] The question of the admission of the state was at once referred to the committees on territories of the respective houses. Senator Douglas, chairman of the Senate committee, reported out a bill for admission on January 26, and two days later attempted in vain to bring it up for consideration.[19] He renewed his effort on February 1, but again without success. Other business blocked the way.

In a very illuminating letter which Congressman-elect Becker wrote from Washington on February 9 to Sibley we find the chief reasons for the delay.[20] The Democratic party was already divided on the Kansas question. Douglas and other northern Democrats had no enthusiasm for the administration's policy in the Kansas matter, while the southern members insisted on the immediate admission of that state under the Lecompton constitution. Somehow the impression had got abroad in Washington that the senators and representatives from Minnesota were opposed to the administration on the Kansas question, an impression which was undoubtedly well founded and which the Minnesota members neither wished nor dared to contradict. Hence

[14] See p. 56.

[15] *House Journal* 1857-1858, p. 246.

[16] See note 11, above.

[17] *Cong. Globe*, 35 Cong., 1 sess., pp. 1949, 1953. Representative John Sherman (Ohio) said, in the course of his bitter attack upon the bill to admit Minnesota (p. 1949): "While we are sitting here, to say whether they shall come into the Union under this constitution, they are proposing to change it! What is the change they propose? It is to allow the people of this infant State to be loaded down with a debt of $5,000,000 to aid some unorganized railroad companies of land jobbers."

[18] *Cong. Globe*, 35 Cong., 1 sess., pp. 246, 254.

[19] *Ibid.*, pp. 405, 462.

[20] *Sibley Papers* Jan.-June, 1858, Minnesota Historical Society.

it was that on both occasions when Douglas tried to bring up the Minnesota bill southern senators were ready to prevent consideration. The southerners wanted the Kansas question settled first, and one of them warned that "If you admit Minnesota and exclude Kansas, standing on the same principle, the spirit of our revolutionary fathers is utterly extinct if this government can last for one short twelvemonth."[21]

The delay which followed was exceedingly painful to the Minnesota members. Days dragged into weeks and weeks into months and still nothing was done. The Kansas bill finally passed the Senate despite the opposition of some northern Democrats as well as Republicans but still no action was taken to revive the Minnesota bill. Grown weary at last of cooling his heels in the lobbies and ante-rooms, Senator-elect Shields on February 24 addressed a communication to his friend Senator Crittenden of Kentucky in which he made application for his seat in the Senate.[22] His argument, very cleverly drawn, asserted that by her acceptance of the enabling act Minnesota had ceased to be a territory and had become a state; that since there could be no such thing as a state out of the Union, Minnesota must be a state in the Union; and if so, then her representatives were being unjustly and illegally denied their seats in Congress. This question was referred to the judiciary committee and on March 4 Senator Bayard reported from that body the laconic conclusion "That Minnesota is not a State of the Union, under the constitution and laws."[23]

There followed then almost three weeks more of waiting. On March 23 Douglas again sought to bring up the Minnesota bill, and on the 24th he finally succeeded.[24] From that day on for two weeks he struggled to keep this question uppermost in the mind of the Senate, and while he was unable to force its consideration for consecutive days until it had been passed or defeated, he did succeed in bringing it finally to a vote on April 7 when it was passed by forty-nine to three.[25] The bills which stood in the way during this period were the Pacific railroad bill and the House substitute for the Kansas bill.

The bill for admission was promptly transmitted to the House, where it fell to the lot of Representative Alexander H. Stephens, as chairman of the committee on territories, to bring it on for debate. This he attempted to do on April 15 but found himself blocked.[26] On May 3 he succeeded in having it made a special order for the next day and for the next three days the bill was debated at some length. On Friday, May 7, 1858, it was put over until Tuesday, May 11, when it was finally put upon its passage, passed by the

[21] *Cong. Globe*, 35 Cong., 1 sess., p. 501.
[22] *Ibid.*, pp. 861-62.
[23] *Ibid.*, p. 957.
[24] *Ibid.*, pp. 1265, 1299.
[25] *Ibid.*, p. 1516.
[26] *Ibid.*, p. 1610.

House, and approved the same day by the president.[27] On the next day the senators were sworn in and given their seats in the Senate, but the two representatives, chosen by lot from among the three elected, were not seated until May 22.

An analysis of the opposition to the act admitting Minnesota to the Union clearly establishes the fact that it had no cohesion and no common ground on which to stand. The group of administration senators who insisted on the passage of the Kansas measure before the Minnesota bill could find no consistent reason for opposition once the Kansas bill had passed. The final Senate vote on the admission of Minnesota disclosed only three senators, all southerners and irreconcilables, voting against the bill.[28] In the House the final vote was one hundred and fifty-seven to thirty-eight. The latter number included twelve extremely partisan Republicans, who disliked to see Minnesota coming in as a Democratic state, eleven members of the American party, who opposed the alien suffrage provisions of the Minnesota constitution, nine former Whigs with Republican sympathies, three Democrats, two Free-Soilers, and one Unionist, with varying objections to the bill or to the constitution. When it came to voting the Democratic majorities in both houses closed their ranks and voted almost unanimously for admission. What would have happened if Minnesota had sent Republicans instead of Democrats to represent her in Washington can only be conjectured, but it was probably just as well that the Democrats carried the state.

While it is true that the opposition was not united there were not lacking many pretexts for prolonging the debate. No one who has read the entire record would attempt to deny that there were numerous irregularities in the procedure leading up to, during, and even after the drawing up and adoption of the state constitution. The interesting fact is, however, that the senators and representatives who desired to oppose the admission of Minnesota found and utilized in their arguments nearly all the irregularities which existed and some which did not exist at all. They found illegalities in the election of the delegates, in the organization and procedure of the constitutional convention, in the contents of the constitution, in the election for the adoption of that instrument, and in the acts of the legislature and the people in legislating under the constitution and even amending it before the admission of the state. The debates upon admission, therefore, and also those upon the seating of Minnesota's representatives, throw some light, and at times not a little darkness, upon the constitutional process in Minnesota.

Both in the Senate and in the House, there was objection to Minnesota's claims to representation in Congress. It was argued with much justice that Minnesota had no right to three representatives, and that it had contravened

[27] *Cong. Globe*, 35 Cong., I sess., pp. 2061, 2070.
[28] Senators Clay (Ala.), Kennedy (Md.), and Yulee (Fla.). Cf. *Minn. Hist. Col.*, 8:176.

the federal law in electing them at large instead of by districts.[29] Some objected also, that Minnesota was not a state at the time and consequently was incapable of electing either representatives or senators.[30] To the latter objection Senator Seward of New York replied that it was "metaphysical rather than practical." There must be a transition stage when it is difficult to determine the exact status of things. "The worm becomes a butterfly; there must be stages in its transition in which it is difficult to tell whether it is one thing or the other. That is the condition of the Territory of Minnesota while it is passing from the condition of dependence into the condition of a sovereign state of the Union." The object must be to find a practical solution, and this he argued consisted in accepting the senators-elect.[31] The number of representatives was reduced to two, however, and after some debate the House consented to seat the only two who presented their credentials, Becker having been eliminated by the drawing of lots.[32]

Scarcely a senator or representative who took part in the debates had the temerity to assert that the proceedings in Minnesota under the enabling act had been regular in all respects, although some made light of the irregularities. It is evident from the debates that both parties in the territory had kept their fellow partisans in Congress fully informed as to developments. In order not to arouse too greatly the ire of those congressmen who believed that an enabling act should be complied with in letter and in spirit, Senator Douglas was very careful to draw the preamble of the bill for admission so as to avoid asserting or even implying that the people of Minnesota had lived up to that act.[33] In spite of his care, however, the preamble contained at the end the words "in pursuance of said act of Congress." Objection being made, these words were also stricken out, leaving nothing in the preamble which could in any way be construed as congressional approval of the proceedings in Minnesota.[34] This amendment, and the reduction in the number of representatives allowed, constituted the only changes made by Congress in Senator Douglas' bill.

The leading objectors in the Senate were Senator Pugh, Democrat, of Ohio, and Senator Brown, Democrat, of Mississippi, and in the House were Representative Sherman, Republican, of Ohio, and Representative Garnett, Democrat, of Virginia, but many others also spoke.[35] Douglas in the Senate, and Representatives Jenkins of Virginia, and Stephens of Georgia, all Democrats, were the leading supporters of Minnesota's claim to admission.

[29] *Cong. Globe*, 35 Cong., 1 sess., pp. 1949, 1956.
[30] *Ibid.*, p. 2076.
[31] *Ibid.*
[32] Letter of Becker to Sibley, Feb. 9, 1858, *Sibley Papers* Jan.-June, 1858, Minnesota Historical Society; *Cong. Globe*, 35 Cong., 1 sess., pp. 2310-15.
[33] *Ibid.*, pp. 1488-90.
[34] *Ibid.*, p. 1490.
[35] There is a satisfactory summary of the debate in Moran's article, How Minnesota became a state, in *Minn. Hist. Col.*, 8:169-80, although the stress is upon the national aspects of the admission of Minnesota and the objections are not given in detail.

The proceedings in Minnesota were condemned because of alleged frauds in the election of June 1, because the number of persons elected to the convention was excessive, because persons were allowed to sit as delegates who had not been elected at all, because there had never been a real constitutional convention but only "two badly-organized mobs," and because the constitution had not been drawn up by a convention. As to the constitution itself the opposition asserted that it was unrepublican, that it permitted representatives in the legislature to hold for life, permitted aliens and "uncivilized Indians" to vote, required the first state legislature to meet before the admission of the state, and attempted to impose additional duties upon federal office-holders in the territory. The principal objection to the contents of the instrument related to the franchise provisions. In spite of all that the friends of Minnesota said to make the point clear, the opposition congressmen seemed incapable of grasping the distinction between the rights of citizenship and the privilege of the franchise. To the very end some of the members, including even some staunch believers in state rights, denied the distinction and asserted that no state had the power to enfranchise aliens. That the wish was father to the thought was clearly shown in a speech by a representative from Missouri:

> I warn gentlemen from the South of the consequences that must result from maintaining the right of unnaturalized foreigners to vote in the formation of State constitutions. The whole of the Territories of this Union are rapidly filling up with foreigners. The great body of them are opposed to slavery. Mark my word: if you do it, another slave State will never be formed out of the Territories of this Union. They are the enemies of the South and her institutions.[36]

On top of all these objections there was the severest condemnation of the manner in which the constitution was ratified and of the attempt to set up a government under it. Senator Pugh pointed out there had been no independent vote upon the question of adopting the constitution, and that for this reason the unanimity of the people in adopting it was apparent rather than real.[37] The meeting of the legislature, the election of two United States senators, the passage of laws, and the proposals to amend the constitution, all before the admission of the state, were referred to by various members as revolutionary and as overthrowing the federal authority in the territory. Thus for several days in each house was waged the battle of words. The friends of the act of admission, while they were insistent, did not attempt to force a vote until all the opposition thunder had spent itself. When that time came it was found in both houses that the number of members voting against admission was relatively small.

On May 24, 1858, the news of the passage of the act of admission having at last reached Minnesota, Governor Sibley and the other state officers quietly

[36] *Cong. Globe*, 35 Cong., 1 sess., p. 1980.
[37] *Ibid.*, p. 1141.

assumed their respective offices.[38] On June 2, the legislature reconvened, to take up its work where it had left off in March. Thus after a movement toward statehood lasting from the legislative session of 1856 until the early summer of 1858, Minnesota found herself at last a fully recognized state in the federal Union, with a state government completely constituted and in operation in all departments.

4. WHEN DID MINNESOTA BECOME A STATE? We come at length, at the end of a somewhat disjointed narrative, to examine briefly the question as to when Minnesota became a state. This question is today of merely historical significance, yet there was a time when important public questions hinged upon its decision and when men differed in their interpretations of the facts. Some said that statehood was an accomplished thing when the constitution was adopted, October 13, 1857.[39] Others held to the view that a subsequent act of admission was necessary and that statehood was not brought about until May 11, 1858.[40] The divergence of views upon this question lasted from the summer of 1857 until many years after statehood was an admitted fact. The constitutional conventions, the first state legislature, the two houses of Congress, and finally the state supreme court all had to consider the problem at one time or another; Senator Shields, Attorney General Berry, and leading attorneys, not to mention the newspapers, also had their different opinions.

The root and cause of most of the confusion lies in the peculiar wording of the enabling act. This act was entitled "An act to authorize the people of the territory of Minnesota to form a constitution and state government, preparatory to their admission into the union on an equal footing with the original states." In the first section of the act it was provided that the people within the limits of the present state of Minnesota were "authorized to form for themselves a constitution and state government, by the name of the state of Minnesota, and to come into the union on an equal footing with the original states, according to the federal constitution." The difficulty arose over the fact that this act seemed to authorize the people of Minnesota not only to form a constitution and state government, but to come into the Union without any further act on the part of Congress. This construction was particularly easy to accept when, as was often the case, the title of the act was completely ignored and the entire attention was concentrated upon the words "authorized ... to come into the union on an equal footing with the original states."

[38] Folwell, *Minnesota*, p. 157.

[39] Application of Senator Shields, *Cong. Globe*, 35 Cong., 1 sess., pp. 861-62; opinion of Attorney General Berry, July 2, 1858, in *Opin. of the Attys. Gen.*, 1858-1884, pp. 2-3. Cf. *Rep. Deb.*, pp. 532-35.

[40] Minority report of D. S. Norton and W. H. C. Folsom in *Senate Journal*, (Minn.) 1857-1858, pp. 72-74; report of U. S. Senate judiciary committee, *Cong. Globe*, 35 Cong., 1 sess., p. 957.

The constitutional conventions and the compromise committee did not follow any consistent view upon this very important question. They accepted the idea of immediate statehood to the extent of providing for the election of all the state officers at the constitutional election and of requiring the first state legislature to meet December 2, long before Congress could possibly have been expected to pass an act of admission.[41] In other passages, however, they clearly show that they were imbued with the idea that an act of admission was a condition precedent to statehood.[42]

The construction of the enabling act upon which it was argued that statehood was acquired simultaneously with the adoption of the constitution proves, upon examination, to have been almost entirely unwarranted. To arrive at this interpretation it was necessary to assume that this enabling act was different from the Wisconsin and other enabling acts which had gone before. It is true that there was a slight difference in wording, but Representative Galusha Grow had given his colleagues definite assurances that there was nothing unusual in any respect about the Minnesota enabling act.[43] It was, likewise, necessary to ignore the title to the act, and also the words "according to the federal constitution."[44] The federal constitution provides that "new states may be admitted by the congress into this union."[45] and in no other way may they come in. The enabling act was in no sense a contract between Congress and the people of Minnesota, as was asserted by some, and even had it been, its meaning would not have been essentially different. It was still left for Congress to say whether Minnesota should or should not be admitted to the Union. Each house separately refused to seat the representatives sent by Minnesota until after the passage of the act of admission, and the two houses joined in the passage of that act, thus proving conclusively that Congress, which had the sole and exclusive power in the premises, believed that such an act was necessary to give statehood to Minnesota. The enabling act merely authorized Minnesota to equip herself with a constitution and a government suitable for statehood, but not to set them in operation. She was to provide herself with vestments against the marriage day. If Minnesota went beyond this it was no one's fault but her own if difficulties arose. Legally Congress had the power to delay statehood indefinitely, and as long as it did so Minnesota remained a territory.

This is not to say, however, that all the acts of the *de facto* state government before May 11, 1858, were utterly null and void. On the contrary, the national and territorial administrations were the only authorities which had any right to object. Congress and the president did nothing by way of

[41] *Minn. Const.*, sched., sec. 6.

[42] *Ibid.*, art. 5, secs. 7, 9; sched. secs. 1, 8. Art. 2, sec. 3 contains the full title of the enabling act, including the words "preparatory to their admission into the union."

[43] See p. 63.

[44] See p. 297.

[45] *Const.*, art. 4, sec. 3.

protest against what was being done, although members of Congress had full knowledge of the facts; and the territorial officials actually coöperated with the first state legislature from December, 1857, to March, 1858.[46] Throughout this period Congress undoubtedly possessed the power to annul the acts mentioned, but instead it admitted Minnesota to the Union without laying down a single condition. After May 11, 1858, the duly constituted state government likewise had power to ignore, or at least to renounce the first group of state laws, yet it not only did nothing toward that end, but actually enforced and took advantage of the acts in question, including the railroad bond amendment to the constitution.[47] The only reasonable conclusion is that Congress and the new state government consented to and ratified what had been done. This was the ground taken by the state supreme court some years later and it is a position which has never been successfully disputed.[48] Minnesota did not actually become a state until May 11, 1858, but the acts of the *de facto* state government before that date were fully validated by subsequent ratification. It may, therefore, very properly be said that some parts of the constitution actually went into effect before the admission of the state, and that the constitution became fully operative on that day.

[46] See p. 134-36.

[47] Cf. Secombe *v.* Kittelson, 29 *Minn.* 555, (1882). When the first state legislature reconvened after its recess on June 2, 1858, a bill was introduced into the senate to validate the legislation signed by Medary and Chase. It passed the senate but was lost in the house. *Senate Journal*, 1857-1858, pp. 398, 442-43, 482, 492-93. Evidently the latter body thought the act unnecessary.

[48] Secombe *v.* Kittelson, *supra*.

CHAPTER VIII

HOW THE CONSTITUTION DEVELOPS

1. THE LINES OF GROWTH. A state constitution develops and changes in various ways. (1) Actual changes in the text of the written constitution are made only by means of the formal processes of revision and amendment. (2) It is very commonly known, however, that even without formal changes of this nature, a constitution develops through the process of interpretation by the courts. (3) Still more subtle and less tangible are the transformations brought about by gradual changes in customs and traditions with reference to the application of the constitution, and even by changes in the meanings of words which make up the text. Judicial decisions, changes in political practices and in the connotation of constitutional terms, often bring about results which are contrary to the wishes and interests of considerable groups of people. Any decision of the courts which interprets the constitution contrary to the desires of any large number of voters may cause a popular demand for a change in the written instrument. Numerous amendments to the Minnesota constitution can be traced directly to an unpopular decision of the supreme court of the state. On the other hand the people have insisted upon changing many clauses of the constitution which had simply become out of date.

2. REVISION BY A CONSTITUTIONAL CONVENTION. The very first section of the Minnesota constitution makes the assertion that "Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify, or reform such government whenever the public good may require it." This sweeping generalization would seem to go almost to the point of justifying revolution by "the people," yet it should be carefully observed that the same instrument provides in article 14 the only legal and constitutional means of making formal changes in the constitution. Two separate and distinct methods are there provided, one for "revision" of the constitution through the instrumentality of a constitutional convention, the other for "amendments" to be proposed by the legislature and ratified by the voters. These two methods require separate discussion.

Section 2 of article 14 makes the following provision with reference to revision of the constitution:

> Whenever two-thirds of the members elected to each branch of the legislature shall think it necessary to call a convention to revise this constitution, they shall recommend to the electors to vote, at the next election for members of the legislature, for or against

a convention; and if a majority of all the electors voting at said election, shall have voted for a convention, the legislature shall, at their next session, provide by law for calling the same. The convention shall consist of as many members as the house of representatives, who shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid.

This provision has been part of the constitution from the beginning. It outlines a slow and cumbersome process of revision conforming well to the more conservative ideas upon this point prevalent in 1857, and designed to prevent effectually any undue haste in the revising of the framework of the government. It provides that one legislature may submit to the voters "at the next general election for members of the legislature" the simple question of whether a constitutional convention shall be called. Only in case "a majority of all the electors voting at said election shall have voted for a convention" shall the legislature proceed to the next step of providing for the election and holding of the convention. At the time when this provision was adopted elections were annual and the legislature met each year; it would have been possible at that time, therefore, for a convention to have been convened within less than two years after the legislature had proposed the matter to the voters. Today the process will take a considerably longer time. Let us suppose that the legislature elected in 1920 decides to take up this matter. It assembles in January, 1921, and sometime before its adjournment in April it passes a resolution submitting the question to the people. The question will not get to the voters until November, 1922, and if at that time the requisite majority of the voters can be obtained, the next legislature is required to proceed to provide for the convention. Early in 1923, therefore, an act would be passed for the holding of the elections, which could hardly come before June 1, and the convention would then be required to meet on or before September 1, 1923. If it set to work at once and pursued its task diligently it could hardly be ready to submit anything to the voters until the spring of 1924.

Only one attempt has been made by the legislature up to this time to invoke this method of changing our constitution.[1] This was in 1896, and at that time the people saw clearly how difficult it is to get "a majority of all the electors voting" at a general election, particularly in a presidential year, to express themselves in favor of any such proposal. At this election the voters were confronted with the duty of settling nine separate questions by referendum vote. Six of these were proposed constitutional amendments, submitted under the original amending clause of the constitution which made the simple requirement that "a majority of the voters present and voting"

[1] *Sess. Laws* 1895, ch. 1. Governor Austin proposed the holding of a convention in 1870 and again in 1871, and no doubt the question has been discussed at other times. See *Minn. ex Docs.*, 1870, Governor's message, I, p. 32; *ibid.*, 1871, Governor's message, I, p. 26.

on any proposed amendment should be sufficient to ratify it. Two were referenda upon legislative questions and one the referendum upon calling a constitutional convention, all three of which required for their adoption the affirmative vote of a majority of all the voters voting at the election. The six amendments related to very important matters: the right of aliens to vote, conferment of home-rule powers upon cities, establishment of a board of pardons, eminent domain proceedings, the taxation of large corporations, and the investment of permanent school funds. The referenda related to the transfer of income from the internal improvement land fund to the road and bridge fund, and to the taxation of railroad lands.[2] The six amendments, requiring but a bare majority of the votes cast upon each amendment, were all adopted.[3] The affirmative votes ranged from 97,980 to 163,694. All would have failed if a majority of the votes cast at the election had been required.

On the other three questions the vote was as follows:

Total votes cast at the election			**343,319**
Necessary to the adoption of any of the following proposals			**171,660**
Shall there be a constitutional convention?	**Yes,**	**96,308**	**Failed**
	No,	**70,568**	
Taxation of railroad lands?	**Yes,**	**235,585**	**Carried**
	No,	**29,530**	
Transfer of internal improvement funds to the road and bridge fund?	**Yes,**	**152,765**	**Failed**
	No,	**28,991**	

On the basis used at that time for determining the passage of constitutional amendments, all of these three propositions would have carried. Actually, one carried and two failed.[4] Yet the six amendments were all adopted and made fundamental changes in the constitution.

From what has been said it will be seen that the vote requirement which is a condition precedent to the calling of a constitutional convention in Minnesota is a difficult obstacle to overcome. It must be said, however, that once this obstacle has been surmounted the path to a revision of the constitution is fairly straight and easy. The constitution lays down no restrictions upon the convention beyond those which state its size and the mode of its election and the requirement that it shall meet within three months after the election.

[2] *Sess. Laws* 1895, ch. 168, 377.

[3] See table, pp. 281-82.

[4] Only one of the amendments received a greater vote than the proposal to transfer the internal improvement funds to the road and bridge fund. On the other hand more electors voted against the constitutional convention than voted against any of the amendments. The law for the taxation of railroad lands which was approved by the voters was later declared unconstitutional. Stearns *v.* Minnesota, 179 *U. S.* 223; 21 *Sup. Ct. Rep.* 73; 45 *L. Ed.* 162, (1900).

Once constituted, the convention becomes practically master of the situation.[5] It may sit as long as it pleases and regulate its own organization and procedure. It may write an entirely new constitution or it may propose amendments to particular clauses or it may even decide that no change is expedient and submit nothing. Whatever it has to propose, it may submit to the voters at either a general or a special election, and it may itself determine the majority which shall be required for the ratification of its proposals.

3. THE AMENDING PROCESS. There have already been several occasions to refer to the fact that from 1858 to 1898, Minnesota had, of all the states, the simplest process for amending its constitution.[6] It was easy to get amendments proposed and easy to get them ratified. Indeed, following the election of 1896, discussed above, many came to the conclusion that a bare majority of the voters voting upon an amendment was too low a requirement for so serious a matter as a change in the fundamental law of the state. A movement was begun, therefore, to amend the amending clause.[7] The Legislature of 1897 proposed that amendments should be submitted only at general elections and that "a majority of all the electors voting at said election" should be required to ratify amendments. This proposition went before the voters in November, 1898, and it was ratified by the following vote:[8]

For the amendment	69,760
Against the amendment	32,881
Total votes for and against	102,641

The total vote at the election was 251,250. Thus less than twenty-eight per cent of the voters decided, by their affirmative votes, that no future amendment should be adopted unless over fifty per cent of all the voters at the election should favor it. Had the amendment itself applied to this election, it would have failed of adoption by 55,866 votes.

Under the present constitutional provision, amendments are just as easy as ever to propose. The 1898 amendment made no change in this respect. Of all the states Minnesota has today, and has had since 1858, the simplest method of proposing constitutional amendments. The Minnesota constitution requires merely "a majority of both houses of the legislature," and this does not mean a majority of all members elected but simply of those present

[5] Hoar, *Const. Conven.*, pp. 149-213, *passim.*, espec. pp. 164, 184, 213; Dodd, *Revis. and Amend. of St. Const.*, pp. 72-117. But see also Jameson, *Const. Conven.*, pp. 300-489, *passim.* The latter author takes a narrower view of the powers of constitutional conventions.

[6] See pp. 100, 129-30. Cf. Dayton *v.* City of St. Paul, *22 Minn.* 400, (1876). This decision settled beyond any doubt the meaning of the original amending clause.

[7] It has been said that the liquor interests promoted this change in order to prevent the adoption of a constitutional amendment prohibiting the liquor traffic. The resultant amendment has, therefore, been called at times "the brewers' amendment."

[8] *Sess. Laws* 1897, ch. 185; *Leg. Man.* 1899, p. 504.

and voting, a quorum being present.[9] Seven states require a majority of the members elected. Twenty-two states require a two-thirds or three-fifths vote, either of a quorum or of the members elected. Fourteen states require that the amendment be approved by two successive legislatures before it may be submitted to the voters. This accounts for forty-four states. Of the remaining four, New Hampshire permits amendments to be proposed only by a constitutional convention; Delaware amends her constitution by the action of two successive legislatures without any referendum to the people; Mississippi and South Carolina require a two-thirds vote of each house on each day for three several days, and two-thirds of the members elected to each house, respectively, and in both of these states, after the voters have approved the amendment, the legislature must again pass it before it becomes part of the constitution.[10]

When it comes to the matter of ratification of amendments, however, the importance of the change made in 1898 becomes evident. A comparison of the results obtained from 1858 to 1898, inclusive, with those obtained from 1900 to 1920, inclusive, shows what a striking change has been brought about in the matter of the adoption of amendments.

	Number of Amendments Proposed	Number Adopted	Number Rejected	Percentage Adopted	Percentage Rejected
1858–98	66	48	18	73	27
1900–20	48	11	37	23	77
Totals	114	59	55		

The situation depicted in this table hardly needs further comment. It should be said, however, that seventeen of the amendments adopted in the earlier period probably received a majority of all the votes cast at the election, showing that the present requirement has never been impossible of attainment. On the other hand the defeat of seventy-seven per cent of the amendments in the later period has not been due to the fact that the legislature has proposed unpopular measures. Every one of the forty-eight voted upon from 1900 to 1920 has received a majority of all the votes cast thereon. It does not follow, however, that they would all have been adopted under the old system. The opposition to amendments is less active today because it is known that only an aroused public opinion can adopt an amendment. Many voters would vote "no" if this were necessary, but they know that failure to vote on the amendment has the effect of a negative vote. The number of such voters is impossible of determination.

[9] See Green *v.* Weller, 32 *Miss.* 650; (1856); State *v.* McBride, 4 *Mo.* 303; 29 *Am. Dec.* 636; (1836). It is true that section 13 of article 4 of the constitution requires that "No law shall be passed unless voted for by a majority of all the members elected to each branch of the legislature," but it has been decided that the proposal of a constitutional amendment is not legislation. Hollingsworth *v.* Virginia, 3 *Dall.* 378; 1 *L. Ed.* 644, (1798).

[10] See *Index Dig. of St. Const.*, pp. 10-20, *passim.*

The figures above indicate not only that the amendment of 1898 has seriously reduced the output of amendments; they show also that the demand for amendments is increasing. The constitution is becoming more and more unadapted to the needs of the present century. The supply of amendments is falling farther behind the demand, and the discrepancy would appear to be much greater were it not for the fact that in recent years the legislature has purposely kept down the number of its proposals. In 1917 it proposed only one, the prohibition amendment. This was done in response to the demand of the prohibition forces who believed that if only this amendment were proposed they could so concentrate public opinion upon it as to bring about its adoption. The total vote in the election (1918) was 380,604; the majority necessary for adoption was 190,303. The vote for the amendment was 189,614, as against 173,665 votes opposed.[11] The affirmative vote exceeded the negative by 15,949, yet the amendment was lost because it fell 689 short of the constitutional requirement.

Facts such as those herein related have caused many individuals to become deeply impatient with the present method of amending the constitution. In the election of 1914, eleven amendments were submitted to the voters. Every proposed amendment received a large majority of the votes cast thereon, yet only one, the "forestry amendment," received a majority of the votes cast at the election.[12] The total vote was 356,906; the vote necessary for the adoption of an amendment was 178,454; and the vote given to this one amendment was 178,954. Thus after a strenuous campaign of public education, in which the public press and the schools had given liberally of their aid, this beneficial amendment received but 500 votes more than were necessary for its adoption. Several of the defeated amendments received over a hundred thousand majority of the votes cast thereon. It is not surprising that Governor Hammond in his message of 1915 said:

> At the last election there were submitted to the electors eleven proposed constitutional amendments, and all but one [were] defeated. The ordinary voter has not the time, or will not take the time, to familiarize himself with so large a number of propositions. Each one is worthy of much study and of earnest consideration. It is too much to expect that voters will give such study and consideration to eleven proposals in a single election. One or two of them might be submitted and the judgment of the people obtained upon these, but when a large number are proposed a great many voters will either not vote at all or vote "No" because they do not feel justified in voting "Yes." Of the amendments approved in the Legislature it is advisable that some method be adopted to determine the one most important, and submit that, and that alone, to the plebiscite.[13]

Disregarding this good counsel, the 1915 legislature submitted eight amendments to the voters in the 1916 election. Only two were adopted.[14]

[11] *Leg. Man.* 1919, p. 670, insert.
[12] *Ibid.*, 1915, p. 537.
[13] *Inaugural Message* 1915, p. 5.
[14] *Leg. Man.* 1917, pp. 516-17.

The six defeated amendments received majorities of the votes cast upon such amendments of from twenty-two thousand to one hundred and thirty-six thousand. The initiative and referendum amendment, which if adopted would have added a new method of changing the constitution, received a vote of 187,711 affirmative as against 51,544 negative, but it failed to receive a majority of the 416,215 votes cast at the election. The 1917 legislature did submit only one amendment, as has been recounted above, but the state was not ready for prohibition.

There can be no question that upon matters of fundamental importance the voters can be aroused to the point where the great majority of them will vote. Over ninety-five per cent of the voters expressed themselves upon prohibition in 1918 and over ninety-one per cent on the trunk highways amendment in 1920. Yet the Minnesota constitution has several unfortunate details which it is not easy to change. A good example is the difficulty which was experienced in extending the term of probate judges from two to four years. On two occasions a proposed amendment to this effect was defeated.[15] Very little publicity was given to the proposal on either occasion. There was no group of active political workers to advertise its merits. It was finally adopted in 1920, but its success seems to have been due to extraneous causes.[16]

One state, Wyoming, permits amendments to become effective only when approved by a "majority of the electors." "Electors" has been held to mean "not only those who vote, but [also] those who are qualified yet fail to exercise the right of franchise."[17] Wyoming thus requires a much higher vote than Minnesota, which requires only a majority of the electors voting at the general election. Nine other states require the same majority as is requisite in this state.[18] The most common provision is that requiring a majority of the votes on the amendment, which was the original requirement in Minnesota also.

[15] See p. 177.

[16] Upon being submitted a third time this amendment was adopted in the election of 1920 by a vote of 446,959 to 171,414 in a total vote of 797,945. Its adoption came as a great surprise to all observers, for it did not receive adequate publicity. The newspapers, which devoted whole pages to the trunk highways amendment, gave almost no attention to the probate-judge measure. Several factors quite apart from the merits and importance of the amendment are entitled to credit for having brought about its final adoption, which was accomplished in spite of the feebleness of the campaign in its favor. In the first place, the newly enfranchised women, urged on and instructed in a quiet way by their leaders in various organizations, approached their task of voting with a fresh zeal and interest. It appears that they voted in large numbers and that they did not neglect the pink ballots. In the next place, the great publicity given to the trunk highways amendment directed the attention of all voters to the constitutional-amendment ballot, with the result that over ninety-one per cent of the electors voted upon the highways amendment, and over seventy-seven upon the probate-judge question. Furthermore, the voters had already had the latter measure before them on two recent occasions, and they were in consequence already partially informed as to its merits. Finally, it must be recognized that the Republican "landslide" in the national election carried other things with it in a most irrational way, not only in Minnesota but in other states.

[17] State *v.* Brooks 14 *Wyo.* 393; 84 *Pac.* 488; 6 *L. R. A.* (n. s.) 750, (1909). See also State *v.* Swift, 69 *Ind.* 505, (1880), and see contra, Green *v.* State Board of Canvassers, 5 *Ida.* 130; 47 *Pac.* 259; 95 *Am. St. Rep.* 169, (1896).

[18] See *Index Dig. of St. Const.*, p. 16; Dodd, *Revis. and Amend. of St. Const.*, pp. 185-209.

4. PROPOSED IMPROVEMENTS IN THE AMENDING PROCESS. Those who are dissatisfied with the present method of amending the Minnesota constitution are, very naturally, casting about for some remedy for what they consider a bad situation. The most honest and straightforward method would be to amend the present clause. Such an amendment might take the form of a complete return to the original provision of the state constitution upon this point, under which a mere majority of those voting upon the amendment was sufficient to carry it. This plan is somewhat objectionable, however, since amendments might often be adopted by small minorities, in cases where the greater number of voters took no interest in the proposal. Less objectionable would be an amendment in the form proposed by a representative in the 1919 legislature. His plan was a compromise between the former and the present methods of amendment in that, had it been adopted, a majority of sixty per cent of those voting upon the proposed amendment would have been sufficient to ratify.[19] Somewhat different, but also effective, would be a plan whereby a majority of those voting upon the proposition would be sufficient only in case such majority was at the same time equal to not less than say forty per cent of the total vote cast at the election. Such a plan would prevent the adoption of amendments by slender minorities, and would at the same time permit the passage of almost any popular amendment of considerable importance.[20]

Professor Dodd, who is a severe critic of the plan of requiring a majority of all the votes cast at a general election to ratify an amendment, calls attention to the manner in which the Alabama legislature has succeeded in evading the ordinary result of such a provision. The legislature in that state provided that "any elector desiring to vote for said amendment shall leave such words intact upon his ballot, and any elector desiring to vote against said amendment shall evidence his intention to so vote by erasing or striking out said words with pen or pencil."[21] This resulted in all ballots not marked in the negative being counted in favor of the amendment, the reverse of the practice in Minnesota. It would be very unfortunate indeed to be compelled to resort to such a subterfuge in Minnesota, yet circumstances can be imagined in which even such a practical nullification of the amendment of 1898 might be more desirable than the alternative of having a constitution which was almost unamendable. Indeed, a close examination of section 1 of article 14 gives some ground for the belief that the Alabama method may be entirely constitutional in Minnesota. There is nothing, for example, to prevent the legislature from requiring the proposed amendments to be printed upon the same ballot with the candidates for the important state offices. This would

[19] House bill 289, introduced by Representative Lauderdale. The bill was indefinitely postponed.

[20] A similar provision has just been adopted in Nebraska, but the percentage was fixed at thirty-five.

[21] Dodd, *op. cit.*, p. 191.

prevent indifferent voters from entirely ignoring or even throwing away their amendment ballots. The legislature could then further enact that all such ballots had been cast for the amendments unless the voter had, in some distinct way, marked a negative upon them. In order to be entirely fair to the voter, the legislature might even go so far as to have a warning notice printed at the head of the ballot, informing the voter of the effect of his not marking any choice upon the amendments, but this would probably not be necessary to establish the constitutionality of such an enactment. The special reason for believing that this plan would be constitutional lies in the fact that the section in question says that "if it shall appear *in a manner to be provided by law,* that a majority of all the electors voting at said election, shall have voted for and ratified such alterations or amendments, the same shall be valid to all intents and purposes, as a part of this constitution."[22] In the past the law has been that a failure to vote should be counted as a negative vote; there is but little reason why, in the future, the legislature could not provide that a failure to vote, under the conditions specified above, should count as an affirmative vote.

In concluding his discussion of the various methods of amending state constitutions, Professor Dodd says: "Of the methods of popular ratification most employed—(1) by a majority of those voting on the measure, even though it be a minority of those voting on other matters at the same time, (2) by a majority of those voting at the election when the proposal is submitted—the second has proven practically unworkable, without schemes for the counting of votes which practically nullify it; the first, on the other hand, often permits constitutional alterations by a small minority of the electors, and is objectionable for this reason. It is a question whether the second plan, aided by party endorsements or by the Alabama method of voting, is not better than final action by a minority. Under the Alabama plan an elector votes for an amendment unless he is definitely opposed to it; he is presumed to be for it rather than against it if he does nothing."[23]

5. THE COURTS AND THE ADOPTION OF AMENDMENTS. One of the interesting facts about the amending process is that the determination of the state canvassing board as to whether an amendment has been adopted or rejected is not necessarily final. It has been held that "whether a constitutional amendment has been properly adopted according to the requirements of an existing constitution is a judicial question."[24] In the determination of such questions "the controlling presumption" is in favor of the statement and

[22] *Minn. Const.*, art. 14, sec. 1. Italics mine. Constitutional amendments are today submitted to the voters on separate pink ballots. *Gen. Stat.* 1913, sec. 318.

[23] Dodd, *op. cit.*, p. 198.

[24] McConaughy *v.* Secretary of State, 106 *Minn.* 392, 409; 119 *N. W.* 408, (1909).

certificate of the state canvassing board. "In a collateral proceeding this certificate is conclusive, . . . and in a direct attack it can be overthrown only by very clear and satisfactory evidence."[25] The burden is upon the contestant. Any legal voter may institute a contest in a state district court, serving notice at the same time upon the secretary of state.[26] There is provision for the inspection and recounting of ballots, also, although the almost insuperable difficulty in recounting the vote of the entire state must be evident to all.[27] Nevertheless, such a recount was proposed in the case of the prohibition amendment in 1918 and might have been carried out had not the success of the national prohibition amendment been so fully assured at the time as to make the state amendment unnecessary. A very interesting contest, with unique results, followed the election of 1906. In that election there were submitted to the voters, among other propositions, the so-called "wide open tax amendment," and a new road and bridge fund amendment.[28] On the ballots the tax amendment was number 2, and the road amendment number 1. On the tally sheets and in the tally books, however, this numbering was reversed. When the ballots were canvassed, the state canvassing board assumed that this error had not resulted in any material error in the returns. The total vote having been 284,366, the required majority for adoption of any amendment was 142,184. Upon this basis the tax amendment was declared adopted with a vote of 156,051, and the road amendment lost with a vote of 141,870.[29] Two contests were immediately instituted in the St. Louis county district court. One of the contestants aimed to overthrow the tax amendment which the canvassing board had declared adopted; the other wished to have the road amendment declared adopted. Both came on for trial before the same judge. A recount of the ballots was begun. Some ballots were counted from all but two counties, and in all nearly half of the vote of the state was counted. However, this represented only 654 of the 2,670 election districts of the state, making it evident that the larger districts were the ones first inspected. In 71 districts the ballots had been destroyed; no effort was made to recount the votes in 1,945 precincts. It was evident from the recount that the error in printing the tally sheets and books had resulted in a considerable number of errors in counting the votes. On the other hand, there was no uniformity of error. In some precincts there was no error; in some the road amendment gained as a result of the recount, and in others the tax amendment gained. There was only what might be called an "average error," or a general tendency to error, in favor of the tax amendment and against the road amendment. So great was this average error that had it continued

[25] *Ibid.*, pp. 427-28.

[26] *R. L.* 1905, sec. 336; *Sess. Laws* 1911, ch. 59; *Gen. Stat.* 1913, sec. 529.

[27] *Gen. Stat.* 1913, sec. 530.

[28] *Sess. Laws* 1905, ch. 168, 212. See pp. 189-90, 193, 240, 246-47 for further discussion and for the texts of the amendments.

[29] *Leg. Man.* 1907, p. 489.

throughout the whole state as it did in the 654 districts the votes from which were recounted, the tax amendment would have been proved defeated, and the road amendment carried. Not only that, but assuming even that the returns from the 2,016 precincts not recounted were entirely correct, and adding to them the corrected returns from the 654 recounted, the tax amendment would still be defeated and the road amendment adopted. Assuming this to be a sufficient proof, the district judge declared that the tax amendment had been defeated and the road amendment carried, and he entered judgments accordingly.[80] At this point there should have been an appeal by the state to the supreme court from both decisions. Such appeals were entered by the attorney general, but the one relating to the road amendment was later dismissed by him.[81] This left the decision of the district court final in this case, and the road amendment was declared by the secretary of state to be a part of the constitution. The other appeal was prosecuted to judgment.[82] The supreme court refused to accept the theory of average error and insisted that the contestant had not proved his point. The decision of the district court as to the tax amendment was, therefore, reversed, and the tax amendment was also declared carried.

6. THE INCREASING LENGTH OF THE CONSTITUTION. It is a matter of familiar observation that the tendency is for state constitutions to grow longer. This process of lengthening is usually accelerated when a state draws up a new constitution, but it goes steadily on, also, as legislative amendments are added, one after another, to the original document. Minnesota is no exception to the rule. Only one amendment has really had the effect of shortening the constitution, the tax amendment of 1906.[83] Article 4 has been increased by the addition of nearly four pages of new material; articles 1, 7, 8, and 9 have all been lengthened. The trunk highways amendment of 1920, embodying the so-called "Babcock plan," adds approximately twelve pages to the constitution.[84]

On principle, most men will admit the wisdom of having a shorter statement of the basic law of the government. When it comes down to cases, however, every man wants his own particular hobby written at length into the constitution; he is sure that he knows just how to write it, and he wants it to be written down in full. He is very often mistaken, and sometimes finds it out too late. In any case, the length of modern state constitutions is due very

[80] McConaughy *v.* Secretary of State, *supra*.
[81] *Leg. Man.* 1909, p. 46, insert.
[82] McConaughy *v.* Secretary of State, *supra*.
[83] See pp. 237-40.
[84] See pp. 252-65.

largely to the fact that legislatures and constitutional conventions and the people who ratify their proposals are less interested in the theoretical and practical merits of having short constitutions than they are in the very practical value of having things written down in full in black and white. When and where constitutions are easy to amend there is no great objection to having them long. Where, as in Minnesota today, it is very difficult to change them, there is an unquestionable advantage in having the constitution a document which deals solely with fundamentals rather than one which has been so filled with detail as to hamper the government in its daily operation. Fundamentals should, perhaps, be written down in tables of bronze; but fundamentals are usually capable of brief statement like the ten commandments and the federal bill of rights. Who will venture to say that he can foresee in detail the needs of the government of this state at a period fifty years hence? Yet the constitution of Minnesota with its many detailed provisions, is now over sixty years old.

CHAPTER IX

THE AMENDMENTS TO THE CONSTITUTION

In the following pages no attempt is made at an exhaustive discussion of the judicial interpretation of the constitution. The chief aim of the chapter is to summarize the growth of the constitution article by article, showing the number of amendments proposed and adopted, together with some of the reasons why they were proposed and any peculiar circumstances surrounding their adoption. In passing, something will be said by way of illustration of the growth of the constitution through judicial interpretation, but it is intended that these partial digressions shall be suggestive rather than exhaustive.

1. ARTICLE I—BILL OF RIGHTS. Seven amendments to this article have been proposed and five have been adopted. As early as 1868 an attempt was made to abolish the requirement of an indictment or presentment of a grand jury as a condition precedent to a trial for felony.[1] The peculiar form in which the question was presented to the voters probably had much to do with the defeat of the amendment.[2] The present section 7 does eliminate the grand jury requirement; it was not adopted until 1904.[3] The only other amendment which has been defeated was that proposed in 1915 which purported to authorize the taking of private property under eminent domain proceedings in order to construct private drainage ditches.[4]

The first amendment to this article came in 1888. The original section 12 prohibited imprisonment for debt, making exception only in cases of persons who were guilty of fraud in contracting such debt. Under this section it was held that the failure to pay a hotel bill may be accompanied by such facts connected with the departure of the guest as to constitute a crime, not because of the debt incurred, but by reason of the fraud.[5] The section further exempted from seizure or sale for the payment of any debt a reasonable amount of property to be determined by law. The exemption was determined by the legislature by defining a homestead as a certain area of property rather than by limiting it as to value, and making the homestead exempt from seizure. Under the original section even a mechanic's lien could not be enforced as against such homestead.[6] An amendment was, therefore, proposed

[1] *Sess. Laws* 1868, ch. 107.

[2] Instead of voting for or against the amendment, the voter was required to vote "for grand jury" or "against grand jury."

[3] *Sess. Laws* 1903, ch. 269.

[4] *Ibid.*, 1915, ch. 384.

[5] State *v.* Benson, 28 *Minn.* 424; 10 *N. W.* 471, (1881). See also State *v.* Harris, 134 *Minn.* 35; 158 *N. W.* 829, (1916).

[6] Cogel *v.* Mickow, 11 *Minn.* 475 (Gil. 354), (1866); Meyer *v.* Berlandi, 39 *Minn.* 438; 40 *N. W.* 513; 1 *L. R. A.* 777; 12 *Am. St. Rep.* 663, (1888).

and readily adopted which provided that such exemption from seizure or sale should not apply as against those who had performed labor or service or who had furnished materials toward the improvement of the property.[7]

The next successful amendment came in 1890 and applied to section 4, relating to jury trial. It was current opinion that the unanimous verdict of a jury was required under this section and that the legislature had no power to change to a different jury system. This was altered by the proviso added in 1890 which authorized the legislature to provide that a five-sixths verdict after not less than six hours deliberation shall be a sufficient verdict in any civil action. The additional clause does not, of course, apply to criminal cases. It is of interest to note that although this amendment was proposed by the legislature in 1889 and adopted in 1890, the necessary statute making the five-sixths verdict possible was not passed until 1913, and that it requires not six but twelve hours deliberation before such verdict may be valid.[8]

In 1896 came the amendment to section 13 with reference to the destroying and damaging of private property for public use. The original section provided merely that "private property shall not be taken for public use without just compensation therefor first paid or secured." Under this section it was held by the supreme court of the state that damages to property resulting from a change in the grade of a city street did not constitute a "taking" of the property for public use.[9] The amendment inserting the words "destroyed or damaged" after the word "taken" made such damages recoverable.[10]

The abolition of the grand-jury requirement in section 7 in 1904 has already been mentioned.[11]

The last amendment to the bill of rights was adopted in 1906. The supreme court had decided that a farmer could not sell even the products of his own farm or garden in violation of a city ordinance requiring a license.[12] The legislature promptly proposed the amendment which became section 18 of this article to the effect that "Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor." The remarkable vote on this amendment is of interest as indicating what can be done when a simple issue arousing the public is presented to the electorate. The amendment received a vote of 190,897 yeas as against 34,094 noes, out of a total vote of 284,366. Not only farmers who wished to sell but also city dwellers who wished to buy, united in passing the new section. In Hennepin county the vote was more than five to one for the amendment; in Ramsey nearly four to one. It may be observed that milk

[7] *Sess. Laws* 1887, ch. 2.
[8] *Ibid.*, 1913, ch. 63; *Gen. Stat.* 1913, sec. 7805.
[9] Henderson *v.* City of Minneapolis, 32 *Minn.* 319; 20 *N. W.* 322, (1884).
[10] Dickerman *v.* City of Duluth, 88 *Minn.* 288; 92 *N. W.* 1119, (1903).
[11] See p. 156.
[12] State *v.* Jensen, 93 *Minn.* 88; 100 *N. W.* 644, (1904).

is a "product of the farm" under this section in the opinion of the attorney general.[13]

While it is not essential to a discussion of the growth of this article to speak of decisions which interpret sections that have not been amended, it will serve to illustrate the results of judicial interpretation to give a brief summary of some leading decisions upon three important and much misunderstood questions, namely, freedom of speech, jury trial, and due process of law.

The Minnesota constitution clearly indicates the fact that freedom of speech and of the press does not mean absolute, uncontrolled license. Unlike the first amendment to the federal constitution, which does not expressly refer to the common law limitations upon freedom of speech, the state constitution provides that the freedom of the people to "speak, write, and publish their sentiments on all subjects" is limited by the very necessary and well established common law rule that they shall be "responsible for the abuse of such right."[14] Even the truth may not be published if such publication serves no justifiable end and endangers the public morals or safety. The legislature passed a statute forbidding the publication of the details of any execution.[15] A newspaper published a truthful and fair statement of the facts concerning the hanging of a criminal. The newspaper was held guilty of violation of the statute. "If the nature of the case is such as to make it improper that the proceedings should be spread before the public because of their immoral tendency, or the blasphemous or indecent character of the evidence exhibited, the publication, although full and complete, will be a public offence, punishable accordingly."[16]

No bill of rights can properly be used as a shield to protect the person who endangers the public safety or the existence of the state. In the words of Story, the constitutional guarantee of a liberty, such as liberty of the press, cannot be construed to deprive the state of "the primary duty of self-preservation."[17] We have had some striking illustrations of this fact in the past few years. The state legislature defines that which is criminal. Sabotage, "meaning malicious damage or injury to the property of an employer by an employe" has been made a crime by statute, and "any person who by word of mouth or writing, advocates or teaches the duty, necessity or propriety of crime, sabotage," etc., has been declared by law to be "guilty of a felony" and punishable accordingly.[18] This statute has been upheld and enforced by the courts.[19] Another law illustrating a limitation properly placed upon freedom of speech and press is that passed in 1917 to prevent interference

[13] *Op. of Atty. Gen.*, 1918, no. 396, p. 272.
[14] *U. S. Const.*, amend. 1; *Minn. Const.*, art. 1, sec. 3.
[15] *Sess. Laws* 1889, ch. 20.
[16] State *v.* Pioneer Press Co., 100 *Minn.* 173; 110 *N. W.* 867; 9 *L. R. A.* (n. s.) 480, (1907).
[17] Story, *Comm. on the Const. of the U. S.*, secs. 1874, 1878, 1880-82.
[18] *Sess. Laws* 1917, ch. 215.
[19] State *v.* Moilen, 140 *Minn.* 113; 167 *N. W.* 345, (1918); State *v.* Holm, 139 *Minn.* 267; 166 *N. W.* 181, (1918).

with the enlistment of men in the military service of the United States or the state of Minnesota. Among other things this act forbids "any person within the confines of the state advocating that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States."[20] The statute has been upheld and liberally construed by the state supreme court.[21] If it be objected that such statutes destroy freedom of speech, the answer must be that the public safety requires them in certain emergencies and that the exercise of the power of the legislature to define crimes is controlled by the people. Public opinion must be relied upon to check the abuse of this great discretionary power.

The right to a jury trial in civil and criminal cases, stated in sections 4 and 6 of this article, has been much misunderstood. The section relating to civil cases provides that "the right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy," etc. The intention of this section was clearly not to create a new right but to preserve an old one against interference by the legislature. "The effect of this provision is, first to recognize the right of trial by jury as it existed in the territory of Minnesota at the time of the adoption of the state constitution; and, secondly, to continue such right unimpaired and inviolate."[22] According to the present laws of the state, "in actions for the recovery of money only, or of specific real or personal property, or for a divorce on the ground of adultery, the issues of fact shall be tried by a jury, unless a jury trial be waived or a reference be ordered. All other issues of fact shall be tried by the court, subject to the right of the parties to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury or referred."[23]

The constitution contains the customary provision that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury."[24] As in the case of the section discussed above, it was not the intention of this provision to add a new right or to change materially an old one but rather to conserve a right previously existing. Before the adoption of the constitution, jury trial was not allowed in court-martial cases arising in the state militia, in contempt of court cases, and in cases of misdemeanors arising under municipal ordinances. These exceptions are, therefore, continued under the constitution. The reason is thus stated by Judge Mitchell: "All that is necessary to be said as to the right of trial by jury is that the constitution simply preserves it in cases where it existed previous to

[20] *Sess. Laws* 1917, ch. 463.

[21] State *v.* Freerks, 140 *Minn.* 349; 168 *N. W.* 23, (1918); State *v.* Gilbert, 141 *Minn.* 263; 169 *N. W.* 790, (1918); State *v.* Townley, 140 *Minn.* 413; 168 *N. W.* 591, (1918). But see Zechariah Chafee, Jr., *Freedom of Speech*, 431 pp., New York, 1920, for a different view of the law of free speech.

[22] Dunnell, *Minn. Digest*, 1910, sec. 5227.

[23] *Gen. Stat.* 1913, sec. 7792.

[24] *Minn. Const.*, art. 1, sec. 6.

its adoption. Courts-martial existed long before the adoption of the constitution, and their existence is impliedly recognized in our own and the constitutions of most states."[25] Even a "public trial" is not assured where, from the nature of the case, spectators embarrass the witnesses and impede justice.[26]

Due process of law is generally guaranteed by our constitutions. In Minnesota it is covered by a number of sections of the bill of rights, including section 7. Yet due process is not an unchangeable process; the constitution has already been modified to eliminate the requirement of a grand jury in cases of felony.[27] The legislature has a very extensive control over matters of judicial procedure. Thus the presumption that a person is innocent until proved guilty is a right subject to limitation. The existence of certain facts may by statute create a presumption of guilt. It has been provided by law that the owner of a building, or the vendor of property, may be presumed by law to know the reputation and offences of those with whom he deals. This virtually shifts the burden of proof in criminal cases, yet it is due process of law.[28]

In Minnesota the very unusual procedure exists of the counsel for the defense speaking first and only once in his argument to a jury in a civil case, and in criminal cases the counsel for the defense speaks once and this is the closing argument.[29] This places an unusual burden upon the prosecution in all criminal cases. Not only must the jury be satisfied beyond all reasonable doubt that the defendant is guilty, but the great advantage of the closing argument is given the defense. Moreover, the court may not comment upon or indicate its views as to the relative credibility of witnesses, the theory being that "if the integrity of trial by jury is to be preserved, as it must be, the credibility of witnesses should be left entirely to the jury; and insinuations, comments, or suggestions by the court indicative of belief or unbelief in their testimony cannot be tolerated."[30] This is, of course, quite contrary to the English practice and to the procedure in the federal courts, and illustrates the fact that judicial process is subject to legislative control and may be so ordered as to give accused persons even greater privileges than are stated in the bill of rights.

[25] State ex rel. Madigan *v.* Wagener, 74 *Minn.* 518; 77 *N. W.* 424; 42 *L. R. A.* 749; 73 *Am. St. Rep.* 369, (1898). For a decision impliedly denying the right to a jury trial in a case of contempt of court, see State ex rel. Johnson *v.* Becht, 23 *Minn.* 1, (1876); for a decision denying the right to a jury trial in a case of violation of a municipal ordinance, see State *v.* Marciniak, 97 *Minn.* 355; 105 *N. W.* 965, (1906), affirmed in 207 *U. S.* 584; 28 *Sup. Ct. Rep.* 262; 52 *L. Ed.* 351, (1907).

[26] State *v.* Callahan, 100 *Minn.* 63; 110 *N. W.* 342, (1907).

[27] See p. 156.

[28] State ex rel. Robertson *v.* New England Furniture and Carpet Co., 126 *Minn.* 78; 147 *N. W.* 951; 52 *L. R. A.* (n.s.) 932, (1914).

[29] *Gen. Stat.* 1913, secs. 7799, 9206.

[30] City of Minneapolis *v.* Canterbury, 122 *Minn.* 301; 142 *N. W.* 812; 48 *L. R. A.* (n.s.) 842, (1913).

2. ARTICLE 2—ON NAME AND BOUNDARIES. There have been no changes of any kind in the text of this article. The following paragraphs will be devoted to a brief elucidation of the meaning of the various sections.

The history of the state boundary has been briefly related in earlier chapters.[31] The boundary described in section 1 of this article accepts the Iowa boundary on the south, the Wisconsin and Michigan boundary lines on the east, and the Canadian boundary line at the north. Only at the west is a new line drawn, and it is different from that proposed by Delegate H. M. Rice only from Big Stone lake southward.[32]

The Iowa line at the south is fixed at the parallel of 43° 30′ north latitude. The eastern boundary line is not so easy to understand. By the treaty of peace with Great Britain in 1783, the northern boundary of the United States was traced westward through the Great Lakes to the water communication between Lake Huron and Lake Superior; "thence through Lake Superior northward of the Isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods;" and so on.[33] The enabling act of the state of Michigan made the northern boundary of that state identical with "the said boundary-line between the United States and Canada, through the Detroit river, Lake Huron, and Lake Superior, to a point where the said line last touches Lake Superior; thence, in a direct line through Lake Superior to the mouth of the Montreal river;" and thence down that river.[34]

The enabling act for Wisconsin provided that the boundary of that state on the east should follow the western boundary line of the state of Michigan up through Lake Michigan and across country to the headwaters of the Montreal river; "thence down the main channel of the Montreal river to the middle of Lake Superior; thence through the centre of Lake Superior to the mouth of the Saint Louis river; thence up the main channel of said river to the first rapids in the same, above the Indian village, according to Nicollet's map; thence due south to the main branch of the river Saint Croix; thence down the main channel of said river to the Mississippi; thence down the centre of the main channel of that river to the northwest corner of the state of Illinois;" and so on.[35] It will be observed from these quotations that the state of Michigan has the greater portion of the American part of Lake Superior within its jurisdiction, and that the boundary of Minnesota in the lake is conterminous with that of Michigan from the center of the lake northward to the mouth of the Pigeon river.[36] Isle Royal falls within the jurisdiction of the state of Michigan, though it is closer to the Minnesota shore.

[31] See index, Boundaries of Minnesota.
[32] See p. 54, and map, p. 48.
[33] Art. 2.
[34] *Stat. at Large*, 5:49; Thorpe, *Const.*, 4:1926-28.
[35] *Stat. at Large*, 9:56; Thorpe, *Const.*, 7:4071-74.
[36] See map, p. 48.

There have been several boundary controversies between Minnesota and Wisconsin, the last of which related to the line in the lower St. Louis river. This controversy, involving the right to tax some very valuable ore docks built out from the Minnesota side, was settled in favor of Minnesota.[37] An explanation will be found elsewhere of the little area north of 49° north latitude in the Lake of the Woods which comes within the jurisdiction of Minnesota.[38]

The clause giving Minnesota concurrent jurisdiction on all boundary waters is a repetition of the provisions in the enabling acts of Wisconsin and other states.[39] Minnesota has concurrent jurisdiction with Wisconsin on the Mississippi, the St. Croix, the St. Louis, and a portion of Lake Superior; with Michigan on the northerly portion of the line in Lake Superior up to the Pigeon river; with North Dakota on the Red River of the North and the Sioux Wood river; and with South Dakota on the Sioux Wood river, Lake Traverse, and Big Stone lake,—wherever these waters form common boundaries. The results of this concurrent jurisdiction are well illustrated in the case of a Minnesota corporation which constructed a boom across the St. Croix river on the interstate boundary of Wisconsin and Minnesota, under authority granted by Minnesota. Upon suit being brought against the corporation in a Wisconsin court, it was held that a private party may not question the jurisdiction of Minnesota in granting a domestic corporation the right to build a boom upon the Wisconsin side of the river. "No one will deny that the one state has as much jurisdiction over the commerce of the river as the other, nor that the jurisdiction of each and both must be and remain subordinate to any action of Congress under the commerce clause of our national constitution."[40] This view was upheld by the federal supreme court in a similar case. "If neither the state of Wisconsin nor the United States complained of this as an obstruction of the navigation of the Mississippi, it does not lie in the mouth of the plaintiff to complain."[41] Even the criminal jurisdiction is concurrent, and thus a crime committed upon an interstate bridge is within the jurisdiction of Minnesota, although the offense was committed beyond the channel and upon the Wisconsin side of the river.[42]

[37] Hoshour, Boundary Controversies between States Bordering on a Navigable River, in *Minn. Law Rev.*, 4:463-82.

[38] See pp. 6, 8. The "most northwestern point" of the Lake of the Woods lying north of 49° no. lat., it was necessary in carrying out the convention of 1818 to draw a line due south from that point until it intersected the forty-ninth parallel.

[39] *Stat. at Large*, 9:56; Thorpe, *Const.*, 7:4071-74.

[40] Keator Lumber Co. *v.* St. Croix Boom Corporation, 72 *Wis.* 62, 88; 38 *N. W.* 529; 7 *Am. St. Rep.* 837, (1888).

[41] Lindsay & Phelps Co. *v.* Mullen, 176 *U. S.* 126, 131; 44 *L. Ed.* 400; 20 *Sup. Ct. Rep.* 325, (1900).

[42] State *v.* George, 60 *Minn.* 503; 63 *N. W.* 100, (1895). See also the statutes on game and fish, *Sess. Laws* 1919, ch. 400, part 10.

The provision that the navigable waters "shall be common highways and forever free" is an exact copy of the provision found in the Northwest Ordinance.[43] Navigable waters have been well described by the Minnesota supreme court. "The public have a right of way in every stream which, in its natural state and ordinary volume, is capable of transporting to market the products of the forest or mines or of the soil along its banks. It is not essential that the property to be transported shall be carried in vessels or be guided by the hand of man. Nor is it necessary that the stream shall be capable of navigation against the current or that it shall be navigable at all times of the year."[44] Navigable waters must be left free. They are primarily under federal control. A county may not bridge a navigable stream if such act be in violation of the statute of Congress.[45]

The provisions in section 3 in which it is "ordained" that the state shall never interfere with the primary disposal of the soil by the United States, nor tax lands belonging to the United States, nor tax non-resident proprietors at a higher rate than residents, are derived from the Northwest Ordinance and the enabling act.[46] Although it is well established that all the states in the Union are entirely equal one with another, a state may not, even after its admission to the Union, alter its agreements with reference to the public lands without the consent of Congress. Agreements as to the private proprietary interests of the state, as distinguished from political restrictions imposed upon the admission of the state, are binding after statehood.[47]

3. ARTICLE 3—DISTRIBUTION OF THE POWERS OF GOVERNMENT. This article stands in its original form. No direct amendment has even been proposed, but certain minor changes in the original separation of powers have resulted from other changes in the constitution, such as that which took the pardoning power from the governor and vested it in a pardon board, and that which conferred upon the judges of district courts the power and duty of appointing boards of freeholders for the framing of city charters.[48] There is not, of course, any legal objection to changes in the separation of powers being made by amendment to the constitution.

The separation of powers provided applies solely to the state government. It places no restriction upon the consolidation of executive and legislative functions in cities, such as is involved in the establishment of the commission form of government.[49]

[43] See p. 289; *U. S. Rev. Stat.*, 1878, pp. 13-16.

[44] Minnesota Canal and Power Co. *v.* Koochiching County, 97 *Minn.* 429; 107 *N. W.* 405; 5 *L. R. A.* (n.s.) 638, (1906).

[45] Viebahn *v.* Board of Co. Comm'rs of Crow Wing County, 96 *Minn.* 276; 104 *N. W.* 1089; 3 *L. R. A.* (n.s.) 638, (1905).

[46] See p. 289.

[47] Stearns *v.* Minnesota, 179 *U. S.* 223; 21 *Sup. Ct. Rep.* 73; 45 *L. Ed.* 162, (1900).

[48] *Minn. Const.*, art. 5, sec. 4; art. 4, sec. 36.

[49] State ex rel. Simpson *v.* City of Mankato, 117 *Minn.* 458; 136 *N. W.* 264, (1912).

Under the scheme of separation, the judiciary cannot be burdened with non-judicial duties. Neither the legislative nor the executive departments may compel the courts to express an opinion upon issues which are not regularly before the court in the ordinary course of litigation.[50] The legislature may not interfere with the administration of the laws by the courts.[51] Neither may judges be compelled to accept administrative duties properly belonging to the executive department.[52]

The legislature may not delegate the law-making function either to the courts or to an administrative board.[53] However, an executive commission may be empowered to investigate, hold hearings, and determine whether certain facts exist. Upon such determination of facts, a law may or may not go into effect. The law-making power still remains with the legislature. "The difference between the power to say what the law shall be and the power to adopt rules and regulations, or to investigate and determine facts, in order to carry into effect the law already passed, is apparent."[54]

The supreme court of this state early took the position that the judiciary had no control over the chief executive officers of the state, even when they exercised functions of a ministerial nature and such as might have been delegated to some minor officer.[55] This immunity from control was held to apply even to the state auditor as commissioner of the land office.[56] This position has now been modified and in part reversed. The court now holds that ministerial duties imposed by the legislature upon the governor, and which could have been imposed upon some other officer, are subject to judicial control.[57] Thus the governor's exercise of the statutory power to remove certain county officers, is subject to review by the courts. Even the proclamation by the governor that a constitutional amendment has been adopted by the electorate raises not a political question but a legal issue subject to judicial review.[58]

[50] In re Application of Senate, 10 *Minn.* 78 (Gil. 56), (1865). See also Rice *v.* Austin, 19 *Minn.* 103 (Gil. 74); 18 *Am. Rep.* 330, (1872).

[51] See Meyer *v.* Berlandi, 39 *Minn.* 438; 40 *N. W.* 513; 1 *L. R. A.* 777; 12 *Am. St. Rep.* 663, (1888), where a provision in *Sess. Laws* 1887, ch. 170, directing the courts to construe an act so as to give laborers the full amount of their claims was declared void as an invasion of the functions of the judiciary. *Gen. Stat.* 1894, p. lxxv.

[52] State ex rel. Young *v.* Brill, 100 *Minn.* 499; 111 *N. W.* 294, 639, (1907). This decision contains a general discussion of the entire subject.

[53] State ex rel. Luley *v.* Simons, 32 *Minn.* 540; 21 *N. W.* 750, (1884); Anderson *v.* Manchester Fire Assurance Co., 59 *Minn.* 182; 60 *N. W.* 1095; 63 *N. W.* 241; 28 *L. R. A.* 609; 50 *Am. St. Rep.* 400, (1894); State *v.* Great Northern Ry. Co., 100 *Minn.* 445; 111 *N. W.* 289, (1907).

[54] State ex rel. Railroad and Warehouse Comm'rs *v.* Chicago, Milwaukee, and St. Paul Ry. Co., 38 *Minn.* 281; 37 *N. W.* 782, (1888); reversed on other grounds in 134 *U. S.* 418; 10 *Sup. Ct. Rep.* 462, 702; 33 *L. Ed.* 970, (1890).

[55] Rice *v.* Austin, *supra;* State ex rel. Co. Treas. of Mille Lacs Co. *v.* Dike, 20 *Minn.* 363 (Gil. 314), (1874); Western Railroad Co. *v.* De Graff, 27 *Minn.* 1; 6 *N. W.* 341 (1880); Secombe *v.* Kittelson, 29 *Minn.* 555; 12 *N. W.* 519 (1887); State ex rel. Tuttle *v.* Braden, 40 *Minn.* 174; 41 *N. W.* 817, (1889).

[56] State ex rel. Thompson *v.* Whitcomb, 28 *Minn.* 50; 8 *N. W.* 902, (1881).

[57] State ex rel. Kinsella *v.* Eberhart, 116 *Minn.* 313; 133 *N. W.* 857, (1911).

[58] McConaughy *v.* Secretary of State, 106 *Minn.* 392; 119 *N. W.* 408, (1909). See pp. 152-54.

4. ARTICLE 4—THE LEGISLATIVE DEPARTMENT. Twenty-two amendments to this article have been proposed, and twelve adopted. They have dealt with the following subjects: (1) the organization of the legislature—the size of the houses, the terms of members, the length and frequency of sessions, and the time and method of apportionment; (2) railroad taxation; (3) the establishment and management of the internal improvement land fund; (4) the prohibition of monopolies; (5) modifications in the governor's power of veto; and (6) special legislation, and home rule for cities. Two attempts have been made, also, to provide for the initiative and referendum as additional methods of legislation.

The constitution originally provided that the legislature should meet "at such times as shall be prescribed by law."[59] Sessions were held annually and there was no limit to their duration. The first amendment to this article to be adopted added to section 1 the clause, "but no session shall exceed the term of sixty days."[60] In 1873 there were proposed two amendments, one of which would have established the system of biennial sessions and have limited them to seventy days, and the other of which would have made the terms of representatives and senators two and four years respectively.[61] Both were defeated. They were resubmitted to the voters in 1877, with the modification that sessions were not to exceed sixty days, and this time they were adopted.[62] This plan quickly proved impracticable; the sixty-day session coming only once in two years was entirely too brief for the work to be done. In 1881 the legislature proposed that the time limit should be entirely removed, but this the voters refused to approve.[63] Finally in 1888 was adopted the present section, under which the biennial sessions are now extended to ninety legislative days, with the proviso that "no new bill shall be introduced in either branch, except on the written request of the governor, during the last twenty (20) days of such sessions, except the attention of the legislature shall be called to some important matter of general interest by a special message from the governor."[64]

Sections 23 and 24 of this article make provision for the taking of a census every tenth year, beginning in 1865, and for the frequent reapportionment of representation upon the basis of either a federal or a state census. The 23rd section reads in part that "At their first session after each enumeration so made, and also at their first session after each enumeration made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional, senatorial and representative districts, and to apportion anew the senators and representatives among the several districts, according to the provisions of section second of this article."

[59] Original *Minn. Const.*, art. 4, sec. 1.
[60] *Sess. Laws* 1860, ch. 22.
[61] *Ibid.*, 1873, ch. 3.
[62] *Ibid.*, 1877, ch. 1.
[63] *Ibid.*, 1881, ch. 2.
[64] *Ibid.*, 1887, ch. 3.

Section 2 lays down the basic rule that "the representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof, exclusive of Indians not taxable under the provisions of law." Section 24 as amended in 1877 provides that senators shall be chosen by single districts of convenient contiguous territory, and provides a scheme whereby approximately half of the senators shall come up for reëlection every two years.

An amendment was proposed to section 23 in 1909 which would have directed the reapportionment of representation in the legislature at "any session" instead of the first session after each census as now provided.[65] Although the amendment failed, the supreme court upheld the 1913 apportionment on the ground that the provision of section 23 is not mandatory, nor is it a grant of power. The legislature has the power to pass apportionment statutes in any case, with or without this section in the constitution, and the section is merely directory.[66] It is interesting to note that the two preceding apportionments, in 1889 and 1897, were not made at the first session after the census. Section 24, which provides for the odd and even numbering scheme for senatorial districts and for the overlapping of the terms of senators, has also been considered as merely directory. The proviso for a complete new election of senators after each new apportionment, if it were coupled with frequent apportionments, would result in senators being elected very frequently for only two- instead of four-year terms. Half of those chosen at the first election after an apportionment, and all of those chosen at the last election before an apportionment would serve for only two years. The plan of overlapping terms has, therefore, been treated as if it is merely directory, and the practice has been adopted of electing all the senators at one time once in four years.

Two attempts have been made to limit the size of the state senate to sixty-three members, and at the same time to limit the number of senators from any one county to seven.[67] In both cases a majority of the electors voting upon the proposition favored it, but in neither case was a constitutional majority obtained. The original and present section 2, quoted above, requires that representation be apportioned "equally" throughout the different sections of the state in proportion to the population thereof. The defeated amendments substituted the words "as nearly equal as practicable." The latter form of words describes very well the present method of apportionment, for it is evident that in practice exact equality is not attained. No other evidence is needed than the apportionment of 1913, which provided for sixty-seven senatorial districts, with one senator from each, and either one, two, three, or four representatives from each senatorial district. Either the senators were not apportioned equally, or else the representatives represent unequal districts;

[65] *Sess. Laws*, 1909, ch. 509.
[66] State ex rel. Meighen *v.* Weatherill, 125 *Minn.* 336; 147 *N. W.* 105 (1914).
[67] *Sess. Laws* 1911, ch. 395; 1913, ch. 590.

and it is difficult to see how under-representation of a district in one house can be exactly compensated for by over-representation in the other.

The railroad problem was prominently to the fore in the politics of the early seventies. The legislature proposed and the voters ratified in 1871 an amendment to the constitution, which became section 32 (a) of article 4, under which any law to repeal or amend any law "heretofore or hereafter enacted" for the taxation of railroads upon the gross earnings basis, "shall before the same shall take effect or be in force, be submitted to a vote of the people of the state and be adopted and ratified by a majority of the electors of the state voting at the election at which the same shall be submitted to them."[68] In 1873 was passed the first railroad gross earnings tax law, and it was optional.[69] In 1887 the gross earnings system of taxation was for the first time made compulsory and applicable to all railroads.[70] The amendment of 1871 is interesting not only because it was passed in advance of the adoption of the scheme of taxation which it was designed to protect, but also on account of the majority it required for the change of the gross earnings tax. While such laws were not required to be submitted at general elections, it was laid down that they must receive the affirmative vote of a "majority of the electors of the state voting at the election." At this time this was a higher vote than was required for the adoption of constitutional amendments, for they required only a majority of the votes upon the proposition. Thus, from 1871 to 1898, it was more difficult to change the laws for the taxation of railroads than it was to amend the constitution.

The Legislature of 1872 proposed another amendment to this article, also to be numbered 32.[71] Upon its adoption the secretary of state designated it as 32 (b) and the railroad gross earnings tax amendment of 1871 as 32 (a). The amendment of 1872 has an interesting history. It was discovered about 1866, that Minnesota was entitled to 500,000 acres of land for purposes of internal improvement under an act of Congress passed in 1841, eight years before the organization of Minnesota as a territory.[72] When the discovery was made, those who favored the payment of the state railroad bonds of 1858, had an act passed through the legislature in 1867 to provide for the selection, appraisal, and sale of these lands and for the use of the proceeds to retire the bonds.[73] The act was submitted to the electorate for its approval as required by the amendment to article 9, section 2, adopted in 1860, and not yet declared unconstitutional, but was rejected by an overwhelming vote.[74] This left the state still entitled to the 500,000 acres but without any

[68] *Ibid.*, 1871, ch. 18.

[69] *Special Laws* 1873, ch. 111. It should be noted, however, that several of the early railroad charters contained provisions for gross earnings taxes to be paid into the state treasury. See *Comp. of R. R. Laws of Minn.*, 1872, pp. 130, 194, 261.

[70] *Sess. Laws* 1887, ch. 11.

[71] *Ibid.*, 1872, ch. 14.

[72] Folwell, *Minnesota*, 326; *ibid.*, The Five Million Loan, *Minn. Hist. Col.*, 15:204; Orfield, *Fed. Land Grants to the States*, pp. 100-2, 148.

[73] Folwell, *Minnesota*, 326; *Sess. Laws* 1867, ch. 53.

[74] In favor of act, 1,935; against the act, 49,763. See *Laws of Minn.*, 1872, pp. 42-43.

provision as to the disposition of them. In 1868 an amendment to article 15 of the constitution was proposed, which provided for the sale of the lands and the investment of the proceeds thereof in state or national securities, but forbade other disposition thereof. "State securities" might well have authorized investment in the discredited railroad bonds. This proposed amendment was also defeated.[75] In 1870 an act was passed providing for the sale of the lands at a minimum price of eight dollars and seventy cents per acre, and permitting the railroad bonds to be taken at par, without interest, in payment for the lands. This act was also submitted to the people, as required, and was adopted. It proved nugatory, however, due to a clause which required that no sale of the lands could be made on these terms unless at least two thousand of the bonds were offered to be turned in. The bondholders refused to comply with these terms in sufficient numbers to make the law operative.[76] All attempts to use the lands for payment of the railroad bonds having failed, the instant amendment was thereupon proposed in 1872, and became a part of the constitution the same year.[77]

It will be observed that the last paragraph of section 32(b) forbids the appropriation of the internal improvement land funds "for any purpose whatever until the amendment for that purpose, shall have been approved by a majority of the electors of the state voting at the annual general election following the passage of the act." In 1875 the United States supreme court intimated that the amendment of 1860 to section 2 of article 9, which forbade the payment of the state railroad bonds without the approval of a vote of the electorate, constituted an impairment of the obligation of a contract, and two Minnesota cases decided in 1881 supported the view that the bonds were legal obligations and would have to be paid.[78] The voters of the state thereupon ratified a statute passed in 1881 providing for the payment from the internal improvement land fund of the "Minnesota state railroad adjustment bonds" which were authorized at the same session to take up the old bonds.[79] Thus was finally quieted a controversy of nearly twenty-five years standing.

The anti-monopoly amendment adopted in 1888 is of interest because of the large vote which was cast in its favor.[80] The vote for governor in this election was 220,558; the vote for the amendment was 194,932, against it, 13,064. It would be interesting to know how far this amendment which was undoubtedly aimed at grain exchanges and chambers of commerce, and the

[75] *Sess. Laws* 1868, ch. 108; vote in favor of amendment, 19,398; vote against the amendment, 28,729.

[76] Folwell, *Minnesota*, p. 327; *Sess. Laws* 1870, ch. 13.

[77] *Sess. Laws* 1872, ch. 14.

[78] Farnsworth et al. *v.* Minnesota & Pacific R. R. Co., 92 *U. S.* 49; 23 *L. Ed.* 530, (1875); State ex rel. Hahn *v.* Young, 29 *Minn.* 474; 9 *N. W.* 737, (1881); Secombe *v.* Kittelson, 29 *Minn.* 555; 12 *N. W.* 519, (1882).

[79] *Sess. Laws* 1881, chs. 71, 1.

[80] *Ibid.*, 1887, ch. 1.

dealers in farm products, could be used in this state to prevent farmers from organizing into coöperative societies to market their products.[81]

There have been two amendments proposed with the view of enlarging the governor's power to control the finances of the state through his veto power. The first of these, which was adopted in 1876 and became part of section 11, gave the governor the power to veto items in appropriation bills.[82] In 1915 a proposal was made by the legislature to extend the governor's power and responsibility still farther by permitting him to veto items "in whole or in part," that is, to cut down items of appropriation if he so chose.[83] This proposal was a companion-piece to the budget law passed the same year.[84] It failed to receive the constitutional majority.

No amendments adopted before 1920 have added more to the length of the constitution than those which relate to the subjects of special legislation and home rule for cities. On the other hand, few are of greater importance, for these amendments constitute the charter of local self government for the cities of the state. In the original constitution, unlike that which Iowa adopted in the same year, there was no clause to prohibit special legislation for cities. Indeed, section 2 of article 10 expressly stated that special laws for the incorporation of municipalities were not prohibited. "No corporation shall be formed under special acts except for municipal purposes." In the early years of the state there were passed many laws regulating the local affairs of cities, counties, towns, and villages. The special laws, printed separately but originally bound with the general laws, were usually more bulky and numerous than the general statutes. The special laws passed at the regular session in 1881 occupied nearly a thousand pages, and at a special session that fall there were enacted 252 pages more. The governments of the various municipalities of the state were changed from year to year by these special enactments without the express consent of the people concerned. The legislature itself became disgusted with this system, and in 1881 it proposed to amend the constitution to restrict its powers of local and special legislation.[85] The amendments proposed were adopted by the voters at the election that year, and went into effect at once as sections 33 and 34 of article 4. While the new sections appeared to be very sweeping, prohibiting as they did eleven classes of special laws, they did not prohibit special legislation for cities, and neither did they forbid the amendment, modification, or extension of any of the previous special laws. One of the few important results was to require the legislature to pass a general law for the incorporation of villages.[86] Otherwise special legislation continued almost unabated. The special laws

[81] *Ibid.*, 1919, ch. 389, dealing with coöperative associations.
[82] *Ibid.*, 1876, ch. 1.
[83] *Ibid.*, 1915, ch. 383.
[84] *Ibid.*, 1915, ch. 356.
[85] *Ibid.*, 1881, ch. 3.
[86] *Ibid.*, 1883, ch. 73; 1885, ch. 145.

were so numerous as to require publication in separate volumes beginning in 1883. The volume of special laws enacted in 1891 contains 507 chapters and 1,138 pages, as contrasted with 173 chapters and 462 pages in the general laws enacted the same year.

Again both the legislature and the people demanded relief. In 1891 was proposed a new section to take the place of section 33 as adopted in 1881.[87] Section 34 was left untouched. The new provision makes: first, a sweeping prohibition of special laws "when a general law can be made applicable," and delegates to the courts the sole power to decide whether a general law could have been made applicable; second, it increases the number of subjects upon which special laws may not be passed, and is particularly inclusive where it provides that "the legislature shall pass no local or special law; regulating the affairs of, or incorporating, erecting or changing the lines of any county, city, village, township, ward, or school district," and so forth; third, it provides that "the legislature may repeal any existing special or local law but shall not amend, extend or modify any of the same." In these three respects the amendment adopted in 1892 makes great advances over the section adopted in 1881. It is not true to say that special legislation has been entirely eliminated, for by means of restricted classifications it is still possible to meet the peculiar needs of particular localities. Thus every recent session of the legislature has regulated the affairs of Minneapolis and of that city alone by passing laws applicable to all cities of the first class not operating under home-rule charters. On the whole, however, the situation today is much better than it was before the adoption of the amendment just described.

Limitations on legislative power nearly always work in two ways. While they may be designed solely for the prevention of bad legislation, they cannot help in many cases to prohibit good laws as well. No sooner had the 1892 amendment checked the output of special legislation than the cities began to find themselves in difficulties. The legislature could no longer help them out of their troubles. There followed then the movement to help the cities to help themselves. The legislative session of 1895 resulted in the passage of a general law under which cities might incorporate, and also in the proposal of a new amendment to the constitution designed to authorize cities to adopt and change their own charters.[88]

The home-rule amendment was adopted in 1896, becoming section 36 of article 4. Legislation was immediately adopted to carry it into effect.[89] In studying the amendment for the enactment of this law, the legislature found several details in it which it wished to have changed. A new home-rule

[87] *Sess. Laws* 1891, ch. 1.
[88] *Ibid.*, 1895, ch. 8, pp. 16-131; ch. 4.
[89] *Ibid.*, 1897, ch. 255.

amendment was therefore proposed in 1897 and adopted in 1898.[90] It differed from the amendment of 1896 in that it prescribed a maximum term of office for charter commissioners, authorized the voters to submit amendments to home-rule charters by petition, and reclassified the cities into four instead of three population groups. In 1899 new legislation was passed to give effect to the home-rule scheme.[91] This legislation has been modified frequently since that time.[92] Under its provisions sixty-two cities and villages have adopted their own charters as cities; the list includes the cities of Minneapolis, St. Paul, and Duluth, but not Winona.[93]

In 1911, due to some doubts as to the validity of the commission plan of government for home-rule cities, an amendment was proposed to section 36 to permit cities to adopt the commission plan, the mayor and council plan, or "any other plan or system of municipal government" not in violation of the state constitution.[94] The proposal also carried provisions decreasing the vote required for the adoption of home-rule charters from four sevenths to a majority of those voting at the election, increasing the required number of signers to an amendment petition from five to ten per cent of the voters, and preventing the application of any law passed for a class of cities to any home-rule city in that class unless such city were especially named in the act. The last provision here described would have legalized special legislation for home-rule cities. The entire proposal failed to receive the constitutional majority. It was unnecessary, however, to bring about the desired result in the matter of legalizing the commission form of government. Before the electorate had an opportunity to pass upon the proposal in the fall of 1912, the supreme court of the state had already decided in a case affecting the home-rule charter of Mankato that the constitutional requirement of a "mayor or chief magistrate, and a legislative body of either one or two houses" in every home-rule charter did not absolutely require the separation of powers in municipal government, and that the commission plan of city government was not unconstitutional.[95] Since that time both St. Paul and Duluth, not to mention smaller cities, have adopted the commission plan, and several cities have gone so far as to provide for a sort of city manager.

This ends the discussion of the amendments to article 4 which have been adopted. A word must be said in passing about the two attempts to adopt the initiative and referendum upon statutory and constitutional issues. The 1913 proposal was not a grant of authority to the legislature to adopt measures to

[90] *Ibid.*, 1897, ch. 280.
[91] *Ibid.*, 1899, ch. 351.
[92] See *Gen. Stat.* 1913, secs. 1339-74.
[93] *Minnesota Municipalities*, April 1920, p. 53. Minneapolis adopted home rule on November 2, 1920.
[94] *Sess. Laws* 1911, ch. 393.
[95] State ex rel. Simpson *v.* City of Mankato, 117 *Minn.* 458; 136 *N. W.* 264, (1912).

put the initiative and referendum into effect; the amendment proposed embodied the law itself.[96] This may have been confusing to the voters, although the ballots were clearly headed "A provision for direct legislation by the people, through the initiative and referendum." In his message to the legislature in 1915, Governor Hammond made this criticism of the 1913 proposal:

> The details of the plan were incorporated in the amendment. It was proposed that the law itself be a part of the constitution. This, in my judgment, was ill-advised. Experience teaches us that laws after they are written and passed and put into practice need to be amended frequently to meet conditions and to remedy administrative defects overlooked in their preparation. If the entire law is a part of the constitution then there can be no amendment without the cumbersome and difficult process of amending the constitution itself. While I think this particular amendment should not be submitted at the next election to the people, I do recommend that a proposed constitutional amendment empowering the legislature to enact legislation establishing the initiative and referendum be submitted. Such an amendment should be short, easily understood. Then there would be no doubt after the vote was canvassed as to the opinion of the people of the state concerning direct legislation.

Instead of following this advice, the 1915 legislature submitted the 1913 proposal again with more details added.[97] Again the proposal failed to receive the constitutional majority. In 1914 the total vote had been 356,906; the vote for the amendment 168,004, against it 41,557, not voting 147,325. In 1916 the total vote was 416,215; the vote for the amendment 187,711, against it 51,544, not voting on the amendment 176,960.

5. Article 5—The executive department. One of the most interesting developments of recent years in the government of the states is the movement for the reorganization of the administrative branch in the interests of economy and efficiency. During the nineteenth century and especially following the Civil War, there was a great increase in the functions of the state governments and an increasing multiplicity in the number of boards and departments to handle the new activities. On the other hand, nothing was done to coördinate the various activities or to create any central responsibility for the work of the different departments. At the beginning of the twentieth century some of the states found that they were supporting from seventy-five to one hundred or even more separate administrative departments, boards, commissions, and bureaus. The result was a very expensive government and to some extent an irresponsible one.[98]

Governor Eberhart was one of the first state executives to point out the need of reorganization. This he did in his message to the legislature in

[96] *Sess. Laws* 1913, ch. 584.
[97] *Ibid.*, 1915, ch. 385.
[98] Holcombe, *State Gov. in the U. S.*, pp. 280-87; Mathews, *Princ. of Amer. St. Admin.*, pp. 156-59.

January, 1911, and again in 1913.[99] The outcome of his proposal was the creation of the Efficiency and Economy Commission which entered upon its activities in the fall of 1913. In May, 1914, the commission made a preliminary report of its findings and in November of the same year it presented to the governor a bill for the reorganization of the entire state administration.[100] In the preliminary report the commission made the hopeful assertion that "the reorganization of the state administration can be accomplished fairly well without amending the constitution. One or two amendments are desirable, but the great bulk of the commission's plan can be put into effect by acts of the legislature." However, when the final report was presented, several needed modifications of the constitution were pointed out and it is doubtful whether the commission went far enough even on this occasion in indicating the constitutional obstacles in the path of reorganization. The recommendations of the commission were not carried out by the legislature except in one or two minor matters and though Minnesota had lighted the path for other states to follow, it has itself failed to this day to bring about the desired simplifications and coördination of the administrative machinery.

The result is that the executive and administrative branch of the government of Minnesota is really little better off than it has been. The number of boards and commissions is still very large. Many of them are practically independent and not responsive to the control either of the governor or of the people, and there is still some overlapping of functions. The governor is not the real head of the administration, since there are several other executive officers elected by the people who have powers of their own in no way subject to the dictation of the governor.

The constitutional provisions relating to the executive have been very little changed since 1858. In all, four amendments to article 5 have been proposed and adopted, though one of them had to be proposed twice before it was ratified. None of these amendments has made any important change in the constitution, and there has been no change whatever since 1896.

The first amendment to article 5 was adopted before the admission of the state. Section 7 originally provided that "the term of each of the executive officers named in this article, shall commence upon taking the oath of office, after the state shall be admitted by congress into the union." This meant that while the legislature of the state government was authorized to meet in December, 1857, no executive officers of the state government could take office until after the admission of the state. For reasons which have been explained above it appeared desirable to bring about an early organization of the entire state administration.[101] An amendment to this section was,

[99] Inaugural message, 1911, espec. pp. 4-9; *ibid.*, 1913, pp. 3-6; see also *Minn. Acad. of Soc. Sci. Proc.*, 5:21-27, (1911).

[100] *Prelim. Report of Effic. and Econ. Comm'n.*, May, 1914; *Final Report of Effic. and Econ. Comm'n.*, Nov. 1914.

[101] See pp. 135-36.

therefore, proposed, whereby the term of each of the executive officers named in this article should "commence on taking the oath of office on or after the first day of May, 1858."[102] This amendment was ratified by the voters but no returns of the election have been officially published. Had the executive officers taken advantage of this amendment before the admission of the state into the Union, and had they attempted, as would have been necessary, to have ousted the territorial officers, the history of Minnesota might have been stained by an outright clash between the state and federal authorities. Governor Sibley pointed this out in his first message to the legislature, in explanation of his failure to carry out the provisions of the amendment.[103] He exercised sound judgment in not taking office until after he had been fully notified of the passage by Congress of the act admitting the state to the Union.

The second amendment to this article was first proposed in 1873, unsuccessfully; but in 1877 it was again proposed and this time it was adopted.[104] The original section 2 of this article had provided that both houses of the legislature should meet to canvass the vote for the various constitutional executive officers named in section 1. The canvassing of the votes in a statewide election is a long and difficult process. It soon proved that a large body like the joint convention of the two houses was a very clumsy piece of machinery for this purpose. Still the original provision was fairly workable as long as the legislature followed the practice of convening in December, a month before the executive officers took office. When it was decided to change this practice and to have the legislature meet in January, it became necessary to relieve the legislature of the duty of canvassing the election returns. Otherwise the executive officials could not have taken office until some weeks later in January. The voters ratified the proposed amendment to set up a separate canvassing board in 1877. The statute which makes the provisions of the new section 2 effective fixes the time of meeting of the canvassing board as the fourth Tuesday of November, which gives ample time for the work to be done before the governor and other officials take office.[105] It is evident that the constitutional provision creates a board of canvassers to canvass the returns for the officers named in section 2, namely, the governor, lieutenant governor, secretary of state, auditor, treasurer, and attorney general. However, the statute increases the duties of the canvassing board by the provision that it "shall open and canvass the certified copies of the statements made by the county canvassing board," and the county canvassing boards certify the returns for legislative and judicial as well as executive officers.[106] In fact, the county canvassing boards certify and file the

[102] *Sess. Laws* 1858, ch. 2.
[103] *House Journal* 1857-1858, pp. 602-9; *Senate Journal* 1857-1858, pp. 372-79.
[104] *Sess. Laws* 1873, ch. 3; 1877, ch. 1.
[105] *Gen. Stat.* 1913, sec. 519.
[106] *Ibid.*, secs. 520, 521, 512.

returns for practically all elections not of a purely local nature. It is evident, therefore, that the statute gives the canvassing board much wider duties than the constitutional provision would imply. Now, since judges of both the supreme and district courts serve with the secretary of state upon a state board of canvassers, it is an interesting question whether judicial duties have not been imposed upon the judges in excess of those authorized by the constitution.[107] The statute also provides that the secretary of state shall call to his assistance "not more than two judges of the supreme court" at one time, whereas the constitution says that the secretary of state "shall call to his assistance two or more judges of the supreme court."[108] There seems to be a discrepancy between the statute and the constitution at this point also.

The system of biennial elections had been discussed in Minnesota for some years before it was finally adopted in 1883.[109] When it went into effect, however, it was necessary to have the various executive and judicial officers serve for an even number of years. The term of the auditor which had formerly been three years, was increased to four years by an amendment to section 5 of this article in the same year.[110]

The last amendment to this article came in 1896. The governor had formerly had the power "to grant reprieves and pardons after conviction for offenses against the state."[111] By the amendment now under discussion, the pardoning power was transferred to a board of pardons consisting of the governor, the attorney general, and the chief justice of the supreme court of the state.[112] The amendment further makes the powers and duties of the board subject to regulation by law. Pardons may be granted only after conviction, and, therefore, the board of pardons, unlike the president of the United States, does not have the power to grant a general amnesty. It is also interesting to note that treason is not excepted from the offenses for which pardons may be granted in this state.

6. ARTICLE 6—THE JUDICIARY. This article, like that upon the executive department, has been very little changed since the adoption of the constitution. The population of the state has grown to be fifteen times as large as it was in 1857 and the quantity of commercial business has undoubtedly increased many times more. In view of these facts, it is probably true that the amount of litigation has also increased at least fifteen fold and undoubtedly there is now a greater variety of judicial business to be done than there was originally. Nevertheless, the original constitutional provisions relating to the judiciary

[107] See pp. 163-64.
[108] *Gen. Stat.* 1913, sec. 519.
[109] See pp. 165, 181.
[110] *Sess. Laws* 1883, ch. 1.
[111] Art. 5, sec. 4.
[112] *Sess. Laws* 1895, ch. 2.

stand practically unchanged to this day. Of the five amendments which have been proposed to this article, four have been adopted; but the proposal to increase the term of probate judges had to be submitted three times before it was ratified. Fortunately the original provisions regulating the courts were sufficiently simple and flexible so that a break-down of the judicial system has been avoided.

The first amendment was adopted in 1875.[113] Section 4 as originally adopted set the number of judicial districts at six and limited the number of judges in each district to one. It was, therefore, impossible to enlarge the number of district judges as the growth of the state and of judicial business made such expansion necessary. Consequently the legislature proposed the present section 4 which sets no limit either to the number of judicial districts or to the number of judges to be assigned to each district. The 1919 legislative manual lists forty-seven district judges distributed throughout nineteen districts, with from one to nine in each district.[114]

Section 2 of this article limits the number of associate justices of the supreme court to four, making a maximum of five with the chief justice. The legislature decided in 1881 that four associate justices were necessary.[115] Since that time the pressure of work has grown greater almost every year, but it has been impossible to bring about an increase in the number of justices. In 1913 and again in 1915 constitutional amendments were proposed to remove the limit.[116] In each case a majority of the voters voting upon the proposition favored the increase, but it was impossible to obtain the required majority of all the voters voting at the election. In 1913, following the example of other states which have similar restrictions in their constitutions, the legislature created the office of commissioner of the supreme court in order to assist the supreme court until it is possible to amend the constitution to authorize additional justices.[117] Two commissioners are appointed by the court for terms of six years each, at the same compensation as is received by the justices themselves. The commissioners do the work of associate justices but have not the power of voting upon decisions. Nevertheless, if three justices concur in an opinion written by a commissioner, it becomes the decision of the supreme court. Thus in fact we have additional judges, though their powers are somewhat limited, and they are chosen not by the voters but by the court itself. The amendments proposed in 1913 and 1915 also carried provisions that the supreme court should have the power to appoint its own clerk. At the present time the clerk of the supreme court is elected by state-wide popular vote.[118] The amendment proposed in 1913 also provided that "no statute

[113] *Sess. Laws.* 1875, ch. 1.
[114] *Leg. Man.* 1919, p. 455.
[115] *Sess. Laws* 1881, ch. 141.
[116] *Ibid.*, 1913, ch. 585; 1915, ch. 382.
[117] *Ibid.*, 1913, ch. 62.
[118] *Minn. Const.*, art. 6, sec. 2.

shall be declared unconstitutional unless five members of the court shall concur in the decision." This was an innovation designed to prevent the supreme court from declaring statutes unconstitutional without the concurrence in the decision of five justices. On the two occasions about an equal number of voters voted in favor of the amendment, but in 1914 when the more radical proposal was before the voters, fully 40,000 less voters voted "no" than in 1916. It is difficult to understand these votes.

The second amendment to this article was adopted in 1876.[119] It took the form of an addition to section 3 whereby the governor, or in certain cases the lieutenant governor, has the power to assign district judges to take the place of supreme court justices in any cases where, from any cause, any of the latter were disqualified from sitting in the said court. This provision was found to be useful in the recent soldiers' bonus case where three of the supreme court justices were disqualified by virtue of the fact that they had relatives interested in the bonus law.[120]

The third amendment to this article came in 1883 when the terms of both supreme court justices and district judges were reduced from seven to six years and the term of the clerk of the supreme court was increased from three to four years to correspond with the system of biennial elections which was established by another amendment of the same year.[121] These changes in terms have no other significance. The three propositions for increasing and decreasing terms were submitted separately, but the vote was practically the same upon all three. Of those who voted upon the proposals, three out of every four favored the amendments.[122]

The three attempts to extend the term of the judges of probate from two to four years are mentioned elsewhere as illustrating the difficulty of changing details in the constitution.[123] The term was originally fixed at two years. Subsequently the terms of other county officers were increased to four years, and for several reasons it became very desirable to lengthen the term of probate judges also. No increase in term was possible, however, without an amendment to the constitution. Both in 1914 and in 1916 proposals to alter the constitution to effectuate this change were defeated. The question was again submitted to the voters in the 1920 election, and the amendment was then finally carried.[124]

7. ARTICLE 7—THE ELECTIVE FRANCHISE. The history of the suffrage in Minnesota is very briefly as follows: In the Northwest Ordinance it was provided "that a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being a resident in the district, or the like

[119] *Sess. Laws* 1876, ch. 3.
[120] Gustafson *v.* Rhinow, 144 *Minn.* 415; 175 *N. W.* 903, (1920).
[121] *Sess. Laws* 1883, ch. 3.
[122] Cf. *Sess. Laws* 1885, pp. 1-2.
[123] See p. 150.
[124] *Sess. Laws*, 1913, ch. 589; 1915, ch. 386; 1919, ch. 531.

freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative."[125] The organic act for the territory of Minnesota, as has been explained above, provided for the suffrage in the following language:

> Sec. 5. And be it further enacted, That every free white male inhabitant above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: Provided, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the constitution of the United States and the provisions of this act.

It will be observed that citizenship of the United States was not an absolute requirement for voters in territorial days.

When Congress came to pass the enabling act authorizing the people of a certain portion of Minnesota territory to form a constitution and a state government, it was provided that "the legal voters" should have the power to elect delegates to the constitutional convention.[126] The legal voters included, of course, a number of aliens. In the constitutional conventions there arose a bitter controversy over suffrage questions. In the Republican convention, the chief difficulty centered around the attempt of certain members to give negroes the suffrage in this state.[127] In the other convention there was some discussion of the residence requirements and whether or not aliens should be required to have a longer residence than citizens.[128] In both conventions it was agreed that aliens who had declared their intentions to become United States citizens should have the right to vote on the same basis as white men. When this constitution was submitted to Congress, the opponents of admission made a great to-do over the provision authorizing aliens to vote and there was also some objection to the provision relating to Indian suffrage.[129] However, no conditions were attached to the admission of the state which would require the state to change its constitution in either of these respects.

The more extreme partisans of the negro who had fought in the Republican convention to give him the right to vote in this state did not cease their efforts to bring about negro suffrage. Beginning in the last year of the Civil War, the legislature submitted on three occasions the proposal to strike the word "white" out of the constitution.[130] The vote was close on each occasion.

[125] See p. 287.
[126] Enabling act, sec. 3. See pp. 60-62.
[127] *Rep. Deb.*, pp. 349-66, 367-76.
[128] *Dem. Deb.*, pp. 422-37, 607-10; and see pp. 123-24 of this study for the compromise which was worked out between the conventions.
[129] See p. 140.
[130] *Sess. Laws* 1865, ch. 57; 1867, ch. 25; 1868, ch. 106.

In 1865 the amendment lost by 14,651 to 12,135. In 1867 when a much larger vote was cast, due in part to the return of the soldiers, the amendment was again lost, by 28,794 to 27,479. In 1868 there was a clear majority in favor, 39,493 voting "yes" and 30,121 voting against the amendment. The word "white" accordingly dropped out of the constitution. In effect it would have done so two years later without the state's having amended the constitution, for in 1870 the fifteenth amendment to the United States constitution was adopted. [181]

While proposals to the same effect, and even more sweeping ones, had been made earlier in the history of the state, the right of women to vote even upon school questions was not established until 1875.[182] The amendment adopted in that year merely authorized the legislature "notwithstanding anything in this article" to provide for woman suffrage "at any election held for the purpose of choosing any officers of schools, or upon any measure relating to schools." This was not a direct grant of the suffrage to women, but required legislative action. The legislature in 1876 carried out the purpose of the amendment.[183] By the same amendment and legislation women were given the right also to hold school offices. In 1877 an unsuccessful attempt was made to amend the constitution to authorize women to vote at any election upon "the question of selling, or restraining the sale, or licensing the selling, or of the manufacture, of intoxicating liquors."[184]

No further change was made in the provisions relating to the voting rights of women until 1898, when the constitution was altered in two respects.[185] In the new section 8 adopted in that year, the right to vote for library boards and upon measures relating to libraries was extended to women; and at the same time the right to vote for school and library officers and upon school and library measures was established in the constitution and not left to depend upon action by the legislature.

Following this partial enfranchisement, the various woman suffrage organizations continued the propaganda for complete enfranchisement. The question was submitted to the legislature on a number of occasions by petitions and otherwise, but at no time did the legislature submit to the voters a constitutional amendment to establish complete woman suffrage. However, after the submission by Congress to the state legislatures of the Anthony amendment to the federal constitution, the governor called a special session

[181] This amendment to the federal constitution provides that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

[182] *Sess. Laws* 1875, ch. 2.

[183] *Ibid.*, 1876, ch. 14.

[184] *Ibid.*, 1877, ch. 2.

[185] *Ibid.*, 1897, ch. 175.

of the legislature in September, 1919, which ratified the federal amendment.[136] This amendment has now been adopted by three fourths of the state legislatures. It is a part of the United States constitution and it in fact overrules the various state constitutional provisions relating to suffrage. It provides that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex." As it relates to Minnesota the practical effect of this amendment is to render null and of no effect the word "male" in section 1 of article 7 of the state constitution. Women now have the right to vote on exactly the same terms as men.

Aliens who had declared their intention to become citizens of the United States and who had established a residence in Minnesota were permitted to vote upon the same terms as citizens up to and including the election of 1896. The Legislature of 1895 proposed an amendment to the constitution forbidding alien declarants to vote.[137] It was adopted at the 1896 election by a vote of 97,980 for the amendment to 52,454 against the amendment out of a total vote for governor of 337,229. Of the eight constitutional amendments submitted at this election this amendment attracted the least popular attention and received the smallest vote. Less than half of the voters voted upon the question and less than thirty per cent of the total vote favored its adoption. That the amendment has deprived a great many former voters of the suffrage is indicated by the election returns for the next year. The vote for governor in 1896 had been 337,229. In 1898 when the amendment was in effect it dropped to 252,562, a decrease of 84,667. This was over nine thousand votes less than 1888. The decrease cannot be explained upon the theory that the election of 1896 was a presidential election and drew a larger vote than normal, for in 1894, when there was an ordinary state election, the vote was 296,249 or over 40,000 more than in 1898.

Article 7 deals also with qualifications for office. The Minnesota constitution is unusually liberal in this matter in that it provides that every person who is entitled under the constitution "to vote at any election shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election; except as otherwise provided in this constitution, or the constitution and laws of the United States." In view of the fact that the constitution itself contains very few special qualifications for particular offices, almost any voter is eligible to almost any public office in this state. A man without knowledge of law may be elected county attorney. A man or woman unable to obtain a teacher's certificate may be elected county superintendent of schools. The legislature in 1907 and again in 1911 proposed amendments to the constitution under which the legislature would have been authorized to establish

[136] *Sess. Laws*, spec. sess., 1919, joint resolution no. 1, pp. 105-6.
[137] *Ibid.*, 1895, ch. 3.

educational qualifications for county superintendent of schools.[138] The amendment was defeated on both occasions though a very large majority of the voters voting on the proposition favored it in each case. The votes were 169,785 "yes" to 42,114 "no" in 1908 and 167,983 affirmative to 36,584 negative in 1912. In each case approximately 40,000 voters voted against the measure. Either they did not understand the measure or else they carried their ideas of democracy to the point of refusing to tolerate special qualifications for educational officers.

The last section of this article was adopted in 1883 for the purpose of establishing biennial elections.[139]

In 1913 the legislature proposed an additional section which was designed to establish the recall of elective officers in this state.[140] It was a most sweeping proposal in that it applied to "every public official in Minnesota, elective or appointive." It would have permitted a petition of from twenty to thirty per cent of the voters in the district concerned to have instituted the recall and would have required a special election to be held upon the presentation of such petition. It made further provisions as to the details of the procedure. It failed to be adopted, but it received a total of 139,801 affirmative votes as against only 44,961 negative.

8. ARTICLE 8—SCHOOL FUNDS, EDUCATION AND SCIENCE. This article, which originally consisted of four sections, now contains seven, and one of these, namely section 2, has been practically trebled in length. In all there have been fourteen separate proposals of amendments to the article but five constituted duplications. Two different amendments were each proposed twice unsuccessfully and a third time successfully, and another was defeated once and adopted upon its second submission. Consequently all the amendments ever proposed to the article have ultimately been adopted. Five of the amendments which have been adopted have related to the proper investment of the school funds, one to the disposition of the swamp land fund, two to the proper administration of the state lands, and one to the appropriation of the income of the school fund.

It is interesting to observe how the provisions regulating the investment of the school funds have been added to and modified from year to year. The original section 2, which is a part of the present section, provides that the proceeds from the sale of school lands "shall remain a perpetual school fund to the state," and that "the principal of all funds arising from sales, or other disposition of lands, or other property, granted or entrusted to this state in each township for educational purposes, shall forever be preserved inviolate

[138] *Ibid.*, 1907, ch. 480; 1911, ch. 394.
[139] *Ibid.*, 1883, ch. 2.
[140] *Ibid.*, 1913, ch. 593.

and undiminished." There was no specification originally as to how this fund could be preserved inviolate and undiminished and some question arose as to how the moneys should actually be invested. In 1875 there was adopted the first amendment relating to this matter.[141] By this amendment a proviso was added to section 2 that the legislature should provide suitable laws for the investment of the principal of the school funds "in interest bearing bonds of the United States or of the state of Minnesota issued after the year 1860, or of such other state, as the legislature may by law from time to time direct." This constituted a limitation of the powers of the legislature to invest the school funds. Thereafter such funds could be invested only in the bonds specified in this amendment. It will be observed that the school funds could not be invested in any bonds of the state of Minnesota issued previous to or during the year 1860. The railroad bonds of 1858 had not yet been adjusted and this proviso was necessary in order to prevent investment of the school funds in the then worthless railroad bonds.[142]

The school fund grew from year to year and it was necessary to find new forms of investment. On the other hand, the various municipalities and local subdivisions of the state were being compelled to borrow money from bankers and other private sources both within and without the state of Minnesota, and in some cases at higher rates of interest than they wished to pay. In 1885 the legislature proposed an amendment to the constitution to authorize the loaning of the permanent school funds to the counties and school districts within the state for the purpose of the erection of county or school buildings.[143] The restrictions under which such loans could be made to counties and school districts were and still are especially stringent. There is a requirement for a compulsory annual tax upon all the taxable property of the county or school district concerned, which tax shall be fifty per cent in excess of the amount actually necessary to pay the principal and interest accruing that year upon any loan made from the school funds.

The other municipalities of the state, including cities, villages, and towns, were as yet unable to borrow from the state school fund. The Legislature of 1895 therefore proposed a new amendment under which any county, school district, city, town, or village in the state may borrow not only from the permanent school fund but also from the university fund upon its bonds.[144] The loans must be approved by the state investment board and shall bear a rate of interest not lower than three per cent and shall run for a period of from five to twenty years. From 1896 to 1904 no loan could be made under this section to any municipality or county when such loan added to the outstanding

[141] *Sess. Laws* 1875, ch. 3.
[142] See pp. 185-87.
[143] *Sess. Laws* 1885, ch. 1.
[144] *Ibid.*, 1895, ch. 6.

debt of the municipality or county concerned would make the total indebtedness exceed seven per cent of the assessed valuation of the taxable property of such county or municipality. During these years, objection was frequently raised to the seven per cent debt limit prescribed in the constitution. In 1899 and again in 1901 unsuccessful attempts were made to raise this limit to fifteen per cent of the assessed value of the taxable real property of the county, school district, city, town, or village.[145] This amendment was proposed for the third time in 1903 and was ratified by the voters in 1904.[146]

Even then the constitutional provision was not satisfactory to everyone. Certain people saw no reason why, if the state had money to loan, it should not loan it to private individuals as well as to the local governments of the state. In 1911 a new section 6 was proposed, the object of which was to permit the owners of improved farm land to borrow state funds upon first mortgages.[147] This amendment failed of adoption in 1912, was proposed again in 1913, failed once more to get the necessary majority in 1914, was proposed a third time in 1915 and finally carried in 1916.[148] At present, therefore, section 6 provides not only for loans to counties and municipalities, but also authorizes the investment of the school and university funds "in first mortgage loans secured upon the improved and cultivated farm lands of this state." It is provided, however, that no such loan shall exceed thirty per cent of the actual cash value of the farm land mortgaged to secure said investment, and that the loan shall run for not less than five nor more than thirty years. By this amendment, it will also be observed, the maximum time limit for all loans of the school funds was extended from twenty to thirty years.

The original constitution made no express provision for the investment of the proceeds from the sales of swamp lands nor for the appropriation of the income from such investments. An amendment was adopted in 1881 which took the form of an addition to section 2 under which it is provided that swamp lands shall be sold at a minimum price of one third less than that fixed for the sale of school lands, that the principal derived from the sale of swamp lands shall be preserved inviolate and undiminished to the common-school fund of the state, and the remaining one half to the educational and charitable institutions of the state in proportion to their respective costs of maintenance.[149]

It was a long time before the state of Minnesota adopted any measures whatever for the improvement of its unsold lands and for the utilization of lands which were not fit to be sold. In 1913 there were proposed two amendments which indicated a renewed interest in the remaining portions of the state domain. One of these amendments became section 7 of this article of

[145] *Ibid.*, 1899, ch. 92; 1901, p. v.
[146] *Ibid.*, 1903, ch. 25.
[147] *Ibid.*, 1911, ch. 392.
[148] *Ibid.*, 1913, ch. 588; 1915, ch. 380.
[149] *Ibid.*, 1881, ch. 4.

the constitution upon its adoption in 1914.[150] This section provides that "such of the school and other public lands of the state as are better adapted for the production of timber than for agriculture, may be set apart as state school forests, or other state forests, as the legislature may provide, and the legislature may provide for the management of the same on forestry principles." This permits the state to reforest such of the state lands as are from their stony and untillable character unfit for agricultural purposes. The other amendment proposed in the same year provided for the creation of a fund of $250,000 to "be set apart from the fund derived from the sale of school and swamp lands, to be used in constructing roads, ditches and fire breaks in, through and around unsold school and swamp lands and in clearing such lands."[151] The fund was to be replenished from the increased value realized from the sale of the lands so benefited.

There has been one amendment to section 3 dealing with the expenditure of the income arising from the school fund. This was adopted in 1877 and prohibits the appropriation of any of the school funds or of any public moneys or property "for the support of schools wherein the distinctive doctrines, creed or tenets of any particular Christian or other religious sect, are promulgated or taught."[152]

9. ARTICLE 9—FINANCES OF THE STATE AND BANKS AND BANKING. No article of the constitution has proved more unsatisfactory throughout the history of the state than this relating to the state's finances. In all thirty-four amendments to this article have been proposed, and of this number fifteen have been declared adopted by the state canvassing authorities. Another one, making sixteen successful amendments in all, was declared adopted after litigation in one of the state district courts. Eighteen proposed amendments, or more than half of all that have been submitted to the voters, have failed to carry. It is interesting to observe that since the change in the amending process in 1898, only four amendments to this article have been adopted, while fifteen have failed of adoption. Before the change twelve were adopted and only three of the fifteen proposed were defeated.

The amendments which have become part of the constitution group themselves under the following headings: Three have had reference to the so-called five-million-dollar loan; five have related to the basis and methods of taxation in the state; one to the safe-keeping of public moneys; one to the authorization of a special loan for public asylums and hospitals; two to the extension of county and municipal aid to railroads, and four to the state road and bridge fund. Some proposed amendments falling under several of these

[150] *Sess. Laws* 1913 ch, 592.
[151] *Ibid.*, 1913, ch. 593. *Minn. Const.*, art. 8, sec. 2.
[152] *Ibid.*, 1877, ch. 3. This provision is practically the same as that proposed by the Republican wing of the constitutional convention in 1857. See p. 124.

heads have also been defeated. In addition amendments have been proposed and defeated relating to the repeal of the section requiring the publication of an annual report by the treasurer, the authorization of a tax to support state hail insurance, the promotion of reforestation, a special tax on dogs, and the development of publicly owned ore deposits under public waters.

One of the arguments which Governor Gorman put forward in favor of statehood in January, 1857, was that the territory had no public credit and that not until the establishment of a state government could the people of Minnesota "command such means as may be deemed indispensable to our welfare."[153] When the constitution of the state was adopted, however, it contained in section 10 of the instant article the following prohibition: "The credit of the state shall never be given or loaned in aid of any individual, association or corporation." Furthermore, section 5 limited the permissible state debt for general purposes to $250,000 and the first legislature found it necessary to use a great deal of this amount to set the state government upon its feet. However, there was urgent need of railroads for the development of the resources of the state and the times following the financial panic of 1857 were exceedingly hard. The magnificent land grant which had been made by Congress for the purpose of promoting the building of railroads in the state would very likely lie idle unless something could be done by the state to stimulate the building of the roads. This, at least, was the substance of the argument put forth by the friends of the four companies to which the last territorial legislature had transferred the rights to the railroad lands. So effective were their arguments that the first state legislature, prior even to the admission of the state to the Union, proposed two amendments to the constitution which were designed to give the railroads a "loan of credit" to set them on their feet. One of these amendments, which has been discussed above, provided for the setting up of the state government on May 1, 1858, without any regard to what action Congress might have taken by that time to bring about the admission of the state to the Union.[154] Thus was to be created, possibly even in defiance of the national authorities, the party of the second part who was to enter into the contract with the railroad companies.

The other amendment provided that section 10 of the article now under discussion should be amended for the purpose of authorizing a loan of the state's credit to the four railroad companies of five million dollars to be divided equally among them.[155] Positive assurances were given the voters by all parties concerned in the submission of this amendment, that this was not a loan of state money but merely one of credit, and that the taxpayers of Minnesota could never in any possible contingency be called upon to pay any tax for the repayment of this loan.[156]

[153] See p. 56.
[154] See pp. 135-36, 173-74
[155] *Sess. Laws* 1857-1858, ch. 1.
[156] Folwell, The Five Million Loan, in *Minn. Hist. Col.*, 15:189, 196.

It is not necessary to recount here all the details of the experience which followed. The story has been well told in various histories and historical publications of the state.[157] Suffice it to say that the whole scheme ended in almost total failure and was a most disastrous affair for the infant state. The companies were unable to fulfill their part of the contract even after they had received and disposed of state bonds to the par value of $2,275,000. The people who had been so utterly misled by their political leaders were willing to believe that the whole railroad scheme was nothing more than an outright attempt to swindle the people out of their money. No doubt this fact had much to do with the complete defeat of the Democratic party in the state elections in the fall of 1859.

The new legislature which met in 1860 proposed two new amendments to the constitution of the state. They were designed to prevent any further waste of the public funds. One of them was a proposal for a new section 10 which repealed and supplanted the amendment adopted in 1858 and provided also that there should not "be any further issue of bonds denominated Minnesota State Railroad Bonds under what purports to be an amendment to section ten of article nine of the constitution, adopted April 15, 1858, which is hereby expunged from the constitution, saving, excepting and reserving to the state nevertheless all rights, remedies and forfeitures accruing under said amendment."[158] The other amendment changed section 2 of article 9 by adding thereto the following words: "But no law levying a tax, or making other provisions for the payment of interest or principal of the bonds denominated Minnesota State Railroad Bonds shall take effect or be in force until such law shall have been submitted to a vote of the people of the state and adopted by a majority of the electors of the state voting upon the same."[159] It is interesting to observe that the same session of the legislature which proposed these amendments to the people also adopted a resolution calling upon the governor to destroy all unissued bonds of the state railroad bond series and to do so in the presence of a joint committee of the two houses.[160]

The amended section 10 speaks of "what purports to be an amendment to section 10," implying that the bond amendment of 1858 was invalid. It appears that the charge of invalidity was based principally upon the fact that the state had not been admitted to the Union at the time the amendment was adopted, and that there was no state governor then in office to sign it before its submission to the electors. This question was subsequently fully settled by the courts. The bonds which had been issued in 1858 were held

[157] Folwell, The Five Million Loan, in *Minn. Hist. Col.*, 15:189, 196. And see also Hall, *Observations*, pp. 246-51; *Minn. in Three Cen.*, 4:346 ff.

[158] *Sess. Laws* 1860, concur. resol. no. 1, p. 297.

[159] *Ibid.*

[160] *Sess. Laws* 1860, jt. res. no. 4, p. 303.

to be contractual obligations of the state government.[161] The amendment to section 2 quoted above which would have required a vote of the people anterior to the taking effect of any tax law for the payment of the interest or principal of the railroad bonds was later held, both by the state and the federal supreme courts, to be a violation of the obligation of contracts.[162] Whatever assurances may have been given to the people at the time that the state would never have to pay these bonds, the fact remains that in the bonds themselves and in the amendment the state loaned its credit, and when these bonds reached the hands of an innocent purchaser there could be no question that sooner or later the bonds would have to be paid. The manner in which they were finally adjusted is touched upon in another place in this volume and is fully discussed by other writers.[163] The interesting fact to note at this point is that even amendments to the state constitution may be in violation of the federal constitution, and therefore null and of no effect.

The amendments which have related to the basis and the methods of taxation are not so unified a group as those which related to the railroad bonds. It may be pointed out, however, that sections 1, 2, 3, and 4 of the original article 9 constituted a complete statement of the manner in which taxes were to be levied in this state. No one of these sections can be discussed without some consideration of the other three. They provided briefly that taxes should be "as nearly equal as may be" and that "all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state."[164] Sections 3 and 4 specified additional subjects of taxation and provided for the exemption of certain classes of property from any taxation, but it was clear that all of the various classes of property subject to taxation were to be taxed upon their cash valuation.

One of the first difficulties to arise under these provisions was of peculiar interest to cities and villages. It was held in an early decision that municipalities could not be authorized to levy special assessments upon abutting property owners in proportion to benefits received from the introduction of such local improvements as streets and sidewalks, but that such taxes must be apportioned according to the cash valuation of the properties.[165] This was, of course, an entirely unsatisfactory method for financing local improvements and there was proposed in 1869 and adopted the same year an amendment permitting the legislature to authorize municipal corporations to levy

[161] State ex rel. Hahn *v.* Young, *29 Minn.* 474; 9 *N. W.* 737, (1881); Farnsworth *et al. v.* Minnesota and Pacific Railroad Co., 92 *U. S.* 49; 23 *L. Ed.* 530, (1875).

[162] Gilfillan, C. J., said, in State ex rel. Hahn *v.* Young, *29 Minn.* 474,550, that "The amendment of November 6, 1860, taking away the power of the legislature to provide for payment of the bonds, is in violation of this contract and lessens the efficiency of the remedy. It is, therefore, repugnant to the constitution of the United States, and void."

[163] See p. 168. See Folwell, The Five Million Loan, *Minn. Hist. Col.*, 15:189, 199-214.

[164] Sec. 1.

[165] Stinson *v.* Smith, 8 *Minn.* 366 (Gil. 326), (1863); Bidwell *v.* Coleman, 11 *Minn.* 78 (Gil. 45), (1865).

special assessments for local improvements either upon abutting property or upon all the property benefited without regard to a cash valuation, and in such manner as the legislature might prescribe.[166] This amendment was followed by another in 1881 which provided that the legislature might authorize municipalities of 5,000 or more to levy annual assessments upon all lands fronting on water mains in such municipalities according to the foot frontage upon the mains.[167] These two provisions continued to be a part of the constitution down to 1906.[168]

In 1867 some question arose as to the power to tax the stock of the shareholders of national banks. A decision rendered by the Minnesota supreme court in 1866 would seem to have settled this question in favor of the power of the state.[169] However, in 1867, the legislature proposed to amend the constitution by adding the following sentence to section 4 of article 9: "Laws may be passed for the taxation of the stock of the shareholders of banks, whether existing under the law of this state or of the United States, by a uniform rate of taxation."[170] The proposed amendment, which appears to have been quite unnecessary, was defeated.

During the nineties, a series of amendments was proposed, the general purpose of which was to bring about an increase of the taxes upon large corporations and large fortunes. In 1891 there was proposed an amendment to section 3 providing for gross earnings taxes upon railroads, sleeping, parlor, and drawing-room car companies, telegraph and telephone companies, and insurance companies, or the owners thereof, or in lieu thereof an annual license fee or tax.[171] In addition there was to be "in lieu of other taxation on mining property, a specific tax upon products of all mines in this state." The latter implied, of course, a tonnage tax, as we use the term today. This amendment was not adopted. In 1893 was proposed an addition to section 1 which was designed to authorize inheritance taxes.[172] This amendment was adopted in 1894 and continued to be a part of the constitution until 1906. It provided "that there may be by law levied and collected a tax upon all inheritances, devises, bequests, legacies and gifts of every kind and description above a fixed and specified sum, of any and all natural persons and corporations. Such tax above such exempted sum may be uniform, or it may be graded or progressive, but shall not exceed a maximum tax of five per cent." This amendment shows in an indirect way one of the limitations upon the taxing power of the state expressed in the original section 1 of this article. There was scarcely any new form of taxation which could conform to

[166] *Sess. Laws* 1869, ch. 51.
[167] *Ibid.*, 1881, ch. 1.
[168] See pp. 189-90.
[169] Smith *v.* Webb, 11 *Minn.* 500, (Gil. 378), (1866).
[170] *Sess. Laws* 1867, ch. 118.
[171] *Ibid.*, 1891, ch. 2.
[172] *Ibid.*, 1893, ch. 1.

the old rule that taxes were to be levied as nearly equal as may be upon a cash valuation of property. Gross earnings taxes, it was thought, required special authorization by constitutional amendment. Inheritance taxes likewise had to receive special constitutional sanction. The next tax to be proposed brought out the same fact. The Legislature of 1895 wanted the authority to tax the various large corporations doing business within the state upon the basis of either the proportion of their mileage within the state to their total mileage or of their business within the state to their total business in order that the state might collect from telegraph and telephone companies, sleeping-car companies, insurance companies, ship-building and ship-owning companies, etc., their proper share of taxes. They proposed to have a new amendment to the constitution to bring about this result and it was adopted by the people in the election of 1896.[173] The section was not given a number but was printed at the end of article 9, and was subsequently repealed by description.

By this time the taxing clauses of the constitution had become entirely too complicated. In addition to the original four sections, there were now in the constitution the exceptions in favor of special assessments for local improvements and water supply, the additional clause with reference to inheritance taxes, and a long new section with reference to the taxation of the great interstate corporations doing business in Minnesota. There began now a movement for the simplification of the constitutional provisions. It was considered to be undesirable to have the legislature so bound up by restrictions of one kind or another as to prevent it from changing the taxing system from time to time as it saw fit. Every change in the taxing system from the beginning of the state's history down to this time had raised constitutional questions and in many cases had required an amendment of the constitution. What was now desired was what came to be called a "wide-open tax amendment." Such an amendment was first proposed in 1902 by the special session of the legislature which met that year.[174] This proposed amendment was designed to take the place of sections 1, 2, and 3 of the article now under discussion. It was itself not as brief and simple as might have been desired. Upon its submission to the voters in the fall of that year it was defeated, although a majority of the voters voting on the proposition favored it.

In 1905 a still more sweeping amendment was proposed.[175] The proposition at this time was to adopt a very short and simple taxing clause to take the place of sections 1, 2, 3, and 4 and of the unnumbered section adopted in 1896. This amendment was adopted in 1906. Its provisions are sufficiently simple. It says that "the power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of

[173] *Ibid.*, 1895, ch. 7.
[174] *Ibid.*, spec. sess., 1902, ch. 1.
[175] *Ibid.*, 1905, ch. 168.

subjects, and shall be levied and collected for public purposes." The various types of property which are exempted from taxation are then enumerated and a proviso is appended to authorize special assessments for local improvements without regard to a cash valuation of the properties involved. The present constitutional provision, therefore, introduces the rule of uniformity within classes but clearly permits the legislature to classify the subjects of taxation. The former absolute requirement of taxation of all property upon a basis of cash valuation is eliminated.

As is related in another chapter of this volume there was litigation over the question of whether or not the tax amendment of 1906 had actually been adopted as declared by the board of canvassers. While this question was still undecided, the Legislature of 1907 proposed another amendment to the same effect.[176] The only difference between the proposal of 1907 and that of 1905 was the introduction of the words "used for religious purposes" following the words "church property" in the list of exempt properties. Undoubtedly this slight difference had much to do with the result, for the outcome was the defeat of this new wide-open tax provision.

It has been thought and it is believed today by men who understand the laws of taxation that the present constitutional provision is broad enough to authorize the legislature to enact an income tax law. Nevertheless the friends of the system of income taxation have some doubts upon the matter. The Legislature of 1919 proposed, therefore, a new constitutional amendment to be voted upon in the fall of 1920, the object of which was to make clear beyond any doubt the authority of the legislature to adopt an income tax law, and at the same time to modify the existing provisions as to the exemption of property from taxation.[177] This proposal failed to receive the constitutional majority at the 1920 election.

In 1873 there occurred one of the few impeachments of public officers that have taken place in this state. William Seeger, state treasurer, was hailed before the legislature on charges of having mishandled the state funds.[178] Specifically he was charged with having loaned from the state moneys to various banking and commercial institutions of St. Paul and its vicinity some hundreds of thousands of dollars and with having failed to make proper accounting of the funds when called upon to do so. Upon trial of the case before the senate, it appeared to some of the members that the provision of the state constitution which made it a felony for any person charged with the care of the state and school fund to convert to his own use, or to loan with or without interest contrary to law any portion of the funds in his care, was inadequate to cover the case. An amendment was therefore proposed to strengthen the various provisions of this section, and this amendment,

[176] *Sess. Laws* 1907, ch. 477. See pp. 152-54.
[177] *Ibid.*, 1919, ch. 532.
[178] *Senate Journal* 1873.

which constitutes the present section 12 of article 9 of the constitution, was adopted at the election in the fall of that year.[179]

The question has arisen several times in the history of the state as to how to finance the erection of buildings. The constitutional debt limit is $250,000. No public building of any size could be built today with the money raised by so small a bond issue. When the state hospital for the insane and other public asylums were to be erected in the early seventies, it was thought necessary to get an amendment to the constitution to authorize additional borrowing for this purpose. The Legislature of 1871 proposed an amendment to authorize the increase of the public debt by an amount not exceeding $250,000 for the purpose of erecting such buildings.[180] This amendment failed when first submitted in 1871 but was adopted in 1872.[181] It became section 14(a) of the constitution. It is interesting to observe, however, that when larger building projects were undertaken at a later day, such as the state capitol and the new prison, a method was found of financing the buildings without, in the view of the courts, violating the provisions of the constitution.[182]

The decade of the seventies was an interesting one particularly because of the Granger movement and the legislation with reference to railroads and warehouses. The people were in a serious quandary. On the one hand, they believed that the existing railroads were gouging them of all their earnings through their unequal and burdensome systems of rates. On the other hand, they needed more railroads in the state and they could not pass laws which would entirely discourage the construction of new lines.[183] Two amendments to the constitution in this decade indicate that though the state had ceased to loan money for railroad projects, the various local units were engaged in that somewhat uncertain financial venture. In 1872 article 9 was amended by the addition of section 14(b) which provided that "the legislature shall not authorize any county, township, city or other municipal corporation to issue bonds or to become indebted in any manner to aid in the construction or equipment of any or all railroads to any amount that shall exceed ten per centum of the value of the taxable property within such county, township, city or other municipal corporation."[184] This amendment remained as a part of the constitution for seven years. It was overruled but not expressly repealed by another amendment which became section 15 of this article in 1879.[185] This amendment reduced the limit of indebtedness for this purpose to five per cent of the value of the taxable property in such county or municipal corporation.

[179] *Sess. Laws* 1873, ch. 4.
[180] *Ibid.*, 1871, ch. 19.
[181] *Ibid.*, 1872, ch. 11.
[182] Fleckten *v.* Lamberton, 69 *Minn.* 187; 72 *N. W.* 65, (1897); Brown *v.* Ringdahl, 109 *Minn.* 6; 122 *N. W.* 469, (1909).
[183] Saby, Railroad Legislation in Minnesota, 1849 to 1875, in *Minn. Hist. Col.*, 15:1-188, espec. p. 57 ff.
[184] *Sess. Laws* 1872, ch. 13.
[185] *Ibid.*, 1879, ch. 1.

Six different amendments relating to the creation and administration of the state road and bridge fund have been proposed and four have been adopted, the last in each case succeeding and supplanting that which went before. The reason for the adoption of the road and bridge fund amendments is to be found in the last sentence of section 5 of this article. This provides that "the state shall never contract any debts for works of internal improvement, or be a party in carrying on such works, except in cases where grants of land or other property shall have been made to the state, especially dedicated by the grant to specific purposes, and in such cases the state shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion." Highways, canals, and railroads are examples of the internal improvements which the state could not assist in constructing.

As the state developed and the systems of county and township roads proved inadequate, many citizens came to desire the establishment of an extensive and efficient state highway system. This was impossible as long as the state was bound by the restrictions cited above. In 1897 the legislature proposed the first road and bridge fund amendment and it was adopted by the voters in 1898.[186] It provided that the income derived from the investments in the internal improvement fund should go into the state road and bridge fund and that in addition thereto the state might levy an annual tax on all taxable property within the state of one twentieth of one mill. The fund was to be administered by a state highway commission of three members which was given superintendence of the construction of state roads and bridges. It was provided that the state should in no case pay more than one third of the cost of constructing any road or bridge and that in no year was more than one third of the fund to be spent upon bridges. It was also provided that the fund should be distributed among the various counties of the state in such manner that no county should receive more than three per cent nor less than one half of one per cent of the fund in any year.

It was very soon made evident that this amendment contained too many restrictions for the establishment of a thorough state highway system. The annual tax levy authorized was entirely too small and the rules for the apportionment of the fund permitted the construction of only short stretches of state aid highways scattered here and there throughout the state without any connection with each other. The provision that the state should in no case pay more than one third of the cost of constructing or improving any road or bridge prevented the state from taking complete control of the projects to which it lent aid. In order to eliminate some of these original restrictions the legislature proposed a new amendment in 1901.[187] It provided for the

[186] *Sess. Laws* 1897, ch. 333.
[187] *Ibid.*, 1901, p. iii.

fund in the same way as did the first amendment, but it increased the allowable tax levy to one tenth of one mill annually and it eliminated all restrictions as to the manner in which the money should be expended and as to the apportionment of the fund among the various counties. A majority of the voters who voted on this proposition in 1902 favored it but the amendment failed to receive the constitutional majority.

In 1905 yet another amendment was proposed.[188] It differed from the then existing provision of the constitution in that it increased the permissible tax levy to one fourth of one mill per annum and eliminated the restriction that not more than one third of the fund accruing in any year should be expended on bridges. It retained, however, the provisions of the 1898 amendment as to distribution among the counties and as to the proportion of the cost of any improvements which the state should bear. The litigation which arose over the question of whether or not this amendment had been adopted is described in another place.[189] It is sufficient to say that while the board of canvassers declared this amendment to have been defeated, the district court of St. Louis county declared it to have been adopted. No appeal from this decision was prosecuted and the amendment went into effect.

Pending the litigation of this case, however, a new amendment relating to the state road and bridge fund was proposed by the legislature which omitted all mention of the distribution of the proceeds of the fund and eliminated the former restrictions upon the amount of the annual tax.[190] It provided simply that the fund should include the income derived from investments in the internal improvement land fund and authorized the legislature to add to such fund by an annual tax upon the property within the state. This amendment would have given the state highway commission a free hand to carry out the construction and improvement of an integrated and efficient system of state highways. It was, however, defeated in the election of 1908.

The agitation for a better disposition of the road and bridge funds continued. The Legislature of 1909 proposed a new amendment.[191] It was identical with that adopted in 1906, except that it permitted the state to assume one half of the cost of any improvement. This amendment was adopted in 1910 and continued in effect until the next election.

The arrangement was still unsatisfactory. The state tax levy for road purposes was considered too small and the restrictions upon the proportion of the cost which the state might bear still stood in the way of complete state control of the state highways. The 1911 legislature proposed the sixth and last of the amendments and it was adopted in 1912.[192] The present section permits a state-wide tax levy of one mill, retains the original provision as to

[188] *Ibid.*, 1905, ch. 212.
[189] See pp. 152-54.
[190] *Sess. Laws* 1907, ch. 478.
[191] *Ibid.*, 1909, ch. 506.
[192] *Ibid.*, 1911, ch. 390.

the distribution of the proceeds among the different counties, but contains no restrictions upon the proportion of the cost of any project which the state may bear.

The provision last described is that under which the state highways have been developed since 1912. Although it has proved to be a great improvement over previous provisions, it has not given satisfaction. The tremendous increase in automotive traffic on the state highways has resulted in a greatly increased expense for upkeep with the result that little money has been left for new construction, except where counties have greatly increased their appropriations for that purpose. Furthermore, the demand is now for hard-surfaced rather than dirt or gravel roads. Hard-surfaced construction is, of necessity, more expensive than any other, and there is a consequent need of a more liberal provision in the state constitution if the state as such is to engage in building such roads. At the same time it is desirable to permit the state to raise adequate road funds, independent of the counties, to insure the receipt by the state of the very liberal federal aid which is now being provided for the building of post roads.[193] The present road and bridge fund is not adequate by itself for these purposes, and while counties may now raise money either by taxation or borrowing for the purpose of receiving federal aid, there is no assurance that they will do so either in sufficient amount or in such manner as to ensure the building of an adequate state road system. The 1919 legislature therefore proposed a new good roads amendment, to be voted upon in 1920. This amendment, embodying the so-called "Babcock plan," for a state trunk highway system, was adopted by a tremendous vote, and is now article 16 of the constitution.[194] Logically it should be considered in connection with the road and bridge fund provision of article 9.

The amendments to article 9 which have been adopted have now been briefly reviewed. A word should be said also as to the proposed amendments which have been rejected. Three of these have related to the establishment of state hail insurance. They were proposed successively in 1907, 1909, and 1911, and rejected in the election following in each case.[195] The proposal was the same in each instance and was stated in the following language:

> The legislature may provide for the payment by the state of Minnesota of damages to growing crops by hail and wind, or either, and to provide a fund for that purpose, may impose a specific tax upon lands, the owners of which, at their option, have listed the same with the county authorities for that purpose, and no payment shall be made on any such damages except from the fund so provided.

Three other amendments have related to the encouragement of reforestation work in this state. Two of these proposals were submitted by the 1909

[193] *Stat. at Large*, 39:355-59; 40:1200-1. These sentences were written early in 1920.
[194] *Sess. Laws* 1919, ch. 530.
[195] *Ibid.*, 1907, ch. 479; 1909, ch. 508; 1911, ch. 391.

legislature to the voters in the 1910 election.[196] One of these authorized a state tax of one fifteenth of one mill on each dollar of taxable property within the state, the proceeds of which were to be used for the purchase, at not over three dollars per acre, of lands better adapted for forestry than for agriculture. The work of reforestation was to be carried on under the supervision of the state forestry board and all the moneys accruing from the tax and from the sales of timber on all lands which were subsequently found better adapted for other purposes than for the production of timber were to constitute a permanent forestry fund. One of the unique clauses in this proposed amendment read as follows: "It shall be competent for two successive regular legislatures, by a two-thirds vote of each house, to repeal any of these provisions." Had this amendment become part of the constitution, it would have been subject to change not only by an amendment adopted by the people but by the legislature alone in the manner prescribed. The other forestry amendment proposed the same year provided as follows: "Laws may be enacted exempting lands from taxation for the purpose of encouraging and promoting the planting, cultivation and protection of useful forest trees thereon." The third of the forestry amendments was proposed in 1913 and differed from the two just described in that it provided for an annual bounty to be paid by the state "to any person who shall plant, cultivate and protect useful forest trees upon his own land." This annual bounty was to be limited to $2.50 per acre and was to be granted in each case for a term of not more than ten years, and no person was to receive this bounty upon more than ten acres of land. This amendment also failed.

On two occasions the legislature has submitted to the voters the question of repealing section 11 of article 9.[197] This section requires the publication by the treasurer "in at least one newspaper printed at the seat of government, during the first week in January of each year, and in the next volume of the acts of the legislature, detailed statements of all moneys drawn from the treasury during the preceding year, for what purposes, and to whom paid, and by what law authorized, and also of all moneys received, and by what authority, and from whom." The publication of this report in this manner is an expensive matter and duplicates the biennial reports submitted to the legislature by the treasurer. Nevertheless the voters did not vote for the repeal in sufficient numbers to make it effective. In fact, however, the legislature has stopped publishing the treasurer's report with the session laws.

In 1913 the legislature proposed a special tax on dogs for the purpose of creating a fund to pay damages sustained by the owners of other domestic animals by reason of injuries caused by dogs.[198] This amendment was of course especially designed to assist the sheep-raising industry in this state. It was not adopted.

[196] *Ibid.*, 1909, ch. 510, 511. See also 1913, ch. 591.
[197] *Ibid.*, 1909, ch. 507; 1913, ch. 587.
[198] *Ibid.*, 1913, ch. 594.

In 1915 the legislature proposed an amendment to authorize the state legislature "to provide by law for the mining and sale of any iron ore, or other minerals which the state owns, in its sovereign capacity, and as a trustee for the people of the state, which are situated under the waters or bed of any meandered public lake or river," and authorized the drainage of such bodies of water or the diversion of the waters for that purpose.[199] It was further provided that the income from the funds derived from the sale of such iron ore or other minerals should be used for the improvement and maintenance of public roads. The state is now, as a result of certain decisions of the supreme court, in the somewhat unusual position of being the undoubted owner of the ores under such public waters, but unable to engage in the development of these properties.[200] An amendment similar to that described is therefore a very desirable one.

10. ARTICLE 10—OF CORPORATIONS HAVING NO BANKING PRIVILEGES. This article applies to all corporations not having banking privileges, and the drafters seem to have believed that it might even apply to municipal corporations. Banks are of course covered by the provisions of section 13 of article 9.

There have been five separate attempts to amend article 10 and all of them have related to the provisions in section 3. The original of this section was phrased as follows: "Each stockholder in any corporation shall be liable to the amount of stock held or owned by him." This was construed to mean a double liability, similar to that existing under national and state banking laws for the stockholders of banks.[201] This provision of the constitution was, therefore, in direct conflict with the ordinary doctrine regarding the liability of a stockholder in a corporation. As has been said by Cook in his treatise on corporations, "Probably the most characteristic feature of a corporate existence is the fact that by being a corporation, its stockholders are liable only for the par value of the stock held by them, and when that is once paid in money or property there is no further liability."[202] In the circumstances it was only natural that corporations already organized in Minnesota and those who wished to be so organized, should desire relief from the constitutional provision as to liability, for that provision was self-executing and was enforced in the courts.[203]

The first effort to change the original section was made in 1870, at a time when it was desirable to stimulate the building of railroads in the state. The legislature proposed in that year an amendment to section 3 exempting stockholders in railroad corporations from the double liability attached to

[199] *Sess. Laws* 1915, ch. 381.
[200] Fraser, Title to the Soil under Public Waters, in *Minn. Law Rev.*, 2:313, 429.
[201] Willis *v.* Mabon, 48 *Minn.* 140; 50 *N. W.* 1110, (1892). See definitions p. 125, n. 30.
[202] Cook, *Treat. on Law of Corps.*, 6 ed., sec. 212, p. 539.
[203] Dodge *v.* Minnesota Plastic Slate Roofing Co., 16 *Minn.* 368 (Gil. 327), (1871).

all other stockholders.[204] The railroads, however, were not popular at the time and this amendment failed to carry.

Two years later another amendment was proposed, the purpose of which was to relieve the stockholders in corporations carrying on manufacturing or mechanical businesses from double liability.[205] This amendment was adopted and it constitutes the present section 3 of this article. Double liability is now the rule for corporations engaged in merchandizing, transportation, and other non-manufacturing businesses, but not for manufacturing corporations.[206]

In 1875 an amendment to section 3 was proposed which would have replaced the words "liable to the amount of stock held or owned by him," and have substituted the words "liable only for all unpaid installments on stock owned by him or transferred for the purpose of defrauding creditors."[207] If this provision had been adopted, the law would have been almost reversed. Stockholders in corporations not engaged in manufacturing would have been subject to only a single liability, whereas those in manufacturing corporations, who in 1872 had been granted the privilege of single liability, might under the proposed provision have been subjected by statute to a double liability or even more. This proposal the voters refused to ratify. In 1876 the amendment to establish single liability was resubmitted, but the exception which would have created a higher liability for manufacturing corporations was omitted, that is, the amendment proposed would have established the limited liability for all corporations dealt with in article 10.[208] This amendment was again submitted in 1877 but it was defeated on both occasions.[209]

11. ARTICLE 11 —COUNTIES AND TOWNSHIPS. The only amendment ever proposed to this article was adopted in 1869. It consisted in the addition to the article of section 7, the object of which was to abolish the county of Manomin.[210] This was a small county which was created at the extra session of the territorial legislative assembly in 1857 and which occupied a position east of the Mississippi river between the town of St. Anthony on the south, the town of Anoka on the north, and Ramsey county on the east.[211] It contained only about sixteen square miles. The prevailing opinion seems to have been that under section 1 of this article no county already organized could be disorganized or abolished without the approval of the electors in the county.[212] This miniature county was, therefore, abolished by constitutional

[204] *Sess. Laws* 1870, ch. 21.
[205] *Ibid.*, 1872, ch. 12.
[206] Dunnell, *Minn. Digest*, secs. 2080 ff.
[207] *Sess. Laws* 1875, ch. 4.
[208] *Ibid.*, 1876, ch. 2.
[209] *Ibid.*, 1877, ch. 4.
[210] *Sess. Laws* 1869, ch. 50.
[211] *Sess. Laws* ex. sess. terr. legis., 1857, ch. 40. See also Upham, Minnesota Geographic Names, *Minn. Hist. Col.*, vol. 17, p. 23.
[212] *Opin. of Atty's. Gen.*, 1858-1884, pp. 26, 45, 59.

amendment. It is interesting to observe in this connection that Cass county was disorganized by special act in 1876 and that the law was held constitutional.[213]

While there have been no other direct amendments to this article, other changes in the constitution have served to repeal parts of section 1 and to modify, in some respects, other sections. Section 1 provides among other things that "all laws changing county lines in counties already organized, or for removing county seats shall, before taking effect be submitted to the electors of the county or counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of such electors." The presumption very clearly is that the legislature will pass a special act in each case a vote upon one of these questions is desired, and for many years that was the practice. But in 1881, by the adoption of section 33 of article 4, the legislature was prohibited from enacting any special or private laws "for changing any county seat," and in 1892 this section was made to read, in part, that "the legislature shall pass no local or special law regulating the affairs of, or incorporating, erecting or changing the lines of any county, ... [or] locating or changing county seats."[214] The power of the legislature to pass general laws upon these subjects was, however, expressly reserved.[215] The manner in which county lines may be changed and county seats relocated is now regulated by general laws passed once and for all time for all counties rather than by special laws passed for each case. Consequently some of the provisions of section 1 of article 11 have become impossible to carry out, and the state supreme court has held that they are repealed and superseded by section 33 of article 4.[216] There are a number of other provisions in the constitution as printed today which, while they have not been expressly repealed, have been practically nullified by subsequent amendments to the federal or state constitution.[217]

12. ARTICLE 12—OF THE MILITIA. This is almost an ideal example of a brief and flexible article which is not in need of frequent amendment. No amendments to this article have ever been proposed by the legislature. The single section which constitutes the article briefly recognizes the need of the militia and leaves it to the legislature to pass such laws "as may be deemed necessary" to regulate "the organization, discipline and service of the militia of the state."

The courts have held that this article must be "read and construed in connection with" the provisions of the bill of rights.[218] One part of the con-

[213] *Special Laws* 1876, ch. 208; State ex rel. Slipp *v.* McFadden, 23 *Minn.* 40, (1876).

[214] See pp. 219-20.

[215] *Minn. Const.*, art. 4, sec. 34.

[216] State ex rel. Childs *v.* Board of County Commissioners of Crow Wing County, 66 *Minn.* 519, 524-26; 68 *N. W.* 767; 69 *N. W.* 925, (1896-97); State ex rel. Childs *v.* Pioneer Press Co., 66 *Minn.* 536; 68 *N. W.* 769, (1896).

[217] See, for example, *Minn. Const.*, art. 4, sec. 26; art. 7, sec. 1, the word "male"; art. 10, sec. 2, the words "except for municipal purposes."

[218] State *v.* Wagener, 74 *Minn.* 518; 77 *N. W.* 424; 42 *L. R. A.* 749; 73 *Am. St. Rep.* 369; (1898).

stitution is of no greater validity than another. It is true, for example, that the bill of rights guarantees the right of trial by jury, but "all that is necessary to be said as to the right of trial by jury is that the constitution simply preserves it in cases where it existed previous to its adoption. Courts martial existed long before the adoption of the constitution, and their existence is impliedly recognized in our own and the constitutions of most of the states."[219] The system of courts martial is an incident of the military system and therefore the right of trial by jury, which is not recognized in military law, cannot exist even in times of peace in the court-martial proceedings of the state militia.

The legislature in carrying out its very broad powers with reference to the militia has affirmed the extreme position taken by military authorities in regard to the exemption of the military from liability, either criminal or civil, if the military act was pursuant to orders in the performance of military duties. The statutes provide that:

> The commanding officer of any militia force engaged in the suppression of an insurrection, the dispersion of a mob, or the enforcement of the laws shall exercise his discretion as to the propriety of firing upon or otherwise attacking any mob or other unlawful assembly; and, if he exercise his honest judgment thereon, he shall not be liable in either a civil or a criminal action for any act done while on such duty. But no officer, under any pretense, or in compliance with any order, shall direct or permit his men, or any of them, to fire blank cartridges upon any mob or unlawful assemblage, under penalty of dishonorable dismissal from the service. No officer or enlisted man shall be held liable, in either a civil or a criminal action, for any act done under lawful orders and in the performance of his duty.[220]

Whenever the people of Minnesota come to feel that this statutory provision gives the military authorities too much freedom, they can bring about a change by bringing their influence to bear upon the legislature. No amendment of the constitution will be needed.

13. ARTICLE 13—IMPEACHMENT AND REMOVAL FROM OFFICE. This article, like that which provides for the militia, stands in its original form. No proposal to amend it has ever been submitted by the legislature to the voters.

Section 2 authorizes the legislature to "provide for the removal of inferior officers from office, for malfeasance or nonfeasance in the performance of their duties." The power to remove for malfeasance or nonfeasance is judicial or quasi-judicial in its nature.[221] It does not follow, however, "that the

[219] *Ibid.*

[220] *Gen. Stat.* 1913, sec. 2379. See also 3 *Minn. Law Review*, 105-21, "Civil Authority versus Military;" O'Shee *v.* Stafford, 122 *La.* 444; 47 *So.* 764; 16 *Ann. Cases* 1163; (1908).

[221] State ex rel. Hart *v.* City of Duluth, 53 *Minn.* 238; 55 *N. W.* 118; 39 *Am. St. Rep.* 595; (1893); Hagerty *v.* Shedd, 75 *N. H.* 393, (1909).

power shall be conferred only on the courts. Indeed, the very purpose of this provision was to provide a more summary and less cumbersome method of removing inferior officers than by impeachment or by indictment, according to the course of the common law, for malfeasance or misfeasance in office. If, then the power of removal vested in the governor by the legislature be judicial, we have here the constitutional authority for it."[222] Indeed, it is not unreasonable to assume that, under this section, the legislature might confer upon other officers than the governor a very wide power of removal of inferior officers.

The duties which have, in fact, been imposed upon the governor by the legislature pursuant to section 2 are ministerial, and such as could have been imposed upon some other officer. Consequently the exercise of such duties is subject to control by the judiciary.[223]

14. ARTICLE 14—AMENDMENTS TO THE CONSTITUTION. The growth and interpretation of this article is fully discussed in another place.[224]

15. ARTICLE 15—MISCELLANEOUS SUBJECTS. The legislature has had no occasion to submit any amendment to any of the five sections which make up this article. However, it has twice proposed additional sections, both of which were defeated.

In 1868 the legislature proposed to add a new section to this article requiring a referendum to the voters before any part of the 500,000 acres of internal improvement lands could be disposed of for any purpose except that of establishing a permanent internal improvement fund.[225] The proposal was made shortly after the discovery of the statute of 1841 under which Minnesota could claim this amount of land, and the object of the amendment was to prevent the dissipation of these lands in the payment of the claims of the railroad bond holders. This proposed amendment, which was defeated, should be read in connection with section 32(b) of article 4 adopted in 1872.[226] The prohibition amendment proposed in 1917 and voted upon in 1918 was also to have constituted a section of this article in case of adoption. This amendment provided that:

> The manufacture, sale, barter, gift, disposition, or the furnishing, or transportation, or keeping or having in possession for sale, barter, gift, disposition, or the furnishing, or transportation of intoxicating liquor of any kind, in any quantity whatever, except for sacramental, mechanical, scientific, or medicinal purposes, shall be forever prohibited

[222] State ex rel. Clapp *v.* Peterson, 50 *Minn.* 239; 52 *N. W.* 655; (1892).

[223] State ex rel. Kinsella *v.* Eberhart, 116 *Minn.* 313; 133 *N. W.* 857; (1911); but see the earlier case of State ex rel. Thompson *v.* Whitcomb, 28 *Minn.* 50; 8 *N. W.* 902; (1881).

[224] See pp. 144-55.

[225] *Sess. Laws* 1868, ch. 108.

[226] See pp. 167-68.

within this state from and after the first day of July 1920, and this amendment shall be self executing. The legislature shall enact laws for the enforcement of this section and shall provide suitable penalties for the violation thereof.[227]

As has been pointed out in another connection, there was a very heavy vote upon this question and the amendment fell just a little short of adoption.[228] The vote in favor of the amendment exceeded the vote against the amendment by over fifteen thousand. The legislature considered this to be a sufficient mandate from the people to ratify the federal prohibition amendment, and it did so in the 1919 session.[229] At the time of this ratification Minnesota was about to become "dry" under the provisions of the act of Congress of November 21, 1918, commonly known as "the war time prohibition act."[230] In the same session of the legislature was enacted the law to carry out the purpose of the defeated state amendment as well as of the federal prohibition amendment,[231] but it was on the condition that:

If prior to January 16, 1920, the sale of intoxicating liquors shall cease to be unlawful under any such act of congress or any such proclamation, then in such case all laws or parts of laws of this state, ordinances and charter provisions suspended during such period, shall again become operative and be in force and shall so continue until January 16, 1920, and provided further, that in case the said article 18 to the constitution of the United States shall at any time become void by final decision of the supreme court of the United States, or be repealed by amendment to the constitution of the United States, then this act shall become and be suspended and inoperative, and all laws and parts of laws, ordinances and charter provisions inconsistent herewith and hereby suspended, shall again become operative and be in full force and effect.[232]

16. ARTICLE 16—TRUNK HIGHWAY SYSTEM. It has been pointed out elsewhere that the road and bridge fund provision of the constitution, which is contained in section 16 of article 9, proved quite inadequate to give Minnesota a state-wide system of good roads under exclusive state control, and that the 1919 legislature proposed a new amendment creating a trunk highway system which was approved by the vote of the electorate of 1920.[233] This is the first and only case in which a new article has been added to the constitution. Furthermore, because it contains the description in considerable detail of the seventy trunk highways which constitute the system, this single amendment adds more to the length of the constitution than all the other amendments from 1858 to 1920 combined.[234] The unusual nature of the amendment, coupled with the surprisingly well-financed and skilfully-managed campaign

[227] *Sess. Laws* 1917, ch. 515.
[228] See p. 149.
[229] *Sess. Laws* 1919, pp. 756-57, Resol. no. 1.
[230] *Stat. at Large*, 40:1045-49.
[231] *Sess. Laws* 1919, ch. 455.
[232] *Ibid.*, sec. 27.
[233] See pp. 192-94.
[234] See pp. 154-55, 252-65.

of publicity in its favor, make this one of the most interesting cases of constitutional amendment in the history of the state.[235]

The effect of the trunk highways article can best be understood if it is first pointed out that it adds something to the constitution without expressly repealing any other definite portion of that instrument. The state is still forbidden to engage in works of internal improvement generally; the trunk highway system presents merely a new exception to the general prohibition.[236] The road and bridge fund provision in article 9 is equally unimpaired by the new amendment; these two provisions are not antagonistic but supplementary.[237]

The following may be considered the essential modification in our constitutional system effectuated by the new amendment:

1. For the first time in the history of Minnesota a group of highways, constituting a complete network of thoroughfares throughout the state, may be considered to be state highways in a real sense. In the past the primary obligation to maintain even the so-called "state roads" has been upon the counties, and of all other highways upon the counties, towns, and municipalities. The state as such merely gave aid in the construction and repair of the highways, and it was unable to enforce the highest standards of efficiency in road work. This situation is now entirely changed, for by this new article there is "created and established a trunk highway system, which shall be located, constructed, reconstructed, improved and forever maintained as public highways by the state of Minnesota."

2. Two funds are created, one the trunk highway fund, which shall be used to finance the building and upkeep of the trunk highways, and the other the trunk highway sinking fund, the moneys in which shall be used to retire the trunk highway bonds.

3. The legislature is expressly authorized to tax motor vehicles "on a more onerous basis than other personal property," but such special tax, if levied, must be in lieu of other taxes on motor vehicles except municipal wheelage taxes and the proceeds must be paid into the trunk highway funds. The legislature could undoubtedly have increased the existing automobile taxes very materially without this amendment, but it was estopped from using the moneys obtained for good roads work.

[235] The publicity campaign on behalf of this amendment deserves special mention. The amendment received liberal support from commercial, labor, and professional organizations throughout the state. Newspapers everywhere gave freely of their space to explain the amendment and there were in addition many full-page advertisements. A great quantity of pamphlet material was circulated, there were numerous billboard advertisements, and a staff of speakers representing state and local highway associations was ever ready to expound the merits of the new plan. On the day before the election hundreds of factory whistles in the larger cities were blown to remind voters of their duty to help to "get Minnesota out of the mud." There were, of course, some scattered opponents of the amendment, but its friends far outmatched them both in numbers and influence. At the end it came to be a mere question of how large the favorable majority of votes could be made.

[236] *Minn. Const.*, art. 9, sec. 5.

[237] *Ibid.*, art. 9, sec. 16.

4. The legislature is further authorized to issue state bonds for trunk highway purposes in amounts not exceeding $10,000,000 per year with the proviso that not over $75,000,000 in such bonds shall be outstanding at any one time. These bonds may not be for a longer term than twenty years, may not be sold at less than par and accrued interest, and shall not bear interest at a greater rate than five per cent per annum. This portion of the amendment recalls the power given to the legislature by the amendment of 1858 to issue state bonds to aid in the construction of railroads.

5. From the point of view of constitutional law section 5 of this article is as interesting as any other portion of it. This section provides for the repeal of inconsistent provisions of the constitution "so far, but only so far, as the same prohibit or limit the power of the legislature to enact laws authorizing or permitting the doing of the things hereinbefore authorized." This method of repealing provisions of the constitution is, to say the least, somewhat unusual, and it will be interesting to learn how the section will be construed.

17. SCHEDULE. The schedule of the constitution consists of provisions which are almost entirely temporary in their nature and effect. The object of the schedule is to provide an easy means of transition from one form of government to another, that is, in the case of Minnesota, from a territorial stage to statehood. The schedule is very seldom cited in judicial decisions at the present time and is mainly of historical interest. It has, of course, never been amended.

APPENDICES

APPENDIX

THE TEXT OF THE CONSTITUTION

NOTE.—In preparing the present corrected text of the constitution, the author has made a careful comparison in the first place of the two original versions of the constitution.[1] Where differences have appeared he has, in accepting one or the other version, used his judgment as to which form was the better in matters of style and punctuation. A table of notes showing the differences between the versions is also appended for the benefit of any who may find it necessary to have both the Democratic and the Republican versions of any particular section.

In the matter of spelling the author has not tried to follow exactly the two original versions but has adopted in every case the most commonly accepted spelling of today. In both originals of the constitution there is a great deal of unnecessary and archaic capitalization, but at the same time there is no agreement as between the two documents as to what words should be capitalized; and even within each version, due to the large number of copyists who participated in the writing, there are a great many discrepancies. For example, the word "state" is sometimes capitalized, sometimes not, and the same is the case with "governor," "legislature," and other similar words. In this edition capitals have been used, so far as possible, only in proper names and in the first words of sentences, except in the case of the amendments.

Many of the recent reprints of the constitution are very inaccurately punctuated in the sense that they do not conform to the punctuation used in the sources, which are the two originals of the constitution and the enrolled bills for all amendments. In this edition the rule has been followed of putting in all the original punctuation where the two original documents were in agreement on this matter. In the almost three hundred cases where the original versions do not agree in matters of punctuation, as has been said above, the authors have exercised their best judgment in using one or the other version and have explained in a table printed with the constitution the differences between the two originals. The punctuation of amendments follows that in the enrolled bills.

In order to make this edition of the constitution complete the author has included every provision which at any time has been or which now is a part of the constitution. Those proposed amendments which have been adopted have been inserted into the text in the proper place and, where there has been a series of amendments to a single section, in the chronological order of their adoption. The historical development of every part of the constitution can thus be ascertained from a study of the text of the constitution itself. In order to differentiate properly between the present text of the constitution, on the one hand, and superseded clauses and explanatory matter on the other, the following typographical arrangement has been adopted: First, the constitution as it is today has been printed in ten point type; second, all explanatory notes and superseded sections have been printed in eight point type; and third, in order to differentiate between superseded sections and explanatory notes, the former have in all cases been printed in brackets. It will be understood, therefore, that everything printed in brackets was a part of the constitution at one time.

[1] See pp. 109-10.

CONSTITUTION OF THE STATE OF MINNESOTA

PREAMBLE

We the people of the state of Minnesota grateful to God for our civil and religious liberty and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this constitution

ARTICLE 1

BILL OF RIGHTS

SECTION 1. Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform such government whenever the public good may require it.

SEC. 2. No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the state otherwise than in the punishment of crime whereof the party shall have been duly convicted.

SEC. 3. The liberty of the press shall forever remain inviolate, and all persons may freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of such right.

SEC. 4. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy, but a jury trial may be waived by the parties in all cases in the manner prescribed by law.

In 1890 the following clause was added:

And the legislature may provide that the agreement of five-sixth (5/6) of any jury in any civil action or proceeding, after not less than six (6) hours deliberation, shall be a sufficient verdict therein.

Proposed by *Sess. Laws* 1889, ch. 1; ratified November 4, 1890.

SEC. 5. Excessive bail shall not be required; nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted.

SEC. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

[SEC. 7. No person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment or in cases cognizable by justices of the peace, or arising in the army or navy, or in the militia when in actual service in time of war or public danger, and no person for the same offense shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property without due process of law. All persons shall before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion, the public safety may require.]

As early as 1868 it was proposed to abolish the requirement of a grand jury hearing but the amendment to this effect was defeated. *Sess. Laws* 1868, ch. 107. In 1904 this change was accomplished by the following amendment, which supplanted the section above:

SEC. 7. No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law. All persons shall before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended unless when in case of rebellion or invasion the public safety may require.

Proposed by *Sess. Laws* 1903, ch. 269; ratified November 8, 1904.

SEC. 8. Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformably to the laws.

SEC. 9. Treason against the state shall consist only in levying war against the same or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 10. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

SEC. 11. No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts shall ever be passed, and no conviction shall work corruption of blood or forfeiture of estate.

SEC. 12. No person shall be imprisoned for debt in this state, but this shall not prevent the legislature from providing for imprisonment or holding to bail persons charged with fraud in contracting said debt. A reasonable

amount of property shall be exempt from seizure or sale, for the payment of any debt or liability; the amount of such exemption shall be determined by law.

An amendment adopted in 1888 added the following proviso:

Provided, however, that all property so exempted shall be liable to seizure and sale for any debts incurred to any person for work done or materials furnished in the construction, repair, or improvement of the same; and provided further, that such liability to seizure and sale shall also extend to all real property for any debt incurred to any laborer or servant for labor or service performed.

Proposed by *Sess. Laws* 1887, ch. 2; ratified November 6, 1888.

[SEC. 13. Private property shall not be taken for public use without just compensation therefor first paid or secured.]

This section was superseded by the following amendment, ratified in 1896:

SEC. 13. Private property shall not be taken, destroyed or damaged for public use, without just compensation therefor first paid or secured.

Proposed by *Sess. Laws*, 1895, ch. 5; ratified November 3, 1896. The amendment proposed in 1915 to authorize the taking of private property for private drainage ditches was defeated. *Sess. Laws*, 1915, ch. 384.

SEC. 14. The military shall be subordinate to the civil power, and no standing army shall be kept up in this state in time of peace.

SEC. 15. All lands within this state are declared to be allodial, and feudal tenures of every description, with all their incidents, are prohibited. Leases and grants of agricultural land for a longer period than twenty-one years, hereafter made, in which shall be reserved any rent or service of any kind, shall be void.

SEC. 16. The enumeration of rights in this constitution shall not be construed to deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry against his consent, nor shall any control of, or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship, but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies, or religious or theological seminaries.

SEC. 17. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the state. No religious test or amount of property shall ever be required as a qualification of any

voter at any election in this state; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

An amendment approved in 1906, added the following section to this article:

SEC. 18. Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor.

Proposed by *Sess. Laws* 1905, ch. 283; ratified November 6, 1906.

ARTICLE 2

ON NAME AND BOUNDARIES

SECTION 1. This state shall be called and known by the name of the "State of Minnesota," and shall consist of and have jurisdiction over the territory embraced in the following boundaries, to wit: Beginning at the point in the center of the main channel of the Red river of the North, where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux river; thence up the main channel of said river to Lake Traverse; thence up the center of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone Lake; thence through its center to its outlet; thence by a due south line to the north line of the state of Iowa; thence east along the northern boundary of said state to the main channel of the Mississippi river; thence up the main channel of said river, and following the boundary line of the state of Wisconsin, until the same intersects the St. Louis river; thence down the said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and British possessions; thence up Pigeon river, and following said dividing line to the place of beginning.

SEC. 2. The state of Minnesota shall have concurrent jurisdiction on the Mississippi and all other rivers and waters bordering on the said state of Minnesota, so far as the same shall form a common boundary to said state and any other state or states now or hereafter to be formed by the same; and said river and waters, and navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said state as to other citizens of the United States, without any tax, duty, impost, or toll, therefor.

SEC. 3. The propositions contained in the act of congress entitled "An act to authorize the people of the territory of Minnesota to form a constitution and state government preparatory to their admission into the union on an equal footing with the original states," are hereby accepted, ratified, and confirmed, and shall remain irrevocable without the consent of the United

States; and it is hereby ordained that this state shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations congress may find necessary for securing the title to said soil to bona fide purchasers thereof; and no tax shall be imposed on lands belonging to the United States, and in no case shall non-resident proprietors be taxed higher than residents.

ARTICLE 3

DISTRIBUTION OF THE POWERS OF GOVERNMENT

SECTION 1. The powers of the government shall be divided into three distinct departments, the legislative, executive and judicial; and no person or persons belonging to or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this constitution.

ARTICLE 4

THE LEGISLATIVE DEPARTMENT

[SECTION 1. The legislature of the state shall consist of a senate and house of representatives, who shall meet at the seat of government of the state, at such times as shall be prescribed by law.]

The following clause was added to this section by an amendment adopted in 1860: [But no session shall exceed the term of sixty days.]

Proposed by *Sess. Laws* 1860, ch. 22; ratified November 6, 1860.

In 1873 the legislature proposed an amendment to make sessions biennial and to limit them to seventy days each. *Sess. Laws* 1873, ch. 3. This proposal was rejected by the voters.

The amended section above was superseded by the following section ratified in 1877:

[SEC. 1. The legislature of the state shall consist of a senate and house of representatives who shall meet biennially at the seat of government of the state at such time as shall be prescribed by law but no session shall exceed the term of sixty days.]

Proposed by *Sess. Laws* 1877 ch. 1; ratified November 6, 1877.

In 1881 the legislature proposed an amendment to remove the time limit from the length of sessions. *Sess. Laws* 1881, ch. 2. The proposal was not ratified.

The section above was itself superseded in 1888 by the following:

SECTION 1. The legislature shall consist of the senate and house of representatives, which shall meet biennially at the seat of government of the state, at such time as shall be prescribed by law, but no session shall exceed the term of ninety (90) legislative days, and no new bill shall be introduced in either branch, except on the written request of the governor, during the

last twenty (20) days of such sessions, except the attention of the legislature shall be called to some important matter of general interest by a special message from the governor.

Proposed by *Sess. Laws* 1887, ch. 3; ratified November 6, 1888.

In 1913 and in 1915 the legislature proposed amendments to this section the effect of which would have been to establish the initiative and referendum. *Sess. Laws* 1913, ch. 584; 1915, ch. 385. Both proposals failed to receive the constitutional majority necessary for ratification.

SEC. 2. The number of members who compose the senate and house of representatives shall be prescribed by law, but the representation in the senate shall never exceed one member for every five thousand inhabitants, and in the house of representatives one member for every two thousand inhabitants. The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof, exclusive of Indians not taxable under the provisions of law.

See the so-called "seven senator" amendment proposed in 1911 and again in 1913 but defeated on both occasions. *Sess. Laws* 1911, ch. 395; 1913, ch. 590. The purpose of this amendment was to prevent any county from being apportioned over seven senators. Strange as it may seem, over 6,300 voters in Hennepin county voted on both occasions for this measure to reduce their own representation.

SEC. 3. Each house shall be the judge of the election, returns, and eligibility of its own members; a majority of each shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as it may provide.

SEC. 4. Each house may determine the rules of its proceedings, sit upon its own adjournment, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member, but no member shall be expelled a second time for the same offense.

SEC. 5. The house of representatives shall elect its presiding officer; and the senate and house of representatives shall elect such other officers as may be provided by law; they shall keep journals of their proceedings, and from time to time publish the same; and the yeas and nays when taken on any question shall be entered on such journals.

SEC. 6. Neither house shall, during a session of the legislature, adjourn for more than three days, (Sundays excepted,) nor to any other place than that in which the two houses shall be assembled, without the consent of the other house.

SEC. 7. The compensation of senators and representatives shall be three dollars per diem during the first session, but may afterwards be prescribed by law. But no increase of compensation shall be prescribed which shall

take effect during the period for which the members of the existing house of representatives may have been elected.

See the amendment for fixing the compensation of legislators proposed in 1881 but rejected. *Sess. Laws* 1881, ch. 2, sec. 2.

SEC. 8. The members of each house shall in all cases except treason, felony and breach of the peace, be privileged from arrest during the session of their respective houses, and in going to or returning from the same. For any speech or debate in either house they shall not be questioned in any other place.

SEC. 9. No senator or representative shall, during the time for which he is elected, hold any office under the authority of the United States, or the state of Minnesota, except that of postmaster; and no senator or representative shall hold an office under the state, which had been created, or the emoluments of which had been increased during the session of the legislature of which he was a member, until one year after the expiration of his term of office in the legislature.

SEC. 10. All bills for raising a revenue shall originate in the house of representatives, but the senate may propose and concur with amendments as on other bills.

SEC. 11. Every bill which shall have passed the senate and house of representatives, in conformity to the rules of each house and the joint rules of the two houses, shall, before it becomes a law, be presented to the governor of the state. If he approve, he shall sign and deposit it in the office of secretary of state for preservation, and notify the house where it originated of the fact. But if not, he shall return it with his objections to the house in which it shall have originated, when such objections shall be entered at large on the journal of the same, and the house shall proceed to reconsider the bill. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted,) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature by adjournment within that time prevent its return, in which case it shall not be a law. The governor may approve, sign, and file in the office of the secretary of state within three days after the adjournment of the legislature any act passed during the three last days of the session and the same shall become a law.

The following additional provisions were ratified in 1876:

If any bill presented to the governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If, on reconsideration, one or more of such items be approved by two thirds of the members elected to each house, the same shall be a part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

Proposed by *Sess. Laws* 1876, ch. 1; ratified November 7, 1876.

In 1915 it was proposed to authorize the governor to veto items of appropriation "in whole or in part." It failed of ratification. *Sess. Laws* 1915, ch. 383.

SEC. 12. No money shall be appropriated except by bill. Every order, resolution or vote requiring the concurrence of the two houses, (except such as relate to the business or adjournment of the same,) shall be presented to the governor for his signature, and before the same shall take effect, shall be approved by him, or being returned by him with his objections, shall be repassed by two-thirds of the members of the two houses, according to the rules and limitations prescribed in case of a bill.

SEC. 13. The style of all laws of this state shall be: "Be it enacted by the legislature of the state of Minnesota." No law shall be passed unless voted for by a majority of all the members elected to each branch of the legislature, and the vote entered upon the journal of each house.

SEC. 14. The house of representatives shall have the sole power of impeachment, through a concurrence of a majority of all the members elected to seats therein. All impeachments shall be tried by the senate, and when sitting for that purpose the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 15. The legislature shall have full power to exclude from the privilege of electing or being elected, any person convicted of bribery, perjury, or any other infamous crime.

SEC. 16. Two or more members of either house shall have liberty to dissent and protest against any act or resolution which they may think injurious to the public or to any individual, and have the reason of their dissent entered on the journal.

SEC. 17. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature. The legislature shall prescribe by law the manner in which evidence in cases of contested seats in either house shall be taken.

SEC. 18. Each house may punish by imprisonment, during its session, any person not a member who shall be guilty of any disorderly or contemptuous behavior in their presence, but no such imprisonment shall at any time exceed twenty-four hours.

SEC. 19. Each house shall be open to the public during the sessions thereof, except in such cases as in their opinion may require secrecy.

SEC. 20. Every bill shall be read on three different days in each separate house, unless, in case of urgency, two-thirds of the house where such bill is depending shall deem it expedient to dispense with this rule, and no bill shall be passed by either house until it shall have been previously read twice at length.

SEC. 21. Every bill, having passed both houses, shall be carefully enrolled, and shall be signed by the presiding officer of each house. Any presiding officer refusing to sign a bill which shall have previously passed both houses, shall thereafter be incapable of holding a seat in either branch of the legislature, or hold any other office of honor or profit in the state, and in case of such refusal, each house shall, by rule, provide the manner in which such bill shall be properly certified for presentation to the governor.

SEC. 22. No bill shall be passed by either house of the legislature upon the day prescribed for the adjournment of the two houses. But this section shall not be so construed as to preclude the enrollment of a bill, or the signature and passage from one house to the other, or the reports thereon from committees, or its transmission to the executive for his signature.

SEC. 23. The legislature shall provide by law for an enumeration of the inhabitants of this state in the year one thousand eight hundred and sixty-five, and every tenth year thereafter. At their first session after each enumeration so made, and also at their first session after each enumeration made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional, senatorial and representative districts, and to apportion anew the senators and representatives among the several districts according to the provisions of section second of this article.

In 1909 it was proposed to authorize the legislature to reapportion representation and to redistrict the state "at any session" after a state or federal census. *Sess. Laws* 1909, ch. 509. The amendment failed of adoption. It was entirely unnecessary, however, since this section is purely directory and the legislature is not limited to reapportioning and redistricting at the first session following a census.

[SEC. 24. The senators shall also be chosen by single districts of convenient contiguous territory, at the same time that the members of the house of representatives are required to be chosen, and in the same manner, and no representative district shall be divided in the formation of a senate district. The senate districts shall be numbered in regular series, and the senators chosen by the districts designated by odd numbers shall go out of office at the expiration of the first year, and the senators chosen by the districts designated by even numbers shall go out of office at the expiration of the second year; and thereafter the senators shall be chosen for the term of two years, except there shall be an entire new election of all the senators at the election next succeeding each new apportionment provided for in this article.]

In 1873 the legislature proposed without success an amendment to extend the terms of representatives and senators to two and four years respectively. *Sess. Laws* 1873, ch. 3. In 1877 was ratified the following amendment to the same effect:

SEC. 24. The senators shall be chosen by single districts of convenient contiguous territory at the same time that members of the house of representatives are required to be chosen and in the same manner, and no representative district shall be divided in the formation of a senate district. The senate districts shall be numbered in a regular series. The terms of office of senators and representatives shall be the same as now prescribed by law until the general election in the year one thousand eight hundred and seventy-eight at which time there shall be an entire new election of all the senators and representatives; representatives chosen at such election or at any election thereafter, shall hold their office for the term of two years, except it be to fill a vacancy, and the senators chosen at such election by districts designated as odd numbers, shall go out of office at the expiration of the second year and senators chosen by districts designated by even numbers, shall go out of office at the expiration of the fourth year, and thereafter senators shall be chosen for four years, except there shall be an entire new election of all the senators, at the election of representatives next succeeding each new apportionment provided for in this article.

Proposed by *Sess. Laws* 1877, ch. 1; ratified November 6, 1877.

SEC. 25. Senators and representatives shall be qualified voters of the state, and shall have resided one year in the state and six months immediately preceding the election in the district from which they are elected.

SEC. 26. Members of the senate of the United States from this state shall be elected by the two houses of the legislature in joint convention at such times, in such manner as may be provided by law.

While this section is still a part of the constitution of this state, it is of no effect since the adoption of the 17th amendment to the federal constitution in 1913.

SEC. 27. No law shall embrace more than one subject, which shall be expressed in its title.

SEC. 28. Divorces shall not be granted by the legislature.

SEC. 29. All members and officers of both branches of the legislature shall, before entering upon the duties of their respective trusts, take and subscribe an oath or affirmation to support the constitution of the United States, the constitution of the state of Minnesota, and faithfully and impartially to discharge the duties devolving upon him as such member or officer.

SEC. 30. In all elections to be made by the legislature the members thereof shall vote viva voce, and their votes shall be entered on the journal.

SEC. 31. The legislature shall never authorize any lottery or the sale of lottery tickets.

Sections 32 to 36 inclusive were not in the original constitution.

SEC. 32 (a). Any law providing for the repeal or amendment of any law, or laws, heretofore or hereafter enacted, which provides that any railroad company now existing in this state, or operating its road therein, or which may be hereafter organized shall in lieu of all other taxes and assessments upon their real estate, roads, rollingstock and other personal property at and during the time and periods therein specified, pay into the treasury of this state a certain percentage therein mentioned of the gross earnings of such railroad companies, now existing or hereafter organized, shall before the same shall take effect or be in force, be submitted to a vote of the people of the state and be adopted and ratified by a majority of the electors of the state voting at the election at which the same shall be submitted to them.

Proposed by *Sess. Laws* 1871, ch. 18; ratified November 8, 1871. This section is printed as sec. 32 (a). It was originally numbered simply 32.

SEC. 32 (b). All lands donated to the state of Minnesota for the purpose of internal improvement under the eighth section of the act of Congress approved September 4th 1841 being ["]an act to appropriate the proceeds of the sales of the public lands, and to grant preemption rights," shall be appraised and sold in the same manner, and by the same officers, and the minimum price shall be the same as is provided by law, for the appraisement and sale of the school lands under the provisions of title one (1) of chapter thirty eight (38), of the General Statutes except the modifications hereinafter mentioned. All moneys derived from the sales of the said lands shall be invested in the bonds of the United States or of the state of Minnesota issued since 1860, and the money so invested shall constitute the Internal Improvement Land fund of the state. All moneys received by the county treasurer under the provisions of title one (1) chapter thirty eight aforesaid derived from the sale of the Internal Improvement Lands, shall be held at all times subject to the order and direction of the state treasurer, for the benefit of the fund to which it belongs, and on the fifteenth day of June in each year and at such other times as he may be requested so to do by the state treasurer,

he shall pay over to the said state treasurer, all moneys received on account of such fund, the bonds purchased in accordance with this amendment shall be transferable only upon the order of the governor, and on each bond shall be written, "Minnesota Internal Improvement Land fund of the state Transferable only on the order of the governor.["] The principal sum from all sales of Internal Improvement Lands shall not be reduced by any charges or costs of officers by fees or by any other means whatever, and section fifty (50), of title one (1), of chapter thirty eight (38), of the General Statutes shall not be applicable to the provisions of this amendment, and wherever the words "school lands" are used in said title it shall read as applicable to this amendment Internal Improvement Lands,

The moneys belonging to the Internal Improvement Land fund, shall not be appropriated for any purpose whatever until the enactment for that purpose, shall have been approved by a majority of the electors of the state voting at the annual general election following the passage of the act.

The force of this amendment shall be to authorize the sale of the Internal Improvement Lands without further legislative enactment.

Proposed by *Sess. Laws* 1872, ch. 14; ratified November 5, 1872. Due to a confusion in numbering it has been necessary to designate this second section 32 as sec. 32 (b).

An amendment proposed in 1877 would have permitted the legislature to utilize the proceeds from the sale of 500,000 acres of internal improvement land to pay off the railroad bonds. *Sess. Laws* 1877, ch. 5. The amendment was defeated.

The first two amendments restricting the powers of the legislature in the matter of passing special legislation were proposed and ratified in 1881. *Sess. Laws* 1881, ch. 3. They were numbered sections 33 and 34 and were in addition to other sections in this article.

[SEC. 33. The legislature is prohibited from enacting any special or private laws in the following cases

First. For changing the name of a person or constituting one (1) person the heir at law of another.

Second. For laying out, opening or altering highways.

Third. For authorizing persons to keep ferries across streams wholly within this state.

Fourth. For authorizing the sale or mortgage of real or personal property of minors or other persons under disability.

Fifth. For changing any county seat.

Sixth. For assessment or collection of taxes or for extending the time for the collection thereof.

Seventh. For granting corporate powers or privileges except to cities.

Eighth. For authorizing the apportionment of any part of the school fund.

Ninth. For incorporating any town or village.

Tenth. For granting to any individual, association or corporation except municipal any special or exclusive privilege, immunity or franchise whatever.

Eleventh. For vacating roads, town plats, streets, alleys, and public grounds.

But the legislature may repeal any existing special law relating to the foregoing subdivisions.]

Proposed by *Sess. Laws* 1881, ch. 3; ratified November 8, 1881. The original section 33 was superseded by the following section ratified in 1892:

SEC. 33. In all cases when a general law can be made applicable, no special law shall be enacted; and whether a general law could have been applicable in any case, is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject. The legislature shall pass no local or special law; regulating the affairs of, or incorporating, erecting or changing the lines of any county, city, village, township, ward or school district, or creating the offices, or prescribing the powers and duties of the officers of or fixing or relating to the compensation, salary or fees of the same or the mode of election or appointment thereto; authorizing the laying out, opening, altering, vacating or maintaining roads, highways, streets or alleys; remitting fines, penalties or forfeitures; regulating the powers, duties and practice of justices of the peace, magistrates and constables; changing the names of persons, places, lakes or rivers; for opening and conducting of elections, or fixing or changing the places of voting; authorizing the adoption or legitimation of children; changing the law of descent or succession; conferring rights upon miners [*sic.*]; declaring any named person of age; giving effect to informal or invalid wills or deeds, or affecting the estates of minors or persons under disability; locating or changing county seats; regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes; exempting property from taxation, or regulating the rate of interest on money; creating corporations, or amending, renewing, extending or explaining the charters thereof; granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever, or authorizing public taxation for a private purpose. Provided, however, that the inhibitions of local or special laws in this section shall not be construed to prevent the passage of general laws on any of the subjects enumerated.

The legislature may repeal any existing special or local law but shall not amend, extend or modify any of the same.

Proposed by *Sess. Laws* 1891, ch. 1; ratified November 8, 1892.

SEC. 34. The legislature shall provide general laws for the transaction of any business that may be prohibited by section one (1) of this amendment, and all such laws shall be uniform in their operation throughout the state.

This section was adopted along with the original section 33 on November 8, 1881. *Sess. Laws* 1881, ch. 3.

SEC. 35. Any combination of persons, either as individuals or as members or officers of any corporation, to monopolize the markets for food products in this state, or to interfere with, or restrict the freedom of such markets, is hereby declared to be a criminal conspiracy, and shall be punished in such manner as the legislature may provide.

Proposed by *Sess. Laws* 1887, ch. 1; ratified November 6, 1888.

The original municipal home rule section approved by the voters in 1896, was as follows:

[SEC. 36. Any city or village in this state may frame a charter for its own government as a city consistent with and subject to the laws of this state as follows: The legislature shall provide under such restrictions as it deems proper for a board of fifteen freeholders, who shall be and for the past five years shall have been qualified voters thereof, to be appointed by the district judges of the judicial district in which the city or village is situated, which board shall within six months after its appointment return to the chief magistrate of such city or village a draft of such charter signed by the members of said board, or a majority thereof. Such charter shall be submitted to the qualified voters of such city or village at the next election thereafter, and if four-sevenths of the qualified voters voting at such election shall ratify the same it shall at the end of thirty days thereafter become the charter of such city or village as a city, and supersede any existing charter and amendments thereof. Provided, That in cities having patrol limits now established such charter shall require a three-fourths majority vote of the qualified voters, voting at such election, to change the patrol limits now established.

Before any city shall incorporate under this act, the legislature shall prescribe by law the general limits within which such charter shall be framed. Duplicate certificates shall be made setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of said city or village, and authenticated by its corporate seal. One of said certificates shall be deposited in the office of the secretary of state, and the other, after being recorded in the office of the register of deeds for the county in which such city or village lies, shall be deposited among the archives of such city or village and all courts shall take judicial notice thereof. Such charter so deposited may be amended by a proposal therefor made by a board of fifteen freeholders aforesaid, published for at least thirty days in three newspapers of general circulation in such city or village, and accepted by three-fifths of the qualified voters, of such city or village, voting at the next election, and not otherwise; but such charter shall always be in harmony with, and subject to the constitution and laws of the state of Minnesota. The legislature may prescribe the duties of the commission relative to submitting amendments of charter to the vote of the people.

The board of freeholders above provided for shall be permanent, and all the vacancies by death, disability to perform duties, resignation or removal from the corporate limits shall be filled by appointment in the same manner as the original board was created, and said board shall always contain its full complement of members.

It shall be a feature of all such charters that there shall be provided, among other things, for a mayor or chief magistrate, and a legislative body of either one or two houses; if of two houses at least one of them shall be elected by general vote of the citizens.

In submitting any such charter or amendment thereto to the qualified voters of such city or village any alternate section or article may be presented for the choice

of the voters, and may be voted on separately without prejudice to other articles or sections of the charter or any amendment thereto.

The legislature may provide general laws relating to affairs of cities, the application of which may be limited to cities of over fifty thousand inhabitants, or to cities of fifty and not less than fifteen thousand inhabitants, or to cities of fifteen thousand inhabitants or less, which shall apply equally to all such cities of either class, and, which shall be paramount while in force, to the provisions relating to the same matter included in the local charter herein provided for. But no local charter provision or ordinance passed thereunder shall supersede any general law of the state defining or punishing crimes or misdemeanors.]

Proposed by *Sess. Laws* 1895, ch. 4; ratified November 3, 1896. At the next session the legislature proposed the following revised home rule section. It received the approval of the voters in 1898.

SEC. 36. Any city or village in this state may frame a charter for its own government as a city consistent with and subject to the laws of this state as follows: The legislature shall provide, under such restrictions as it deems proper, for a board of fifteen freeholders, who shall be and for the past five years shall have been qualified voters thereof, to be appointed by the district judges of the judicial district in which the city or village is situated, as the legislature may determine, for a term in no event to exceed six years, which board shall within six months after its appointment return to the chief magistrate of said city or village a draft of said charter signed by the members of said board, or a majority thereof. Such charter shall be submitted to the qualified voters of such city or village at the next election thereafter, and if four-sevenths of the qualified voters voting at such election shall ratify the same, it shall at the end of thirty days thereafter, become the charter of such city or village as a city, and supersede any existing charter and amendments thereof; Provided, That in cities having patrol limits now established, such charter shall require a three-fourths majority vote of the qualified voters voting a [*sic.*] such election to change the patrol limits now established. Before any city shall incorporate under this act, the legislature shall prescribe by law the general limits within which such charter shall be framed. Duplicate certificates shall be made setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of said city or village, and authenticated by its corporate seal. One of said certificates shall be deposited in the office of secretary of state, and the other, after being recorded in the office of the register of deeds for the county in which such city or village lies, shall be deposited among the archives of such city or village, and all courts shall take judicial notice thereof. Such charter so deposited may be amended by proposal therefor made by a board of fifteen commissioners aforesaid, published for at least thirty days in three newspapers of general circulation in such city or village, and accepted by three-fifths of the qualified voters of such city or village voting at the next election and not otherwise; but such charter shall always be in harmony

with and subject to the constitution and laws of the state of Minnesota. The legislature may prescribe the duties of the commission relative to submitting amendments of charter to the vote of the people, and shall provide that upon application of five per cent of the legal voters of any such city or village, by written petition, such commission shall submit to the vote of the people, proposed amendments to such charter, set forth in said petition. The board of freeholders above provided for shall be permanent and all the vacancies by death, disability to perform duties, resignation or removal from the corporate limits, or expiration of term of office, shall be filled by appointment in the same manner as the original board was created and said board shall always contain its full complement of members. It shall be a feature of all such charters that there shall be provided, among other things, for a mayor or chief magistrate, and a legislative body of either one or two houses; if of two houses, at least one of them shall be elected by general vote of the electors. In submitting any such charter or amendment thereto to the qualified voters of such city or village any alternate section or article may be presented for the choice of the voters and may be voted on separately without prejudice to other articles or sections of the charter or any amendments thereto. The legislature may provide general laws relating to affairs of cities, the application of which may be limited to cities of over fifty thousand inhabitants, or to cities of fifty and not less than twenty thousand inhabitants, or to cities of twenty and not less than ten thousand inhabitants, or to cities of ten thousand inhabitants or less, which shall apply equally to all such cities of either class, and which shall be paramount while in force to the provisions relating to the same matter included in the local charter herein provided for. But no local charter, provision or ordinance passed thereunder shall supersede any general law of the state defining or punishing crimes or misdemeanors.

Proposed by *Sess. Laws* 1897, ch. 280; ratified November 8, 1898. In 1911 a simplified home rule process was proposed but it failed to carry. *Sess. Laws* 1911, ch. 393.

ARTICLE 5

THE EXECUTIVE DEPARTMENT

SECTION 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor, treasurer, and attorney general, who shall be chosen by the electors of the state.

[SEC. 2. The returns of every election, for the officers named in the foregoing section, shall be made to the secretary of state, and by him transmitted to the speaker of the house of representatives, who shall cause the same to be opened and canvassed before both houses of the legislature, and the result declared within three days after each house shall be organized.]

This section was superseded by the following, submitted to the voters in 1873 and again in 1877, and approved by the voters upon its second submission in the latter year.

SEC. 2. The returns of every election for the officers named in the foregoing section shall be made to the secretary of state who shall call to his assistance two or more of the judges of the supreme court, and two disinterested judges of the district courts of the state who shall constitute a board of canvassers who shall open and canvass said returns and declare the result within three days after such canvass.

Proposed by *Sess. Laws* 1877, ch. 1; ratified November 6, 1877. See also *Sess. Laws* 1873, ch. 3.

SEC. 3. The term of office for the governor and lieutenant governor shall be two years, and until their successors are chosen and qualified. Each shall have attained the age of twenty-five (25) years, and shall have been a bona fide resident of the state for one year next preceding his election. Both shall be citizens of the United States.

SEC. 4. The governor shall communicate by message to each session of the legislature, such information touching the state and condition of the country as he may deem expedient. He shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, to suppress insurrection and to repel invasion. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices,

[and he shall have power to grant reprieves and pardons after conviction for offenses against the state,]

except in cases of impeachment. He shall have power, by and with the advice and consent of the senate, to appoint a state librarian and notaries public, and such other officers as may be provided by law; he shall have power to appoint commissioners to take the acknowledgment of deeds or other instruments in writing, to be used in the state. He shall have a negative upon all laws passed by the legislature under such rules and limitations as are in this constitution prescribed. He may on extraordinary occasions convene both houses of the legislature. He shall take care that the laws be faithfully executed, fill any vacancy that may occur in the office of secretary of state, treasurer, auditor, attorney general, and such other state and district offices as may be hereafter created by law, until the next annual election, and until their successors are chosen and qualified.

By an amendment approved in 1896 the words "and he shall have power to grant reprieves and pardons after conviction for offenses against the state" were stricken from this section and the following provision inserted in their place:

And he shall have power in conjunction with the board of pardons of which the governor shall be ex officio a member, and the other members of

which shall consist of the attorney-general of the state of Minnesota and the chief justice of the supreme court of the state of Minnesota and whose powers and duties shall be defined and regulated by law to grant reprieves and pardons after convictions for offences against the state.

Proposed by *Sess. Laws* 1895, ch. 2; ratified November 3, 1896.

[SEC. 5. The official term of the secretary of state, treasurer and attorney general shall be two years. The official term of the auditor shall be three years; and each shall continue in office until his successor shall have been elected and qualified. The governor's salary for the first term under this constitution shall be two thousand five hundred dollars per annum. The salary of the secretary of state for the first term shall be fifteen hundred dollars per annum. The auditor, treasurer and attorney general shall each, for the first term, receive a salary of one thousand dollars per annum. And the further duties and salaries of said executive officers shall each thereafter be prescribed by law.]

By an amendment approved in 1883 the section above was amended to read as follows:

SEC. 5. The official term of the secretary of state, treasurer and attorney general, shall be two years. The official term of the state auditor shall be four years and each shall continue in office until his successor shall have been elected and qualified. The further duties and the salaries of said executive officers shall each be prescribed by law.

Proposed by *Sess. Laws* 1883, ch. 1; ratified November 6, 1883.

SEC. 6. The lieutenant governor shall be ex-officio president of the senate, and in case a vacancy should occur, from any cause whatever, in the office of governor, he shall be governor during such vacancy. The compensation of lieutenant governor shall be double the compensation of a state senator. Before the close of each session of the senate, they shall elect a president pro tempore, who shall be lieutenant governor in case a vacancy should occur in that office.

[SEC. 7. The term of each of the executive offices named in this article, shall commence upon taking the oath of office, after the state shall be admitted by congress into the union, and continue until the first Monday in January, 1860, except the auditor, who shall continue in office until the first Monday in January, 1861, and until their successors shall have been duly elected and qualified.]

Before the admission of the state into the union, the section above was amended to read as follows:

SEC. 7. The term of each of the executive officers named in this article, shall commence on taking the oath of office on or after the first day of May, 1858, and continue until the first Monday of January, 1860, except the auditor, who shall continue in office till the first Monday of January, 1861, and until their successors shall have been duly elected and qualified; and the same above-mentioned time for qualification and entry upon the duties

of their respective offices shall extend and apply to all other officers elected under the state constitution, who have not already taken the oath of office and commenced the performance of their official duties.

Proposed by *Sess. Laws* 1858, ch. 2; ratified April 15, 1858. The author failed to find the enrolled law proposing this amendment.

SEC. 8. Each officer created by this article shall, before entering upon his duties, take an oath or affirmation to support the constitution of the United States, and of this state, and faithfully discharge the duties of his office to the best of his judgment and ability.

SEC. 9. Laws shall be passed at the first session of the legislature after the state is admitted into the union to carry out the provisions of this article.

ARTICLE 6

THE JUDICIARY

SECTION 1. The judicial power of the state shall be vested in a supreme court, district courts, courts of probate, justices of the peace, and such other courts, inferior to the supreme court, as the legislature may from time to time establish by a two-thirds vote.

SEC. 2. The supreme court shall consist of one chief justice and two associate justices, but the number of associate justices may be increased to a number not exceeding four, by the legislature, by a two-thirds vote, when it shall be deemed necessary. It shall have original jurisdiction in such remedial cases as may be prescribed by law, and appellate jurisdiction in all cases, both in law and equity, but there shall be no trial by jury in said court. It shall hold one or more terms in each year, as the legislature may direct, at the seat of government, and the legislature may provide by a two-thirds vote, that one term in each year shall be held in each or any judicial district. It shall be the duty of such court to appoint a reporter of its decisions. There shall be chosen by the qualified electors of the state one clerk of the supreme court, who shall hold his office for the term of four [formerly three] years, and until his successor is duly elected and qualified; and the judges of the supreme court, or a majority of them, shall have the power to fill any vacancy in the office of clerk of the supreme court until an election can be regularly had.

By an amendment ratified November 6, 1883, the term of the clerk of the supreme court was changed from three to four years. *Sess. Laws* 1883, ch. 3.

In 1913 and again in 1915 it was proposed to increase the number of associate justices of the supreme court from four to six, and to give the court power to appoint its own clerk. In the 1913 proposal it was also provided that at least five justices must concur in the decision to declare any statute unconstitutional. In both cases the proposed amendments suffered defeat. *Sess. Laws* 1913, ch. 585; 1915, ch. 382.

SEC. 3. The judges of the supreme court shall be elected by the electors of the state at large, and their term of office shall be six [formerly seven] years and until their successors are elected and qualified.

In 1876 an amendment was ratified which added the following provision to section 3:

Whenever all or a majority of the judges of the supreme court shall from any cause, be disqualified from sitting in any case in the said court the governor, or, if he shall be interested in the result of such case, then the lieutenant governor, shall assign judges of the district court of the state, who shall sit in such case, in place of such disqualified judges with all the powers and duties of judges of the supreme court.

Proposed by *Sess. Laws* 1876, ch. 3; ratified November 7, 1876. By an amendment ratified November 6, 1883, the term of judges of the supreme court was reduced from seven to six years as indicated above. *Sess. Laws* 1883, ch. 3.

[SEC. 4. The state shall be divided by the legislature into six judicial districts, which shall be composed of contiguous territory, be bounded by county lines, and contain a population as nearly equal as may be practicable. In each judicial district, one judge shall be elected by the electors thereof, who shall constitute said court, and whose term of office shall be seven years. Every district judge shall, at the time of his election, be a resident of the district for which he shall be elected, and shall reside therein during his continuance in office.]

An amendment ratified in 1875 made section 4 read as follows:

SEC. 4. The state shall be divided by the legislature into judicial districts which shall be composed of contiguous territory be bounded by county lines and contain a population as nearly equal as may be practicable. In each judicial district one or more judges as the legislature may prescribe shall be elected by the electors thereof whose term of office shall be six [formerly seven] years and each of said judges shall severally have and exercise the powers of the court under such limitations as may be prescribed by law. Every district judge shall at the time of his election be a resident of the district for which he shall be elected, and shall reside therein during his continuance in office. In case any court of common pleas heretofore established shall be abolished the judge of such court may be constituted by the legislature one of the judges of the district court of the district wherein such court has been so established for a period not exceeding the unexpired term for which he was elected.

Proposed by *Sess. Laws* 1875, ch. 1; ratified November 2, 1875. The term of district judges was reduced from seven to six years as indicated above, by an amendment ratified November 6, 1883. *Sess. Laws* 1883, ch. 3.

SEC. 5. The district courts shall have original jurisdiction in all civil cases, both in law and equity, where the amount in controversy exceeds one

hundred dollars, and in all criminal cases where the punishment shall exceed three months imprisonment or a fine of more than one hundred dollars, and shall have such appellate jurisdiction as may be prescribed by law. The legislature may provide by law that the judge of one district may discharge the duties of the judge of any other district not his own, when convenience or the public interest may require it.

SEC. 6. The judges of the supreme and district courts shall be men learned in the law, and shall receive such compensation, at stated times, as may be prescribed by the legislature, which compensation shall not be diminished during their continuance in office, but they shall receive no other fee or reward for their services.

[SEC. 7. There shall be established in each organized county in the state a probate court, which shall be a court of record, and be held at such times and places as may be prescribed by law. It shall be held by one judge, who shall be elected by the voters of the county, for the term of two years. He shall be a resident of such county at the time of his election, and reside therein during his continuance in office, and his compensation shall be provided by law. He may appoint his own clerk, where none has been elected, but the legislature may authorize the election by the electors of any county, of one clerk or register of probate for such county, whose powers, duties, term of office and compensation shall be prescribed by law. A probate court shall have jurisdiction over the estates of deceased persons and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution.]

In 1913, 1915, and 1919 proposals were made to amend the section above to extend the terms of the judges of probate from two to four years. The amendment was adopted on its third submission (1920). *Sess. laws* 1913, ch. 589; 1915, ch. 386.

SEC. 7. There shall be established in each organized county in the state a probate court which shall be a court of record, and be held at such times and places as may be prescribed by law. It shall be held by one judge, who shall be elected by the voters of the county for the term of four years. He shall be a resident of such county at the time of his election, and reside therein during his continuance in office; and his compensation shall be provided by law. He may appoint his own clerk where none has been elected; but the legislature may authorize the election, by the electors of any county, of one clerk or register of probate for such county, whose powers, duties, term of office and compensation shall be prescribed by law. A probate court shall have jurisdiction over the estates of deceased persons and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution.

Proposed by *Sess. Laws* 1919, ch. 531; ratified November 2, 1920.

SEC. 8. The legislature shall provide for the election of a sufficient number of justices of the peace in each county, whose term of office shall be two years, and whose duties and compensation shall be prescribed by law; provided, that no justice of the peace shall have jurisdiction of any

civil cause where the amount in controversy shall exceed one hundred dollars, nor in a criminal cause where the punishment shall exceed three months imprisonment, or a fine of over one hundred dollars, nor in any cause involving the title to real estate.

SEC. 9. All judges other than those provided for in this constitution shall be elected by the electors of the judicial district, county or city, for which they shall be created, not for a longer term than seven years.

SEC. 10. In case the office of any judge shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor until a successor is elected and qualified, and such successor shall be elected at the first annual election that occurs more than thirty days after the vacancy shall have happened.

SEC. 11. The justices of the supreme court and the district courts shall hold no office under the United States nor any other office under this state. And all votes for either of them for any elective office under this constitution, except a judicial office, given by the legislature or the people, during their continuance in office, shall be void.

SEC. 12. The legislature may at any time change the number of judicial districts or their boundaries, when it shall be deemed expedient, but no such change shall vacate the office of any judge.

SEC. 13. There shall be elected in each county where a district court shall be held, one clerk of said court, whose qualifications, duties and compensation shall be prescribed by law, and whose term of office shall be four years.

SEC. 14. Legal pleadings and proceedings in the courts of this state shall be under the direction of the legislature. The style of all process shall be "The State of Minnesota," and all indictments shall conclude "against the peace and dignity of the state of Minnesota."

SEC. 15. The legislature may provide for the election of one person in each organized county in this state, to be called a court commissioner, with judicial power and jurisdiction not exceeding the power and jurisdiction of a judge of the district court at chambers, or the legislature may instead of such election confer such power and jurisdiction upon judges of probate in the state.

ARTICLE 7

THE ELECTIVE FRANCHISE

[SECTION 1. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the United States one year, and in this state for four months next preceding any election, shall be entitled to vote at such election, in the election district of which he shall at the time have been for ten days a resident, for all officers that now are, or hereafter may be, elective by the people.

First. White citizens of the United States.

Second. White persons of foreign birth, who shall have declared their intentions to become citizens, conformably to the laws of the United States upon the subject of naturalization.

Third. Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization.

Fourth. Persons of Indian blood residing in this state who have adopted the language, customs and habits of civilization, after an examination before any district court of the state, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the state.]

After the Republicans gained control of the state government by the election of 1859, several attempts were made to eliminate the word "white" from the first and second subdivisions of section 1 of this article. See *Sess. Laws* 1865, ch. 57; 1867, ch. 25. The effort finally succeeded in 1868 when the proposal of the legislature of that year was adopted, as follows:

[SECTION 1. Every male person of the age of twenty one or upwards belonging to either of the following classes, who shall have resided in the United States one year, and in this state four months next preceding any election, shall be entitled to vote at such election, in the election district of which he shall at the time have been for ten days a resident for all officers that now are or hereafter may be elected by the people:

First. Citizens of the United States.

Second. Persons of foreign birth, who shall have declared their intention to become citizen [*sic.*] conformably to the laws of the United States upon the subject of naturalization.

Third. Persons of mixed white and Indian blood who have adopted the customs and habits of civilization.

Fourth. Persons of Indian blood residing in this state who have adopted, the language customs and habits of civilization after an examination before any district court of the state, in such a manner as may be provided by law and shall have been pronounced by said court, capable of exercising the rights of citizenship within this state.]

Proposed by *Sess. Laws* 1868, ch. 106; ratified November 3, 1868.

This provision stood as part of the constitution from 1868 to 1896, when it was itself displaced by the following section, which differs from the preceding in that it disqualifies aliens:

SECTION 1. What persons are entitled to vote:

Every male person of the age of twenty-one (21) years or upwards belonging to either of the following classes who has resided in this state six (6) months next preceding any election shall be entitled to vote at such election in the election district of which he shall at the time have been for thirty (30) days a resident, for all officers that now are, or hereafter may be, elective by the people.

First. Citizens of the United States who have been such for the period of three (3) months next preceding any election.

Second. Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization.

Third. Persons of Indian blood residing in this state, who have adopted the language, customs and habits of civilization, after an examination before any district court of the state, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the state.

Proposed by *Sess. Laws* 1895, ch. 3; ratified November 3, 1896.

SEC. 2. No person not belonging to one of the classes specified in the preceding section; no person who has been convicted of treason or any felony, unless restored to civil rights, and no person under guardianship, or who may be non compos mentis, or insane, shall be entitled or permitted to vote at any election in this state.

SEC. 3. For the purpose of voting, no person shall be deemed to have lost a residence by reason of his absence while employed in the service of the United States; nor while engaged upon the waters of this state or of the United States; nor while a student of any seminary of learning; nor while kept at any alms-house or other asylum; nor while confined in any public prison.

SEC. 4. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed within the same.

SEC. 5. During the day on which any election shall be held, no person shall be arrested by virtue of any civil process.

SEC. 6. All elections shall be by ballot, except for such town officers as may be directed by law to be otherwise chosen.

SEC. 7. Every person who by the provisions of this article shall be entitled to vote at any election shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election; except as otherwise provided in this constitution, or the constitution and laws of the United States.

In 1907 and again in 1911 the legislature proposed amendments to this section which would have authorized "educational qualifications" (1907) or "educational and professional qualifications" (1911) to be established by the legislature for county superintendent of schools. Both were defeated. *Sess. Laws* 1907, ch. 480; 1911, ch. 394. The legislature has itself laid down that the judges of municipal courts shall be men "learned in the law," although this is not expressly authorized by the constitution.

In the original constitution, article 7 consisted of only seven sections. The following sections are all of later origin.

[SEC. 8. The legislature may, notwithstanding anything in this article provide by law that any woman at the age of twenty-one years and upward may vote at any election held for the purpose of choosing any officers of schools, or upon any measure

relating to schools, and may also provide that any such woman shall be eligible to hold any office pertaining solely to the management of schools.]

Proposed by *Sess. Laws* 1875, ch. 2; ratified November 2, 1875. In 1877 the legislature proposed an amendment to this article, to be called section 9, which would have authorized women to vote in "local option" elections upon the saloon question. The proposed amendment was defeated. *Sess. Laws* 1877, ch. 2. Sec. 8 was succeeded in 1898 by the following section which extended to women the right to vote for library boards also, and was self executing, whereas the former section merely authorized the legislature to act.

SEC. 8. Women may vote for school officers, and members of library boards, and shall be eligible to hold any office pertaining to the management of schools or libraries. Any woman of the age of twenty-one (21) years and upward, and possessing the qualifications requisite to a male voter, may vote at any election held for the purpose of choosing any officer of schools, or any members of library boards, or upon any measure relating to schools or libraries, and shall be eligible to hold any office pertaining to the management of schools and libraries.

Proposed by *Sess. Laws* 1897, ch. 175; ratified November 8, 1898.

SEC. 9. The official year for the state of Minnesota, shall commence on the first Monday in January in each year and all terms of office shall terminate at that time, and the general election shall be held on the first Tuesday after the first Monday of November. The first general election for state and county officers, except judicial officers, after the adoption of this amendment, shall be held in the year A. D. one thousand eight hundred and eighty-four and thereafter the general election shall be held biennially. All state, county or other officers elected at any general election whose terms of office would otherwise expire on the first Monday of January, A. D. one thousand eight hundred and eighty-six, shall hold and continue in such offices respectively until the first Monday in January, one thousand eight hundred and eighty-seven.

Proposed by *Sess. Laws* 1883, ch. 2; ratified November 6, 1883. This section was added to the constitution to put an end to the old system of annual elections. Under its provisions state elections have been biennial, beginning with the year 1884.

In 1913 the legislature proposed an amendment in the form of an additional section to this article to be numbered section 10. This proposed section made provision for the recall, to be applicable to "every public official in Minnesota, elective or appointive." *Sess. Laws* 1913, ch. 593. The proposal was rejected by the voters.

ARTICLE 8

SCHOOL FUNDS, EDUCATION AND SCIENCE

SECTION 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools.

SEC. 2. The proceeds of such lands as are or hereafter may be granted by the United States for the use of schools within each township in this state, shall remain a perpetual school fund to the state and not more than one-third (1/3) of said lands may be sold in two (2) years, one-third (1/3) in five (5) years, and one-third (1/3) in ten (10) years; but the lands of the greatest valuation shall be sold first; provided that no portion of said lands shall be sold otherwise than at public sale. The principal of all funds arising from sales, or other disposition of lands, or other property, granted or entrusted to this state in each township for educational purposes, shall forever be preserved inviolate and undiminished; and the income arising from the lease or sale of said school lands shall be distributed to the different townships throughout the state in proportion to the number of scholars in each township between the ages of five and twenty-one years, and shall be faithfully applied to the specific objects of the original grants or appropriations.

The following addition to section 2 was adopted in 1875:

Suitable laws shall be enacted by the legislature for the safe investment of the principal of all funds which have heretofore arisen or which may hereafter arise from the sale or other dispositions of such lands, or the income from such lands accruing in any way before the sale or disposition thereof, in interest bearing bonds of the United States or of the state of Minnesota issued after the year eighteen hundred and sixty, or of such other states as the legislature may by law from time to time direct.

Proposed by *Sess. Laws* 1875, ch. 3; ratified November 2, 1875.

In 1881 a further addition to this section was adopted:

All swamp lands now held by the state, or that may hereafter accrue to the state, shall be appraised and sold in the same manner and by the same officers, and the minimum price shall be the same less one third, as is provided by law for the appraisement and sale of the school lands under the provisions of title one, chapter thirty-eight of the general statutes. The principal of all funds derived from sales of swamp lands as aforesaid shall forever be preserved inviolate and undiminished. One-half of the proceeds of said principal shall be appropriated to the common school fund of the state, the remaining one-half shall be appropriated to the educational and charitable institutions of the state in the relative ratio of cost to support said institutions.

Proposed by *Sess. Laws* 1881, ch. 4; ratified November 8, 1881.

The 1913 legislature proposed an amendment designed to create a small revolving fund to improve unsold school lands. *Sess. Laws* 1913, ch. 586. It failed to receive enough votes for its adoption.

The 1915 legislature proposed an almost identical amendment which was ratified by the electors in 1916. It makes this further addition to section 2:

A revolving fund of not over two hundred fifty thousand dollars (250,000) may be set apart from the fund derived from the sale of school and swamp lands, to be used in constructing roads, ditches and fire breaks in, through and around unsold school and swamp lands and in clearing such lands, such fund to be replenished as long as needed from the enhanced value realized from the sale of such lands so benefited.

Proposed by *Sess. Laws* 1915, ch. 379; ratified November 7, 1916.

SEC. 3. The legislature shall make such provisions, by taxation or otherwise, as, with the income arising from the school fund, will secure a thorough and efficient system of public schools in each township in the state.

In 1877 the following proviso was added to this section:

But in no case shall the moneys derived as aforesaid or any portion thereof, or any public moneys or property be appropriated or used for the support of schools wherein the distinctive doctrines, creed or tenets of any particular Christian or other religious sect, are promulgated or taught.

Proposed by *Sess. Laws* 1877, ch. 3; ratified November 6, 1877.

SEC. 4. The location of the University of Minnesota, as established by existing laws, is hereby confirmed, and said institution is hereby declared to be the University of the state of Minnesota. All the rights, immunities, franchises and endowments heretofore granted or conferred, are hereby perpetuated unto the said University, and all lands which may be granted hereafter by congress, or other donations for said University purposes, shall vest in the institution referred to in this section.

The following sections were not in the original constitution:

SEC. 5. The permanent school funds of the state may be loaned upon interest at the rate of five (5) per cent per annum to the several counties or school districts of the state, to be used in the erection of county or school buildings. No such loan shall be made until approved by a board consisting of the governor, the state auditor and the state treasurer who are hereby constituted an investment board for the purpose of the loans hereby authorized nor shall any such loan be for an amount exceeding three per cent of the last preceding assessed valuation of the real estate of the county or school district receiving the same. The state auditor shall annually at the time of certifying the state tax to the several county auditors, also certify to each auditor to whose county or to any of the school districts of whose county any such loan shall have been made. The tax necessary to be levied to meet the accruing interest or principal of any such loan and it shall be the duty of every such county auditor forthwith to levy and extend such tax upon all the taxable property of his county or of the several school

districts respectively liable for such loans as the case may be and in all such cases the tax so assessed shall be fifty (50) per cent in excess of the amount actually necessary to be raised on account of such accruing principal or interest. It shall be levied, collected and paid into the county and state treasuries in the same manner as state taxes and any excess collected over the amount of such principal or interest accruing in any given year shall be credited to the general funds of the respective counties or school district, no change of the boundaries of any school district after the making of any such loan shall operate to withdraw any property from the taxation herein provided for—nor shall any law be passed extending the time of payment of any such principal or interest or reducing the rate of such interest or in any manner waiving or impairing any rights of the state in connection with any such loan, suitable laws not inconsistent with this amendment may be passed by the legislature for the purpose of carrying the same into effect.

Proposed by *Sess. Laws* 1885, ch. 1; ratified November 2, 1886. This new section made possible for the first time the loaning of state school funds to counties and school districts within the state.

[SEC. 6. The permanent school and university fund of this state may be invested in the purchase of bonds of any county, school district city, town or village of this state, but no such investment shall be made until approved by the board of commissioners designated by law to regulate the investment of the permanent school fund and the permanent university fund of this state; nor shall such loan or investment be made when the issue of which the same in part would make the entire bonded indebtedness exceed seven per cent of the assessed valuation of the taxable real property of the county, school district, city, town or village issuing such bonds; nor shall such loans or indebtedness be made at a lower rate of interest than three per cent per annum nor for a shorter period than five (5) years nor for a longer period than twenty (20) years and no change of the town, school district, village, city or county lines shall relieve the real property in such town, school district, county, village or city in this state at the time of the issuing of such bonds from any liability for taxation to pay such bonds.]

Proposed by *Sess. Laws* 1895, ch. 6; ratified November 3, 1896. Objection was soon raised to the seven per cent debt limitation contained in this section. In 1899 and in 1901 the legislature proposed amendments raising this limit to fifteen per cent. *Sess. Laws* 1899, ch. 92; 1901, pp. iv-v. Both of these proposals fell short of ratification, but when the same amendment was submitted for a third time in 1904 it was adopted. From 1904 to 1916 the section stood as follows:

[SEC. 6. The permanent school and university fund of this state may be invested in the bonds of any county, school district, city, town or village of this state, but no such investment shall be made until approved by the board of commissioners designated by law to regulate the investment of the permanent school fund and the permanent university fund of this state; nor shall such loan or investment be made when the bonds to be issued or purchased would make the entire bonded indebtedness exceed fifteen (15) per cent of the assessed valuation of the taxable real property of the county, school district, city, town or village issuing such bonds; nor shall such

loans or indebtedness be made at a lower rate of interest than three (3) per cent per annum, nor for a shorter period than five (5) years, nor for a longer period than twenty (20) years, and no change of the town, school district, city, village, or of county lines, shall relieve the real property in such town, school district, county, village or city in this state at the time of the issuing of such bonds from any liability for taxation to pay such bonds.]

Proposed by *Sess. Laws* 1903, ch. 25; ratified November 8, 1904.

In 1911 and again in 1913 the legislature proposed to amend this section further by authorizing the school and university funds to be invested in first mortgages upon improved farm lands in the state up to thirty per cent of their cash value. *Sess. Laws* 1911, ch. 392; 1913, ch. 588. Both of these proposals failed of ratification. The legislature persisted, however, and upon the third submission in 1916, as in the case of the debt limit discussed under this section, above, the amendment was ratified. The section is now as follows:

SEC. 6. The permanent school and university fund of this state may be invested in the bonds of any county, school district, city, town or village of this state, and in first mortgage loans secured upon improved and cultivated farm lands of this state. But no such investment or loan shall be made until approved by the board of commissioners designated by law to regulate the investment of the permanent school fund and the permanent university fund of this state; nor shall such loan or investment be made when the bonds to be issued or purchased would make the entire bonded indebtedness exceed 15 per cent of the assessed valuation of the taxable property of the county, school district, city, town or village issuing such bonds; nor shall any farm loan or investment be made when such investment or loan would exceed 30 per cent of the actual cash value of the farm land mortgage to secure said investment; nor shall such investments or loans be made at a lower rate of interest than 3 per cent per annum, nor for a shorter period than five years, nor for a longer period than thirty years, and no change of the town, school district, city, village or of county lines shall relieve the real property in such town, school district, county, village or city in this state at the time of issuing of such bonds from any liability for taxation to pay such bonds.

Proposed by *Sess. Laws* 1915, ch. 380; ratified November 7, 1916.

SEC. 7. Such of the school and other public lands of the state as are better adapted for the production of timber than for agriculture, may be set apart as state school forests, or other state forests, as the legislature may provide, and the legislature may provide for the management of the same on forestry principles. The net revenue therefrom shall be used for the purposes for which the lands were granted to the state.

Proposed by *Sess. Laws* 1913, ch. 592; ratified November 3, 1914.

ARTICLE 9

FINANCES OF THE STATE AND BANKS AND BANKING

[SECTION 1. All taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state.]

[SEC. 2. The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year, and whenever it shall happen that such ordinary expenses of the state for any year shall exceed the income of the state for such year, the legislature shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year.]

[SEC. 3. Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property, according to its true value in money; but public burying-grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property used for religious purposes and houses of worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars for each individual, shall, by general laws, be exempt from taxation.]

[SEC. 4. Laws shall be passed for taxing the notes and bills discounted, or purchased, moneys loaned, and all other property, effects, or dues of every description; of all banks, and of all bankers; so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals.]

Because of the fact that the first four sections were in 1906 supplanted by a single section, it seems desirable to treat them as a group.

The first attempt to amend any section in this group related to section 2. The object of this amendment, adopted in 1860, was to prevent the payment of either the principal or interest of the railroad bonds authorized by the amendment to section 10 of this article in 1858. See below. The amendment took the following form:

[SEC. 2. The legislature shall provide for an annual tax sufficient to defray the estimated ordinary expenses of the state for each year and whenever it shall happen that such ordinary expenses of the state for any year shall exceed the income of the state for such year the legislature shall provide for levying a tax for the ensuing year sufficient with other sources of income to pay the deficiency of the preceding year together with the estimated expenses of such ensuing year. But no law levying a tax, or making other provisions for the payment of interest or principal of the bonds denominated Minnesota State Railroad Bonds shall take effect or be in force until such law shall have been submitted to a vote of the people of the state and adopted by a majority of the electors of the state voting upon the same.]

Proposed by *Sess. Laws* 1860, Concurrent Resolution No. 1; ratified November 6, 1860.

It will be observed that the first sentence was simply a re-enactment of the original section 2, with the insertion of the word "ordinary" before the word "expenses" where it first occurs. The second sentence, however, added new matter, and its effect was to impair the obligation of the state railroad bonds. The amendment was, therefore, declared unconstitutional by both the state and federal courts. State ex rel. Hahn *v.* Young, 29 *Minn.*, 474, (1881); Farnsworth et al., trustees, *v.* Minnesota and Pacific R. R. Co., 92 *U. S.*, 49 (1875). Hence, although this amendment

was proposed by the legislature in due legal form and ratified by the voters, this amendment must be considered as having been void and of no effect from the beginning.

The next effort to change the provisions in this group of sections came in 1867, when the legislature proposed and the electors defeated a change in section 4 designed to subject the shares in state and national banks to state taxation. *Sess. Laws* 1867, ch. 118.

In 1869 for the purpose of authorizing special assessments for local improvements, section 1 was amended to read as indicated below:

[SEC. 1. All taxes to be raised in this state shall be as nearly equal as may be and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the state. Provided, that the legislature may by general law or special acts authorize municipal corporations to levy assessments for local improvements upon the property fronting upon such improvements, or upon the property to be benefited by such improvements, without regard to a cash valuation, and in such manner as the legislature may prescribe.]

Proposed by *Sess. Laws* 1869, ch. 51; ratified November 2, 1869.

It will be observed that the first sentence of the new section is identical with the original section.

In 1881 section 1 was again amended, this time to read as follows:

[SEC. 1. All taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state: Provided: that the legislature may by general law or special act, authorize municipal corporations to levy assessments for local improvements upon the property fronting upon such improvements, or upon the property to be benefited by such improvements or both, without regard to a cash valuation, and in such manner as the legislature may prescribe; and provided further, that for the purpose of defraying the expenses of laying water pipes and supplying any city or municipality with water, the legislature may by general or special law authorize any such city or municipality, having a population of five thousand (5,000) or more to levy an annual tax or assessment upon the lineal foot of all lands fronting on any water main or water pipe laid by such city or municipality within corporate limits of said city for supplying water to the citizens thereof without regard to the cash value of such property and to empower such city to collect any such tax assessments or fines, or penalties for failure to pay the same or any fine or penalty for any violation of the rules of such city or municipality in regard to the use of water, or for any water rate due for the same.]

Proposed by *Sess. Laws* 1881, ch. 1; ratified November 8, 1881.

In 1891 there was proposed a sweeping addition to section 3, under which it would have been lawful to levy gross earnings taxes on railroads, sleeping, parlor and drawing room car companies, telegraph and telephone companies, and insurance companies, in addition to the ordinary real estate taxes upon their property; and also, "in lieu of other taxation on mining property, a specific tax upon the product of all mines in this state," i.e., a tonnage tax. *Sess. Laws* 1891, ch. 2. This proposed amendment was defeated in the election of 1892.

In 1894 section 1 was again amended, this time by the addition of the following clause designed to authorize the levying of inheritance taxes:

(SEC. 1, additional clause) [And provided further, that there may be by law levied and collected a tax upon all inheritances, devises, bequests, legacies and gifts of every kind and description above a fixed and specified sum, of any and all natural persons and corporations. Such tax above such exempted sum may be uniform, or it may be graded or progressive, but shall not exceed a maximum tax of five (5) per cent.]

Proposed by *Sess. Laws* 1893, ch. 1; ratified November 6, 1894.

In 1896 the following section was added to the end of article 9:

(Additional, unnumbered section.) [The legislature may impose, or provide for the imposition of, upon the property within this state of any and all owners or operators, whether corporate or individual, or otherwise, or any and all sleeping, parlor, and drawing room cars, or any or either of the same, which run in, into, or through this state; also upon the property within this state of any and all telegraph and telephone companies, or owners, whose lines are in, or extend in, into or through this state, also upon the property within this state of all express companies, or owners, or any or either of the same, doing business in this state; also upon the property within this state of all domestic insurance companies of this state of any kind; also upon the property within this state of any and all foreign insurance companies doing business in this state, of any kind; also upon the property within this state of all owners or operators of any and all mines or of mineral ores situated in this state; also upon the property within this state of all boom companies or owners, and of all ship builders or owners, doing business in this state or having a port therein; provided, that this act shall not apply to property owned by railroad companies, their lands and other property; and upon the property of either or any of such companies or owners a tax, as uniform as reasonably may be with the taxes imposed upon similar property in said state or upon the earnings thereof within this state, but may be graded or progressive, or both, and in providing for such tax, or in providing for ascertaining the just and true value of such property, it shall be competent for the legislature, in either or all of such cases, to impose such tax, upon any or all property thereof within this state, and in either case by taking as the basis of such imposition the proportionate business earnings mileage, or quantity of production or property now or hereafter existing of any such companies, persons, or owners, transacted or existing in this state in relation to the entire business, mileage, or quantity of production or property of such companies, persons, or owners as aforesaid; or in such other manner, or by such other method, as the legislature may determine; but the proceeds of such taxes upon mining property shall be distributed between the state and the various political subdivisions thereof wherein the same is situated in the same proportion as the proceeds of taxes upon real property are distributed; Provided further that nothing in this act contained shall operate to authorize the assessment or taxation of any farm land or ordinary business blocks, or property owned by any such corporation, person, firm or company, except in the manner provided by the ordinary methods of taxation.]

Proposed by *Sess. Laws* 1895, ch. 7; ratified November 3, 1896. It should have been "appropriately numbered" 16, but apparently was not numbered at all. In the *Revised Laws*, 1905, this section was numbered 17, having thus a number higher by one than an amendment adopted two years later. It will be observed that, omitting railroads entirely, this additional section provided for graded or progressive taxes upon a whole series of other important industries and businesses, mostly interstate in their operations, and authorized the legislature to exercise almost unlimited discretion in determining their taxable values.

The special session of 1902 proposed a lengthy amendment to take the place of sections 1, 2, and 3 as then existing. *Sess. Laws* 1902 (special session) ch. 1. This amendment failed of adoption.

In 1906 was adopted the section which now is number 1 in this article. It supplanted sections 1, 2, 3, 4, and the unnumbered section of 1896.

SECTION 1. The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property, and houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation, and there may be exempted from taxation personal property not exceeding in value $200. for each household individual or head of a family, as the legislature may determine: Provided, that the legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to a cash valuation, and, provided further, that nothing herein contained shall be construed to affect, modify or repeal any existing law providing for the taxation of the gross earnings of railroads.

Proposed by *Sess. Laws* 1905, ch. 168; ratified November 6, 1906. This amendment is sometimes called the "wide open tax amendment." For the peculiar outcome of the legal controversy arising out of the question of whether or not it was legally ratified, see pp. 152-54. No amendments have been adopted to take the place of the old sections 2, 3, and 4; there is, therefore, a gap in the numbering from 1 to 5.

In 1907, when the question of whether the amendment above had been adopted, was still undecided by the courts, the legislature proposed substantially the same amendment again, adding, however, the words "used for religious purposes" after the words "church property," in order to cut down the amount of tax-exempt property. *Sess. Laws* 1907, ch. 477. The amendment failed of ratification. The words "used for religious purposes" were originally a part of the constitution. See p. 237, above.

In 1919 the legislature proposed a new amendment which expressly authorized an income tax and also provided for a change in the list of classes of property which might be exempted from taxation. *Sess. Laws* 1919, ch. 532. The voters did not approve the change.

SEC. 5. For the purpose of defraying extraordinary expenditures, the state may contract public debts, but such debts shall never in the aggregate exceed two hundred and fifty thousand dollars; every such debt shall be authorized by law, for some single object to be distinctly specified therein; and no such law shall take effect until it shall have been passed by the vote of two-thirds of the members of each branch of the legislature, to be recorded by yeas and nays on the journals of each house respectively; and every such law shall levy a tax annually sufficient to pay the annual interest

of such debt, and also a tax sufficient to pay the principal of such debt within ten years from the final passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation and taxes shall not be repealed, postponed, or diminished until the principal and interest of such debt shall have been wholly paid. The state shall never contract any debts for works of internal improvement or be a party in carrying on such works, except in cases where grants of land or other property shall have been made to the state, especially dedicated by the grant to specific purposes, and in such cases the state shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

SEC. 6. All debts authorized by the preceding section shall be contracted by loan on state bonds of amounts not less than five hundred dollars each, on interest, payable within ten years after the final passage of the law authorizing such debt; and such bonds shall not be sold by the state under par. A correct registry of all such bonds shall be kept by the treasurer, in numerical order, so as always to exhibit the number and amount unpaid and to whom severally made payable.

SEC. 7. The state shall never contract any public debt, unless in time of war, to repel invasion or suppress insurrection, except in the cases and in the manner provided in the fifth and sixth sections of this article.

SEC. 8. The money arising from any loan made or debt or liability contracted, shall be applied to the object specified in the act authorizing such debt or liability, or to the repayment of such debt or liability, and to no other purpose whatever.

SEC. 9. No money shall ever be paid out of the treasury of this state, except in pursuance of an appropriation by law.

[SEC. 10. The credit of the state shall never be given or loaned in aid of any individual, association or corporation.]

On April 15, 1858, nearly four weeks before the passage of the law admitting Minnesota to the Union as a state, the electors approved the following substitute for section 10:

[SEC. 10. The credit of this state shall never be given or loaned in aid of any individual association or corporation, except that for the purpose of expediting the construction of the lines of railroads, in aid of which the congress of the United States has granted lands to the territory of Minnesota, the governor shall cause to be issued and delivered to each of the companies in which said grants are vested by the legislative assembly of Minnesota, the special bonds of the state, bearing an interest of seven per cent. per annum, payable semi-annually in the city of New York, as a loan of public credit, to an amount not exceeding twelve hundred and fifty thousand dollars, or an aggregate amount to all of said companies not exceeding five millions of dollars, in manner following, to wit:

Whenever either of the said companies shall produce to the governor satisfactory evidence, verified by the affidavits of the chief engineer, treasurer and two directors of said company, that any ten miles of the road of said company has been actually constructed and completed, ready for placing the superstructure thereon, the governor shall cause to be issued and delivered to such company, bonds to the amount of one hundred thousand dollars; and whenever thereafter, and as often as either of said companies shall produce to the governor like evidence of a further construction of ten miles of its road, as aforesaid, then the governor shall cause to be issued to such company further like bonds to the amount of one hundred thousand dollars for each and every ten miles of road thus constructed; and whenever such company shall furnish like evidence that any ten miles of its road is actually completed and cars running thereon, the governor shall cause to be issued to such company like bonds to the amount of one hundred thousand dollars; and whenever thereafter, and as often as either of said companies shall produce to the governor like evidence that any further ten miles of said road is in operation as aforesaid, the governor shall cause to be issued to such company further like bonds to the amount of one hundred thousand dollars until the full amount of the bonds hereby authorized shall be issued: Provided, That two fifths, and no more, of all bonds issued to the Southern Minnesota Railroad Company, shall be expended in the construction and equipment of the line of road from La Crescent to the point of junction with the Transit Road, as provided by law. And further provided, that the Minneapolis and Cedar Valley Railroad Company shall commence the construction of their road at Faribault and Minneapolis, and shall grade an equal number of miles from each of said places.

The said bonds thus issued shall be denominated "Minnesota State Railroad Bonds," and the faith and credit of this state are hereby pledged for the payment of the interest and the redemption of the principal thereof. They shall be signed by the governor, countersigned and registered by the treasurer, sealed with the seal of the state, of denominations, not exceeding one thousand dollars, payable to the order of the company to whom issued, transferable by the endorsement of the president of the said company, and redeemable at any time after ten and before the expiration of twenty-five years from the date thereof. Within thirty days after the Governor shall proclaim that the people have voted for a loan of state credit to railroads, any of said companies proposing to avail themselves of the loan herein provided for, and to accept the conditions of the same, shall notify the governor thereof, and shall, within sixty days, commence the construction of their roads; and shall, within two years thereafter, construct ready for the superstructure, at least fifty (50) miles of their road. Each company shall make provision for the punctual payment and redemption of all bonds issued and delivered as aforesaid, to said company, and for the punctual payment of the interest which shall accrue thereon, in such manner as to exonerate the treasury of this state from any advances of money for that purpose; and as security therefor, the governor shall demand and receive from each of said companies, before any of said bonds are issued, an instrument pledging the net profits of its road, for the payment of said interest, and a conveyance to the state of the first two hundred and forty sections of land, free from prior incumbrances, which such company is or may be authorized to sell in trust for the better security of the treasury of the state from loss on said bonds, which said deed of trust shall authorize the governor and secretary of state to make conveyances of title to all or any of such lands, to purchasers agreeing with the respective railroad companies therefore. Provided, That before releasing the interest of the state to such lands, such sale shall be approved by the governor, but the proceeds of all such sales shall

be applied to the payment of interest accruing upon the bonds in case of default of the payment of the same, and as a sinking fund to meet any future default in the payment of interest and the principal thereof when due; and as further security, an amount of first mortgage bonds on the roads, lands and franchises of the respective companies, corresponding to the state bonds issued, shall be transferred to the treasurer of the state at the time of the issue of state bonds, and in case either of said companies shall make default in payment of either the interest or principal of the bonds issued to said companies by the governor, no more state bonds shall thereafter be issued to said company, and the governor shall proceed in such manner as may be prescribed by law, to sell the bonds of the defaulting company or companies, or the lands held in trust as above, or may require a foreclosure of the mortgage executed to secure the same: Provided, That if any company so in default, before the day of sale, shall pay all interest and principal then due, and all expenses incurred by the state, no sale shall take place, and the right of said company shall not be impaired to a further loan of state credit: Provided, if any of said companies shall at any time offer to pay the principal, together with the interest that may then be due upon any of the Minnesota State Railroad Bonds, which may have been issued under the provisions of this section, then the treasurer of state shall receive the same; and the liabilities of said company or companies in respect to said bonds shall cease upon such payment into the state treasury, of principal, together with the interest as aforesaid: Provided further, That in consideration of the loan of state credit herein provided, that the company or companies which may accept the bonds of the state in the manner herein specified, shall, as a condition thereof, each complete not less than fifty miles of its road on or before the expiration of the year 1861, and not less than one hundred miles before the year 1864, and complete four-fifths of the entire length of its road before the year 1866, and any failure on the part of any such company to complete the number of miles of its road or roads, in the manner and within the several times herein prescribed, shall forfeit to the state, all the rights, title and interest of any kind whatsoever in and to any lands, together with the franchises connected with the same not pertaining or applicable to the portion of the road by them constructed, and a fee simple to which has not accrued to either of said companies, by reason of such construction, which was granted to the company or companies, thus failing to comply with the provisions hereof, by act of the legislature of the territory of Minnesota, vesting said land in said companies respectively.]

Proposed by *Sess. Laws* 1858, ch. 1; ratified April 15, 1858. The author failed to find the enrolled law proposing this amendment.

After the disastrous experience with the state issue of railroad bonds, the legislature and the voters joined hands in 1860 to repeal the amendment given above, and to adopt the following in its stead:

SEC. 10. The credit of the state shall never be given or loaned in aid of any individual association or corporation, nor shall there be any further issue of bonds denominated Minnesota State Railroad Bonds under what purports to be an amendment to section ten of Article nine of the constitution adopted April fifteenth eighteen hundred and fifty eight, which is hereby expunged from the constitution, saving, excepting and reserving to the state nevertheless all rights, remedies and forfeitures accruing under said amendment.

Proposed by *Sess. Laws* 1860, Concurrent Resolution No. 1; ratified November 6, 1860.

SEC. 11. There shall be published by the treasurer, in at least one newspaper printed at the seat of government, during the first week in January of each year, and in the next volume of the acts of the legislature, detailed statements of all moneys drawn from the treasury during the preceding year, for what purposes, and to whom paid, and by what law authorized, and also of all moneys received, and by what authority, and from whom.

Two unsuccessful attempts have been made to repeal this section. *Sess. Laws* 1909, ch. 507; 1913, ch. 587.

[SEC. 12. Suitable laws shall be passed by the legislature for the safe-keeping, transfer and disbursement of the state and school funds, and all officers and other persons charged with the same shall be required to give ample security for all moneys and funds of any kind, to keep an accurate entry of each sum received, and of each payment and transfer, and if any of said officers or other persons shall convert to his own use in any form, or shall loan with or without interest, contrary to law, or shall deposit in banks, or exchange for other fund, any portion of the funds of the state, every such act shall be adjudged to be an embezzlement of so much of the state funds as shall be thus taken, and shall be declared a felony; and any failure to pay over or produce the state or school funds intrusted to such person, on demand, shall be held and taken to be prima facie evidence of such embezzlement.]

In 1873 this section was supplanted by the following:

SEC. 12. Suitable laws shall be passed by the legislature for the safe-keeping, transfer and disbursement of the state and school funds, and all officers and other persons charged with the same, or any part of the same, or the safe-keeping thereof shall be required to give ample security for all moneys and funds of any kind received by them to make forthwith and keep an accurate entry of each sum received, and of each payment and transfer: and if any of said officers or other persons shall convert to his own use in any manner or form, or shall loan with or without interest, or shall deposit in his own name or otherwise than in the name of the state of Minnesota, or shall deposit in banks or with any person or persons, or exchange for funds or property any portion of the funds of the state or of the school funds aforesaid, except in the manner prescribed by law, every such act shall be and constitute an embezzlement of so much of the aforesaid state and school funds, or either of the same as shall be thus taken, or loaned, or deposited, or exchanged, and shall be a felony: and any failure to pay over or produce, or account for, the state or school funds, or any part of the same intrusted to such officer or person as by law required on demand, shall be held and taken to be prima facie evidence of such embezzlement.

Proposed by *Sess. Laws* 1873, ch. 4; ratified November 4, 1873. This new provision closes many loopholes which may be considered to have existed in the former section.

SEC. 13. The legislature may, by a two-thirds vote, pass a general banking law, with the following restrictions and requirements, viz.:

First, The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person, association or corporation issuing bank notes of any description.

Second, The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security in United States stock, or state stocks for the redemption of the same in specie, and in case of a depreciation of said stocks, or any part thereof, to the amount of ten per cent., or more, on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by additional stocks.

Third, The stockholders in any corporation and joint association for banking purposes issuing bank notes, shall be individually liable in an amount equal to double the amount of stock owned by them for all the debts of such corporation or association, and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

Fourth, In case of the insolvency of any bank or banking association, the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Fifth, Any general banking law which may be passed in accordance with this article shall provide for recording the names of all stockholders in such corporations, the amount of stock held by each, the time of transfer, and to whom transferred.

This article originally ended with section 13. What follows is of later adoption.

SEC. 14 (a). For the purpose of erecting and completing buildings for a hospital for the insane; a deaf dumb and blind asylum—and state prison, the legislature may by law increase the public debt of the state to an amount not exceeding two hundred and fifty thousand dollars in addition to the public debt already heretofore authorized by the constitution, and for that purpose may provide by law for issuing and negotiating the bonds of the State and appropriate the money only for the purpose aforesaid, which bonds shall be payable in not less than ten nor more than thirty years from the date of the same at the option of the state.

Proposed by *Sess. Laws* 1872, ch. 11; ratified November 5, 1872. A similar section was proposed a year earlier, but was disapproved by the voters. See *Sess. Laws* 1871, ch. 19.

[SEC. 14 (b). The legislature shall not authorize any county, township city or other municipal corporation to issue bonds or to become indebted in any manner to aid in the construction or equipment of any or all railroads to any amount that shall exceed ten per centum of the value of the taxable property within such county, township, city or other municipal corporation, the amount of such taxable property to be ascertained and determined by the last assessment of said property made for the purpose of state and county taxation previous to the incurring of such indebtedness.]

Proposed by *Sess. Laws* 1872, ch. 13; ratified November 5, 1872. Sections 14 (a) and 14 (b) were ratified by the voters on the same day. Both sections had been given the number 14 by the legislature. The secretary of state merely added the letters (a) and (b) for convenience of citation. Section 14 (b) has been superseded in fact. See section 15 below.

SEC. 15. The legislature shall not authorize any county, township, city or other municipal corporation to issue bonds, or to become indebted in any manner to aid in the construction or equipment of any or all railroads to any amount that shall exceed five (5) per centum of the value of the taxable property within such county, township, city or other municipal corporation. The amount of such taxable property to be ascertained and determined by the last assessment of said property made, for the purpose of state and county taxation, previous to the incurring of such indebtedness.

Proposed by *Sess. Laws* 1879, ch. 1; ratified November 4, 1879. This section is identical with section 14 (b) above except that it reduces the limit of indebtedness for this purpose from ten to five per cent of the value of the taxable property. Section 14 (b) is, therefore, superseded in fact though it has not been repealed in express terms.

[SEC. 16. For the purpose of lending aid in the construction and improvement of public highways and bridges, there is hereby created a fund to be known as the "State Road and Bridge Fund." Said fund shall include all moneys accruing from the income derived from investments in the Internal Improvement Land Fund, or that may hereafter accrue to said fund, and shall also include all funds, accruing to any state road and bridge fund however provided. The legislature is authorized to add to such fund for the purpose of constructing or improving roads and bridges of this state, by providing, in its discretion, for an annual tax levy upon the property of this state of not to exceed in any year one-twentieth (1/20) of one (1) mill on all the taxable property within the state. The legislature is also authorized to provide for the appointment by the governor of the state, of a board to be known as the "State Highway Commission," consisting of three (3) members who shall perform such duties as shall be prescribed by law without salary or compensation other than personal expenses. Such commission shall have general superintendence of the construction of state roads and bridges and shall use such fund in the construction thereof and distribute the same in the several counties in the state upon an equitable basis. Provided further, That no county shall receive in any year more than three (3) per cent or less than one-half (1/2) of one (1) per cent of the total fund thus provided and expended during such year and Provided, further, that no more than one-third (1/3) of such fund accruing in any year shall be expended for bridges, and in no case, shall more than one-third (1/3) of the cost of constructing or improving any road or bridge be paid by the state from such fund.]

Proposed by *Sess. Laws* 1897, ch. 333; ratified November 8, 1898. This was the first "road and bridge fund" amendment.

In 1901 a new "road and bridge fund" amendment was proposed. *Sess. Laws* 1901, pp. iii, iv. It did not receive the approval of the requisite majority of the voters.

In 1905 an amendment similar to that proposed in 1901, but changing the permissible tax levy from one tenth to one fourth of a mill, and providing a definite scheme for the distribution of the fund, was proposed by the legislature. Following

the election in November, 1906, the state canvassing board declared that this amendment had failed to pass. An appeal was taken from this decision in December, 1906, in the district court of St. Louis county, which found that it had been adopted and entered judgment accordingly. Since no appeal was taken from this decision, the amendment was accepted as having been ratified. It is as follows:

[SEC. 16. For the purpose of lending aid in the construction and improvement of public highways and bridges, there is hereby created a fund, to be known as the "State Road and Bridge Fund," Said fund shall include all moneys accruing from the income derived from investments in the internal improvement land fund, or that may hereafter accrue to said fund, and shall also include all funds accruing to any state road and bridge fund, however provided. The legislature is authorized to add to such fund for the purpose of constructing or improving roads and bridges of this state, by providing, in its discretion for an annual tax levy upon the property of this state of not to exceed in any year one-fourth (1/4) of one mill on all the taxable property within the state. Provided that no county shall receive in any year more than three (3) per cent or less than one-half (1/2) of one per cent of the total fund thus provided and expended during such year; and provided further, that in no case shall more than one-third (1/3) of the cost of constructing or improving any road or bridge be paid by the state from such fund.]

Proposed by *Sess. Laws* 1905, ch. 212; ratified November 6, 1906. For further discussion of the peculiar circumstances surrounding the litigation in this case, see pp. 153-54.

In 1907, while it was as yet uncertain whether the amendment above had been adopted, the legislature proposed yet another amendment covering the same matter. *Sess. Laws* 1907, ch. 478. This proposed amendment omitted all mention of the manner in which the fund should be distributed and put no limit on the annual tax levy for road and bridge purposes. It failed of ratification.

Again in 1909 the legislature revived the question. The amendment proposed this year fixed the tax levy at not over one-fourth of a mill, and provided a new scheme for distributing the money. It was ratified and was as follows:

[SEC. 16. For the purpose of lending aid in the construction and improvement of public highways and bridges, there is hereby created a fund, to be known as the "state road and bridge fund," said fund shall include all moneys accruing from the income derived from investments in the internal improvement land fund, or that may hereafter accrue to said fund, and shall also include all funds accruing to any state road and bridge fund, however provided.

The legislature is authorized to add to such fund, for the purpose of constructing or improving roads and bridges of this state, by providing, in its discretion, for an annual tax levy upon the property of this state of not to exceed in any year one-fourth (1/4) of one mill on all the taxable property within the state. Provided, that no county shall receive in any year more than three (3) per cent or less than one-half (1/2) of one (1) per cent of the total fund thus provided and expended during such year; and provided, further, that in no case shall more than one-half (1/2) of the cost of constructing or improving any road or bridge be paid by the state from such fund.]

Proposed by *Sess. Laws* 1909, ch. 506; ratified November 8, 1910. This section was a part of the constitution for just two years. In 1911 a new amendment was proposed which increased the permissible annual tax levy to one mill, retained the provision as to distribution of the money among the counties, and eliminated the clause restricting the state to the payment of not over half of the cost of any improvement. The new section is as follows:

SEC. 16. For the purpose of lending aid in the construction and improvement of public highways and bridges, there is hereby created a fund to be known as the "state road and bridge fund," said fund shall include all moneys accruing from the income derived from investments in the internal improvement land fund, or that may hereafter accrue to said fund, and shall also include all funds accruing to any state road and bridge fund, however provided. The legislature is authorized to add to such fund, for the purpose of constructing or improving roads and bridges of this state, by providing, in its discretion, for an annual tax levy upon the property of this state of not to exceed in any year one mill on all the taxable property within the state. Provided, that no county shall receive in any year more than three (3) per cent. or less than one-half (1/2) of one (1) per cent of the total fund thus provided and expended during such year.

Proposed by *Sess. Laws* 1911, ch. 390; ratified November 5, 1912.

Various other amendments to this article have been proposed, calling for the addition of new sections. Three times the proposition of permitting state taxation for the support of state hail and wind insurance for growing crops has been submitted to the voters without success. *Sess. Laws* 1907, ch. 479; 1909, ch. 508; 1911, ch. 391. Three distinct amendments have been proposed for the encouragement of the reforestation of the state. One took the form of a proposed tax exemption, *Sess. Laws* 1909, ch. 511; another provided a method whereby the state might itself engage in this work, *Sess. Laws* 1909, ch. 510; and the third made provision for annual bounties, *Sess. Laws* 1913, ch. 591. An amendment has also been proposed to authorize the state to mine the ore upon the public domain under lakes and rivers, for the state now finds itself in the peculiar legal predicament of owning but being unable to exploit valuable ore deposits thus situated. *Sess. Laws* 1915, ch. 381. Finally an amendment was proposed in 1913 to authorize a dog tax "on a basis other than the value of the dog" for the purpose of creating a fund to pay damages sustained by the owners of other domestic animals by reason of injuries caused by dogs. *Sess. Laws* 1913, ch. 594. All of these proposed amendments have failed to receive the constitutional majority required for adoption of amendments to the constitution.

ARTICLE 10

OF CORPORATIONS HAVING NO BANKING PRIVILEGES

SECTION 1. The term "corporations" as used in this article shall be construed to include all associations and joint stock companies having any of the powers and privileges not possessed by individuals or partnerships except such as embrace banking privileges, and all corporations shall have the right to sue, and shall be liable to be sued in all courts in like manner as natural persons.

SEC. 2. No corporation shall be formed under special acts except for municipal purposes.

[SEC. 3. Each stockholder in any corporation shall be liable to the amount of the stock held or owned by him.]

The first proposed amendment to this section was submitted to the voters in 1870, ch. 21. It proposed to exempt the holders of railroad stock from the constitutional rules of liability. It was defeated.

The next proposed amendment was ratified by the voters in 1872. It supplanted the former section and is as follows:

SEC. 3. Each stockholder in any corporation (excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of the stock held or owned by him.

Proposed by *Sess. Laws* 1872, ch. 12; ratified November 5, 1872. Three other amendments to this section have been submitted to the voters without success. *Sess. Laws* 1875, ch. 4; 1876, ch. 2; 1877, ch. 4.

SEC. 4. Lands may be taken for public way, for the purpose of granting to any corporation the franchise of way for public use. In all cases however, a fair and equitable compensation shall be paid for such land and the damages arising from the taking of the same; but all corporations being common carriers, enjoying the right of way in pursuance of the provisions of this section, shall be bound to carry the mineral, agricultural and other productions or manufactures on equal and reasonable terms.

ARTICLE 11

COUNTIES AND TOWNSHIPS

SECTION 1. The legislature may, from time to time, establish and organize new counties, but no new county shall contain less than four hundred square miles; nor shall any county be reduced below that amount; and all laws changing county lines in counties already organized, or for removing county seats shall, before taking effect be submitted to the electors of the county or counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of such electors. Counties now established may be enlarged, but not reduced below four hundred (400) square miles.

SEC. 2. The legislature may organize any city into a separate county when it has attained a population of twenty thousand inhabitants, without reference to geographical extent, when a majority of the electors of the county in which such city may be situated, voting thereon, shall be in favor of a separate organization.

SEC. 3. Laws may be passed providing for the organization, for municipal and other town purposes, of any congressional or fractional townships in the several counties in the state, provided that when a township is divided by county lines, or does not contain one hundred inhabitants, it may be attached to one or more adjoining townships or parts of townships, for the purposes aforesaid.

SEC. 4. Provision shall be made by law for the election of such county or township officers as may be necessary.

SEC. 5. Any county and township organization shall have such powers of local taxation as may be prescribed by law.

SEC. 6. No money shall be drawn from any county or township treasury except by authority of law.

But one amendment to this article has been proposed by the legislature, and it was adopted by the voters in 1869. It added a new section as follows:

SEC. 7. That the county of Manomin is hereby abolished and that the territory heretofore comprising the same shall constitute and be a part of the county of Anoka.

Proposed by *Sess. Laws* 1869, ch. 50; ratified November 2, 1869.

ARTICLE 12

OF THE MILITIA

SECTION 1. It shall be the duty of the legislature to pass such laws for the organization, discipline and service of the militia of the state, as may be deemed necessary.

The legislature has never proposed any amendment to this article.

ARTICLE 13

IMPEACHMENT AND REMOVAL FROM OFFICE

SECTION 1. The governor, secretary of state, treasurer, auditor, attorney general, and the judges of the supreme and district courts, may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgment in such cases shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit, in this state. The party convicted thereof shall nevertheless be liable, and subject to indictment, trial, judgment and punishment according to law.

SEC. 2. The legislature of this state may provide for the removal of inferior officers from office, for malfeasance or nonfeasance in the performance of their duties.

SEC. 3. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

SEC. 4. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court.

SEC. 5. No person shall be tried on impeachment before he shall have been served with a copy thereof at least twenty days previous to the day set for trial.

The legislature has never proposed any amendment to this article.

ARTICLE 14

AMENDMENTS TO THE CONSTITUTION

[SECTION 1. Whenever a majority of both houses of the legislature shall deem it necessary to alter or amend this constitution, they may propose such alterations or amendments, which proposed amendments shall be published with the laws which have been passed at the same session, and said amendments shall be submitted to the people for their approval or rejection; and if it shall appear, in a manner to be provided by law, that a majority of voters present and voting shall have ratified such alterations or amendments, the same shall be valid to all intents and purposes, as a part of this constitution. If two or more alterations or amendments shall be submitted at the same time, it shall be so regulated that the voters shall vote for or against each separately.]

In 1898 the voters approved the amendment establishing a higher majority requirement for the amendment of the constitution. The new section follows:

SECTION 1. Whenever a majority of both houses of the legislature shall deem it necessary to alter or amend this constitution, they may propose such alterations or amendments, which proposed amendments shall be published with the laws which have been passed at the same session, and said amendments shall be submitted to the people for their approval or rejection, at any general election, and if it shall appear in a manner to be provided by law, that a majority of all the electors voting at said election, shall have voted for and ratified such alterations or amendments, the same shall be valid to all intents and purposes, as a part of this constitution. If two or more alterations or amendments shall be submitted at the same time, it shall be so regulated that the voters shall vote for or against each separately.

Proposed by *Sess. Laws* 1897, ch. 185; ratified November 8, 1898.

SEC. 2. Whenever two-thirds of the members elected to each branch of the legislature shall think it necessary to call a convention to revise this constitution, they shall recommend to the electors to vote, at the next election for members of the legislature, for or against a convention; and if a majority of all the electors voting at said election, shall have voted for a convention, the legislature shall, at their next session, provide by law for calling the same. The convention shall consist of as many members as the house of representatives, who shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid.

ARTICLE 15

MISCELLANEOUS SUBJECTS

SECTION 1. The seat of government of the state shall be at the city of St. Paul, but the legislature at their first, or any future session, may provide by law for a change of the seat of government by a vote of the people, or

may locate the same upon the land granted by congress for a seat of government for the state; and in the event of the seat of government being removed from the city of St. Paul to any other place in the state, the capitol building and grounds shall be dedicated to an institution for the promotion of science, literature and the arts, to be organized by the legislature of the state, and of which institution the Minnesota Historical Society shall always be a department.

SEC. 2. Persons residing on Indian lands within the state shall enjoy all the rights and privileges of citizens as though they lived in any other portion of the state, and shall be subject to taxation.

SEC. 3. The legislature shall provide for a uniform oath or affirmation to be administered at elections, and no person shall be compelled to take any other or different form of oath to entitle him to vote.

SEC. 4. There shall be a seal of the state, which shall be kept by the secretary of state, and be used by him officially, and shall be called the Great Seal of the State of Minnesota and shall be attached to all official acts of the governor (his signature to acts and resolves of the legislature excepted) requiring authentication. The legislature shall provide for an appropriate device and motto for said seal.

SEC. 5. The territorial prison as located under existing laws shall, after the adoption of this constitution, be and remain one of the state prisons of the state of Minnesota.

In 1868 an amendment was proposed to prevent the passage of any law disposing of the 500,000 acres of internal improvement lands without popular approval by referendum, with a proviso that they might be appraised and sold if the proceeds were invested in state or national securities. *Sess. Laws* 1868, ch. 108. This amendment was not ratified.

In 1917 the proposed prohibition amendment was to have become section 6 of article 15. *Sess. Laws* 1917, ch. 515. It lost by a narrow margin in the 1918 election.

The following article became a part of the constitution upon adoption as an amendment in November, 1920. For convenience it is called "Trunk Highway System."

ARTICLE 16

TRUNK HIGHWAY SYSTEM

SECTION 1. There is hereby created and established a Trunk Highway System, which shall be located, constructed, reconstructed, improved and forever maintained as public highways by the state of Minnesota. The said highways shall extend as nearly as may be along the following described routes, the more specific and definite location of which shall be fixed and determined by such boards, officers or tribunals, and in such manner, as shall be prescribed by law, but in fixing such specific and definite routes

there shall not be any deviation from the starting points or terminals set forth in this bill, nor shall there be any deviation in fixing such routes from the various villages and cities named herein, through which such routes are to pass.

ROUTE NO. 1. Beginning at a point on the boundary line between the states of Minnesota and Iowa, southeasterly at Albert Lea and thence extending in a northwesterly direction to a point in Albert Lea and thence extending in a northerly direction to a point and on the southerly limits of the city of St. Paul and then beginning at a point on the northerly limits of the city of St. Paul and thence extending in a northerly direction to a point on the westerly limits of the city of Duluth and then beginning at a point on the northerly limits of the city of Duluth and thence extending in a northeasterly direction to a point on the boundary line between the state of Minnesota and the province of Ontario, affording Albert Lea, Owatonna, Faribault, Northfield, Farmington, St. Paul, White Bear, Forest Lake, Wyoming, Rush City, Pine City, Hinckley, Sandstone, Moose Lake, Carlton, Duluth, Two Harbors, Grand Marais and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 2. Beginning at a point on Route No. 1 on the westerly limits of the city of Duluth and thence extending in a southwesterly direction along said Route No. 1 to a point on said route at Carlton and thence extending in a westerly direction to a point on the east bank of the Red River of the North at Moorhead, affording Duluth, Carlton, McGregor, Aitkin, Brainerd, Motley, Staples, Wadena, Detroit, Moorhead and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 3. Beginning at a point on the boundary line between the states of Minnesota and Wisconsin, westerly of La Crosse, Wisconsin, and thence extending in a northwesterly direction to a point on the easterly limits of the city of St. Paul and then beginning at a point on the westerly limits of the city of Minneapolis and thence extending in a northwesterly direction to a point on the east bank of the Red River of the North at Breckenridge, affording La Crescent, Winona, Kellogg, Wabasha, Lake City, Red Wing, Hastings, St. Paul, Minneapolis, Osseo, Champlin, Anoka, Elk River, Big Lake, St. Cloud, Albany, Sauk Center, Alexandria, Elbow Lake, Fergus Falls, Breckenridge and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 4. Beginning at a point on the boundary line between the states of Minnesota and Iowa, southwesterly of Jackson and thence extending in a northerly direction to a point on Route No. 3, southeasterly of Sauk Center and thence extending in a northwesterly direction along said Route

No. 3 to a point on said route at Sauk Center and thence extending in a northerly direction to a point at International Falls, affording Jackson, Windom, Sanborn, Redwood Falls, Morton, Olivia, Willmar, Paynesville, Sauk Center, Long Prairie, Wadena, Park Rapids, Itasca State Park, Bemidji, International Falls and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 5. Beginning at a point on the boundary line between the states of Minnesota and Iowa, southerly of Blue Earth and thence extending in a northeasterly direction to a point on the southerly limits of the city of Minneapolis and then beginning at a point on the northerly limits of the city of Minneapolis and thence extending in a northerly direction to a point in Swan River on Route No. 8, hereinafter described, affording Blue Earth, Winnebago, Mankato, St. Peter, Le Sueur, Jordan, Shakopee, Minneapolis, Cambridge, Mora, McGregor, Swan River and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 6. Beginning at a point on the boundary line between the states of Minnesota and Iowa, southerly of Ash Creek, and thence extending in a northerly direction to a point on the boundary line between the state of Minnesota and the province of Manitoba, near St. Vincent, affording Luverne, Pipestone, Lake Benton, Ivanhoe, Canby, Madison, Bellingham, Odessa, Ortonville, Graceville, Dumont, Wheaton, Breckenridge, Moorhead, Kragnes, Georgetown, Perley, Hendrum, Ada, Crookston, Warren, Donaldson, Hallock and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 7. Beginning at a point on Route No. 3 at Winona and thence extending in a westerly direction to a point on the boundary line between the states of Minnesota and South Dakota, westerly of Lake Benton, affording Winona, St. Charles, Rochester, Kasson, Dodge Center, Claremont, Owatonna, Waseca, Mankato, St. Peter, New Ulm, Springfield, Tracy, Lake Benton and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 8. Beginning at a point on the westerly limits of the city of Duluth and thence extending in a northwesterly direction to a point on Route No. 6 near Crookston and thence extending in a westerly and northerly direction along said Route No. 6 to a point on said route northerly of Crookston and thence extending in a northwesterly direction to a point on the east bank of the Red River of the North at East Grand Forks, affording Duluth, Floodwood, Swan River, Grand Rapids, Cass Lake, Bemidji, Bagley, Erskine, Crookston, East Grand Forks and intervening and adjacent

communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 9. Beginning at a point on Route No. 3 at La Crescent and thence extending in a westerly direction to a point on the boundary line between the states of Minnesota and South Dakota southwesterly of Beaver Creek, affording La Crescent, Hokah, Houston, Rushford, Lanesboro, Preston, Fountain, Spring Valley, Austin, Albert Lea, Blue Earth, Fairmont, Jackson, Worthington, Luverne and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 10. Beginning at a point on the westerly limits of the city of Minneapolis and thence extending in a northwesterly direction to a point on Route No. 6 at or near Wheaton, affording Minneapolis, Montrose, Cokato, Litchfield, Willmar, Benson, Morris, Herman, Wheaton and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 11. Beginning at a point on Route No. 8 at the westerly limits of the city of Duluth and thence extending in a northwesterly and northerly direction to a point on Route No. 4 at International Falls and thence extending in a southwesterly direction along said Route No. 4 to a point on said route southwesterly of International Falls and thence extending in a westerly direction to a point on Route No. 6 at Donaldson, affording Duluth, Eveleth, Virginia, Cook, Orr, Cussons, International Falls, Baudette, Warroad, Roseau, Greenbush, Donaldson and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 12. Beginning at a point on the west bank of the St. Croix River near Hudson, Wisconsin and thence extending in a westerly direction to a point on the easterly limits of the city of St. Paul and then beginning at a point on the westerly limits of the city of Minneapolis and thence extending in a westerly direction to a point on Route No. 6 at Madison, affording St. Paul, Minneapolis, Hopkins, Norwood, Glencoe, Olivia, Granite Falls, Montevideo, Dawson, Madison and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 13. Beginning at a point on Route No. 9 at Albert Lea and thence extending in a northerly direction to a point on Route No. 5 at Jordan, affording Albert Lea, Waseca, Waterville, Montgomery, New Prague, Jordan and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 14. Beginning at a point on Route No. 6 at Ivanhoe and thence extending in an easterly direction to a point on Route No. 4 at Redwood Falls and thence extending in an easterly direction along said Route No. 4 to a point on said route at Morton and thence extending in an easterly direction to a point on Route No. 22, hereinafter described, at Gaylord, affording Ivanhoe, Marshall, Redwood Falls, Morton, Winthrop, Gaylord and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 15. Beginning at a point on the boundary line between the states of Minnesota and Iowa southerly of Fairmont and thence extending in a northerly direction to a point on Route No. 14 at Winthrop, affording Fairmont, Madelia, New Ulm, Winthrop and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 16. Beginning at a point on Route No. 5 southwesterly of Mankato and thence extending westerly to a point on Route No. 15 at Madelia and thence extending in a southerly direction along said Route No. 15 to a point on said route southerly of Madelia and thence extending in a westerly direction to a point on Route No. 4 northerly of Windom and thence extending in a southerly direction along said Route No. 4 to a point on said route at Windom and thence extending in a westerly direction to a point at Fulda and thence extending in a southerly direction to a point on Route No. 9 at Worthington, affording Mankato, Madelia, St. James, Windom, Fulda, Worthington and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 17. Beginning at a point on Route No. 16 at Fulda and thence extending in a northerly direction to a point on Route No. 12 at Granite Falls, affording Fulda, Slayton, Garvin, Marshall, Granite Falls and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 18. Beginning at a point on Route No. 3 at Elk River and thence extending in a northerly direction to a point on Route No. 2 easterly of Brainerd, affording Elk River, Princeton, Milaca, Onamia and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 19. Beginning at a point on Route No. 2 at Brainerd and thence extending in a northwesterly direction to a point on Route No. 8 at Cass Lake, affording Brainerd, Pine River, Walker, Cass Lake and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 20. Beginning at a point on the boundary line between the states of Minnesota and Iowa near Canton and thence extending in a northwesterly direction to a point on Route No. 9 at or near Preston and thence extending in a northwesterly direction along said Route No. 9 to a point on said route at Fountain and thence extending in a northwesterly direction to a point on Route No. 3 in the town of Douglas, Dakota county (T. 113, R. 17 W) affording Canton, Harmony, Preston, Fountain, Chatfield, Oronoco, Pine Island, Zumbrota, Cannon Falls and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 21. Beginning at a point on Route No. 20 at Zumbrota and thence extending in a westerly direction to a point on Route No. 5 at St. Peter, affording Zumbrota, Kenyon, Faribault, Le Sueur Center, Cleveland, St. Peter and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 22. Beginning at a point on Route No. 5 at St. Peter and thence extending in a northwesterly direction to a point on Route No. 4 at Paynesville, affording St. Peter, Gaylord, Glencoe, Hutchinson, Litchfield, Paynesville and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 23. Beginning at a point on Route No. 4 at Paynesville and thence extending in a northeasterly direction through the villages of Richmond, Coldspring, Rockville and Waite Park to a point on Route No. 3 westerly of St. Cloud, and thence extending in a northeasterly direction to a point on Route No. 5 southerly of Mora, and thence extending in a northerly direction along said Route No. 5 to a point on said route at Mora, and thence extending in an easterly direction to a point on Route No. 1 southerly of Hinckley, affording Paynesville, St. Cloud, Foley, Milaca, Ogilvie, Mora and intervening and adjacent communities, a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 24. Beginning at a point on Route No. 10 at Litchfield and thence extending in a northeasterly direction to a point on Route No. 3 at St. Cloud, affording Litchfield, St. Cloud and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 25. Beginning at a point on Route No. 5 at or near Belle Plaine and thence extending in a northerly direction to a point on Route No. 3 at Big Lake, affording Belle Plaine, Norwood, Watertown, Montrose, Buffalo, Monticello, Big Lake and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 26. Beginning at a point on Route No. 10 at Benson and thence extending in a westerly direction to a point on Route No. 6 near Ortonville, affording Benson, Ortonville and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 27. Beginning at a point on Route No. 3 at St. Cloud and thence extending in a northerly direction to a point on Route No. 2 at Brainerd, affording St. Cloud, Sauk Rapids, Royalton, Little Falls, Brainerd and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 28. Beginning at a point on Route No. 27 at Little Falls and thence extending in a southwesterly direction to a point on the boundary line between the states of Minnesota and South Dakota at Browns Valley, affording Little Falls, Sauk Center, Glenwood, Starbuck, Morris, Graceville, Browns Valley and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 29. Beginning at a point on Route No. 28 at Glenwood and thence extending in a northerly direction to a point on Route No. 2 westerly of Wadena affording Glenwood, Alexandria, Parkers Prairie, Deer Creek and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 30. Beginning at a point on Route No. 3 at Fergus Falls, and thence extending in a northerly direction to a point on Route No. 8 at Erskine, affording Fergus Falls, Pelican Rapids, Detroit, Mahnomen, Erskine and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 31. Beginning at a point on Route No. 6 at Ada, and thence extending in an easterly direction to a point on Route No. 30 near Mahnomen, affording Ada, Mahnomen and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 32. Beginning at a point on Route No. 8 easterly of Crookston and thence extending in a northerly direction to a point on Route No. 11 at Greenbush, affording Red Lake Falls, Thief River Falls, Middle River, Greenbush and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 33. Beginning at a point on Route No. 32 at Thief River Falls and thence extending in a northwesterly direction to a point on Route No. 6 at Warren, affording Thief River Falls, Warren and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 34. Beginning at a point on Route No. 2 at Detroit and thence extending in a northeasterly direction to a point on Route No. 8 westerly of Grand Rapids, affording Detroit, Park Rapids, Walker, Remer, Grand Rapids and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 35. Beginning at a point on Route No. 18 near Mille Lacs Lake and thence extending in a northerly direction to a point at Grand Rapids and thence extending in a northeasterly direction to a point at Ely, affording Aitkin, Grand Rapids, Hibbing, Chisholm, Buhl, Mountain Iron, Virginia, Gilbert, McKinley, Biwabik, Aurora, Tower and Ely and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 36. Beginning at a point on Route No. 3 at Fergus Falls and thence extending in an easterly direction to a point on Route No. 29 easterly of Henning, affording Fergus Falls, Henning and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 37. Beginning at a point on Route No. 27 at Little Falls and thence extending in a northwesterly direction to a point on Route No. 2 at Motley, affording Little Falls, Motley and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 38. Beginning at a point on Route No. 12 at Montevideo and thence extending in a northerly direction to a point on Route No. 28 at Starbuck, affording Montevideo, Benson, Starbuck and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 39. Beginning at a point on Route No. 7 at Mankato and thence extending in a southeasterly direction to a point on Route No. 9 westerly of Albert Lea, affording Mankato, Mapleton, Minnesota Lake, Wells and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 40. Beginning at a point on the boundary line between the states of Minnesota and Iowa at Lyle and thence extending in a northwesterly direction to a point on Route No. 7 at Owatonna, affording Lyle, Austin, Blooming Prairie, Owatonna and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 41. Beginning at a point on Route No. 40 at or near Blooming Prairie and thence extending in an easterly direction to a point on Route No. 56, hereinafter described, near Hayfield, affording Blooming Prairie, Hayfield and intervening and adjacent communities a reasonable

means of communication, each with the other and other places within the state.

ROUTE NO. 42. Beginning at a point on Route No. 7 easterly of Rochester and thence extending in a northeasterly direction to a point on Route No. 3 at Kellogg, affording Rochester, Elgin, Plainview, Kellogg and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 43. Beginning at a point on Route No. 9 at Rushford and thence extending in a northeasterly direction to a point on Route No. 3 at Winona, affording Rushford, Winona and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 44. Beginning at a point on Route No. 9 at Hokah and thence extending in a southwesterly direction to a point on Route No. 20 near Canton, affording Hokah, Caledonia, Canton and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 45. Beginning at a point on the west bank of the St. Croix River at Stillwater and thence extending in a southwesterly direction to a point on the easterly limits of the city of St. Paul, affording Stillwater, Lake Elmo, St. Paul and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 46. Beginning at a point on the west bank of the St. Croix River at Taylors Falls and thence extending in a southwesterly direction to a point on Route No. 1 near Wyoming, affording Taylors Falls, Center City, Wyoming and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 47. Beginning at a point on Route No. 17 at Slayton and thence extending in a westerly direction to a point on Route No. 6 at Pipestone, affording Slayton, Pipestone and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 48. Beginning at a point on Route No. 17 westerly of Granite Falls and thence extending in a westerly direction to a point on Route No. 6 at Canby, affording Granite Falls, Clarkfield, Canby and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 49. Beginning at a point on Route No. 12 easterly of Montevideo and thence extending in a northeasterly direction to a point on Route No. 4 southerly of Willmar, affording Montevideo, Clara City, Willmar

and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 50. Beginning at a point on Route No. 20 at Cannon Falls and thence extending in a northwesterly direction to a point on the southerly limits of the city of Minneapolis, affording Cannon Falls, Farmington, Minneapolis and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 51. Beginning at a point on Route No. 5 at Shakopee and thence extending in a northerly direction to a point on Route No. 12 northerly of Shakopee, affording a connection between said Route No. 5 and said Route No. 12.

ROUTE NO. 52. Beginning at a point on Route No. 5 south of the city of Minneapolis and thence extending in a northeasterly direction to a point on the westerly limits of the United States military reservation at Fort Snelling, affording St. Paul and adjacent communities a reasonable communication with said Route No. 5.

ROUTE NO. 53. Beginning at a point on Route No. 3 at Hastings and thence extending in a northwesterly direction to a point on the southerly limits of the city of South St. Paul, affording Hastings, South St. Paul and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 54. Beginning at a point on Route No. 3 at Elbow Lake and thence extending in a southwesterly direction to a point on Route No. 10 at Herman, affording Elbow Lake, Herman and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 55. Beginning at a point on Route No. 2 northwesterly of Carlton and thence extending in a northerly direction to a point in Cloquet, affording Carlton, Cloquet and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 56. Beginning at a point on Route No. 9 easterly of Austin and thence extending in a northerly direction to a point on Route No. 21 at or near Kenyon affording Brownsdale, Hayfield, Dodge Center, West Concord, Kenyon and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 57. Beginning at a point in Mantorville and extending in a southerly direction to a point on Route No. 7 southerly of Mantorville, affording Mantorville a reasonable means of communication with said Route No. 7.

ROUTE NO. 58. Beginning at a point on Route No. 20 at Zumbrota and thence extending in a northeasterly direction to a point on Route No. 3 at

Red Wing, affording Zumbrota, Red Wing and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 59. Beginning at a point on the boundary line between the states of Minnesota and Iowa southerly of Spring Valley and thence extending in a northerly direction to a point on No. 3 at Lake City, affording Spring Valley, Stewartville, Rochester, Zumbro Falls, Lake City and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 60. Beginning at a point on Route No. 1 at Faribault and thence extending in a southwesterly direction to a point on Route No. 7 at or near Madison Lake, affording Faribault, Morristown, Waterville, Madison Lake and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 61. Beginning at a point on Route No. 8 at Deer River and thence extending in a northerly direction to a point on Route No. 4 at or near Big Falls, affording Deer River, Big Falls and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 62. Beginning at a point on Route No. 3 at Anoka and thence extending in a southeasterly direction to a point on the northerly limits of the city of St. Paul, affording Anoka, St. Paul and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 63. Beginning at a point on Route No. 1 southerly of Forest Lake and thence extending in a southwesterly direction to a point on the northerly and easterly limits of the city of Minneapolis, affording a reasonable means of communication between Route No. 1 and Minneapolis.

ROUTE NO. 64. Beginning at a point on Route No. 30 northerly of Fergus Falls and thence extending in a northerly and westerly direction to a point on Route No. 6 southerly of Moorhead, affording Fergus Falls, Rothsay, Barnesville, Moorhead and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 65. Beginning at a point on Route No. 8 at Bagley and thence extending in a northerly and westerly direction to a point on Route No. 32 southerly of Red Lake Falls, affording Bagley, Clearbrook, Gonvick, Gully, Brooks, Terrebonne and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 66. Beginning at a point on Route No. 12 at Montevideo and thence extending in a northwesterly direction to a point on Route No. 26

northerly of Appleton affording Montevideo, Appleton and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 67. Beginning at a point on Route No. 14 southerly of Echo and thence extending in a northerly and westerly direction to a point on Route No. 17 at or near Granite Falls, affording Echo, Granite Falls and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 68. Beginning at a point on Route No. 14 at Marshall and thence extending in a northwesterly direction to a point on Route No. 6 near Canby, affording Marshall, Minneota, Canby and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 69. Beginning at a point on Route No. 25 at Buffalo and thence extending in a northwesterly direction to a point on Route No. 22 southeasterly of Paynesville, affording Buffalo, Maple Lake, Annandale, Eden Valley, Paynesville and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ROUTE NO. 70. Beginning at a point on Route No. 7 westerly of New Ulm and thence extending in a northerly direction to a point on Route No. 12 at or near the village of Hector, affording Fort Ridgely, Fairfax, Hector and intervening and adjacent communities a reasonable means of communication, each with the other and other places within the state.

ADDITIONAL ROUTES. Whenever, either by reason of the creation of a new county, or by reason of the change of the county seat of any existing county, any city or village not a county seat at the time of the adoption of this amendment is lawfully constituted the county seat of any county, the legislature is authorized to add to the Trunk Highway System such additional routes connecting such newly constituted county seats with other county seats and other points in the state.

When after at least seventy-five (75) per cent of the total number of the miles of the routes embraced in the trunk highway system hereinbefore specified shall have been constructed and permanently improved, the legislature shall have authority to add new routes to such trunk highway system; provided, however, that no such new routes shall be added until and unless the funds available for the construction, improvement and maintenance of such additional routes shall be sufficient therefor in addition to the construction, improvement and maintenance of the several routes hereinbefore specifically described.

SEC. 2. There is hereby created a fund which shall be known as the Trunk Highway Sinking Fund. Said fund shall consist of the proceeds of

any tax imposed on motor vehicles as herein authorized. The moneys in said fund shall be used for the payment of the principal and interest of any bonds which may be issued under the authority of this article; and any moneys in excess of such requirements shall be transferred to a fund which is hereby created and which shall be known as the Trunk Highway Fund. The Trunk Highway Fund shall be used solely for the purposes specified in section 1 of this article, and when duly authorized by legislative enactment to reimburse any county for the money expended by it subsequent to February 1st, 1919, in permanently improving any road hereinbefore specifically described, in accordance with plans and specifications therefor approved by the Commissioner of Highways.

SEC. 3. The legislature is hereby authorized to provide, by law, for the taxation of motor vehicles, using the public streets and highways of this state, on a more onerous basis than other personal property, provided, however, that any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any borough, city or village. Any such law may, in the discretion of the legislature, provide for the exemption from taxation of any motor vehicle owned by a non-resident of the state, and transiently or temporarily using the streets and highways of the state. The proceeds of such tax shall be paid into said Trunk Highway Sinking Fund.

SEC. 4. The legislature may provide by law for the issue and sale of the bonds of the state in such amount as may be necessary to carry out the provisions of section 1 of this article, provided, however, that the amount of bonds which may be issued in any one calendar year shall not exceed, in the aggregate, ten million dollars, par value, and provided, further, the total amount of such bonds issued and unpaid shall not at any time exceed seventy-five million dollars, par value. The proceeds of the sale of such bonds shall be paid into the treasury of the state and credited to the Trunk Highway Fund. Any bonds so issued and sold shall be for a term not exceeding twenty (20) years. They shall not be sold for less than par and accrued interest and shall not bear interest at a greater rate than five per cent per annum. In case the Trunk Highway Sinking Fund shall not be adequate to meet the payment of the principal and interest of the bonds authorized by the legislature as hereinbefore provided, the legislature may provide by law for the taxation of all taxable property of the state in an amount sufficient to meet the deficiency, or it may, in its discretion, appropriate to such Sinking Fund moneys in the state treasury not otherwise appropriated.

SEC. 5. Any and all provisions of the constitution of the state of Minnesota inconsistent with the provisions of this article, are hereby repealed,

so far, but only so far, as the same prohibit or limit the power of the legislature to enact laws authorizing or permitting the doing of the things hereinbefore authorized.

Proposed by *Sess. Laws* 1919, ch. 530; adopted November 2, 1920.

SCHEDULE

SECTION 1. That no inconvenience may arise by reason of a change from a territorial to a permanent state government, it is declared that all rights, actions, prosecutions, judgments, claims and contracts, as well of individuals as of bodies corporate, shall continue as if no change had taken place; and all process which may be issued under the authority of the territory of Minnesota previous to its admission into the union of the United States, shall be as valid as if issued in the name of the state.

SEC. 2. All laws now in force in the territory of Minnesota not repugnant to this constitution shall remain in force until they expire by their own limitation or be altered or repealed by the legislature.

SEC. 3. All fines, penalties, or forfeitures accruing to the territory of Minnesota shall inure to the state.

SEC. 4. All recognizances heretofore taken, or which may be taken before the change from a territorial to a permanent state government shall remain valid, and shall pass to, and may be prosecuted in the name of the state, and all bonds executed to the governor of the territory or to any other officer or court in his or their official capacity, shall pass to the governor or state authority and their successors in office, for the uses therein respectively expressed; and may be sued for and recovered accordingly; and all the estate of property, real, personal, or mixed, and all judgments, bonds, specialties, choses in action, and claims and debts of whatsoever description, of the territory of Minnesota, shall inure to and vest in the state of Minnesota, and may be sued for and recovered in the same manner and to the same extent by the state of Minnesota as the same could have been by the territory of Minnesota. All criminal prosecutions and penal actions which may have arisen or which may arise before the change from a territorial to a state government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the state. All offenses committed against the laws of the territory of Minnesota before the change from a territorial to a state government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the state of Minnesota with like effect as though such change had not taken place, and all penalties incurred shall remain the same as if this constitution had not been adopted. All actions at law and suits in equity which may be pending in any of the courts of the territory of Minnesota at the time of the change from a territorial to a state

government may be continued and transferred to any court of the state which shall have jurisdiction of the subject matter thereof.

SEC. 5. All territorial officers, civil and military now holding their offices under the authority of the United States or of the territory of Minnesota shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the state.

SEC. 6. The first session of the legislature of the state of Minnesota shall commence on the first Wednesday of December next, and shall be held at the capitol in the city of St. Paul.

SEC. 7. The laws regulating the election and qualification of all district, county and precinct officers shall continue and be in force until the legislature shall otherwise provide by law.

SEC. 8. The president of this convention shall, immediately after the adjournment thereof, cause this constitution to be deposited in the office of the governor of the territory, and if after the submission of the same to a vote of the people as hereinafter provided, it shall appear that it has been adopted by a vote of the people of the state, then the governor shall forward a certified copy of the same, together with an abstract of the votes polled for and against said constitution to the president of the United States, to be by him laid before the congress of the United States.

SEC. 9. For the purposes of the first election the state shall constitute one district, and shall elect three members to the house of representatives of the United States.

SEC. 10. For the purposes of the first election for members of the state senate and house of representatives, the state shall be divided into senatorial and representative districts as follows, viz: 1st district, Washington County; 2d district, Ramsey County; 3d district, Dakota County; 4th district, so much of Hennepin County as lies west of the Mississippi; 5th district, Rice County; 6th district, Goodhue County; 7th district, Scott County; 8th district, Olmsted County; 9th district, Fillmore County; 10th district, Houston County; 11th district, Winona County; 12th district, Wabashaw County; 13th district, Mower and Dodge Counties; 14th district, Freeborn and Faribault Counties; 15th district, Steele and Waseca Counties; 16th district, Blue Earth and Le Sueur Counties; 17th district, Nicollet and Brown Counties; 18th district, Sibley, Renville and McLeod Counties; 19th district, Carver and Wright Counties; 20th district, Benton, Stearns and Meeker Counties; 21st district, Morrison, Crow Wing and Mille Lac Counties; 22d district, Cass, Pembina and Todd Counties; 23d district, so much of Hennepin County as lies east of the Mississippi; 24th district, Sherburne, Anoka and Manomin Counties; 25th district, Chisago, Pine and Isanti Counties; 26th district, Buchanan, Carlton, St. Louis, Lake and Itasca Counties.

SEC. 11. The counties of Brown, Stearns, Todd, Cass, Pembina and Renville as applied in the preceding section, shall not be deemed to include any territory west of the state line, but shall be deemed to include all counties and parts of counties east of said line as were created out of the territory of either at the last session of the legislature.

SEC. 12. The senators and representatives at the first election shall be apportioned among the several senatorial and representative districts as follows to wit:

1st	district	2	senators	3	representatives
2d	"	3	"	6	"
3d	"	2	"	5	"
4th	"	2	"	4	"
5th	"	2	"	3	"
6th	"	1	"	4	"
7th	"	1	"	3	"
8th	"	2	"	4	"
9th	"	2	"	6	"
10th	"	2	"	3	"
11th	"	2	"	4	"
12th	"	1	"	3	"
13th	"	2	"	3	"
14th	"	1	"	3	"
15th	"	1	"	4	"
16th	"	1	"	3	"
17th	"	1	"	3	"
18th	"	1	"	3	"
19th	"	1	"	3	"
20th	"	1	"	3	"
21st	"	1	"	1	"
22d	"	1	"	1	"
23d	"	1	"	2	"
24th	"	1	"	1	"
25th	"	1	"	1	"
26th	"	1	"	1	"

SEC. 13. The returns from the 22d district shall be made to and canvassed by the judges of election at the precinct of Otter Tail city.

SEC. 14. Until the legislature shall otherwise provide, the state shall be divided into judicial districts as follows, viz:

The counties of Washington, Chisago, Manomin, Anoka, Isanti, Pine, Buchanan, Carlton, St. Louis and Lake shall constitute the first judicial district.

The county of Ramsey shall constitute the second judicial district.

The counties of Houston, Winona, Fillmore, Olmsted and Wabashaw shall constitute the third judicial district.

The counties of Hennepin, Carver, Wright, Meeker, Sherburne, Benton, Stearns, Morrison, Crow Wing, Mille Lac, Itasca, Pembina, Todd and Cass shall constitute the fourth judicial district.

The counties of Dakota, Goodhue, Scott, Rice, Steele, Waseca, Dodge, Mower and Freeborn shall constitute the fifth judicial district.

The counties of Le Sueur, Sibley, Nicollet, Blue Earth, Faribault, McLeod, Renville, Brown and all other counties in the state not included within the other districts shall constitute the sixth judicial district.

SEC. 15. Each of the foregoing enumerated judicial districts may, at the first election, elect one prosecuting attorney for the district.

SEC. 16. Upon the second Tuesday, the 13th day of October 1857, an election shall be held for members of the house of representatives of the United States, governor, lieutenant governor, supreme and district judges, members of the legislature, and all other officers designated in this constitution, and also for the submission of this constitution to the people for their adoption or rejection.

SEC. 17. Upon the day so designated as aforesaid, every free white male inhabitant over the age of twenty-one years, who shall have resided within the limits of the state for ten days previous to the day of said election may vote for all officers to be elected under this constitution at such election, and also for or against the adoption of this constitution.

SEC. 18. In voting for or against the adoption of this constitution, the words "For Constitution," or "Against Constitution" may be written or printed on the ticket of each voter, but no voter shall vote for or against this constitution on a separate ballot from that cast by him for officers to be elected at said election under this constitution: and if upon the canvass of the votes so polled it shall appear that there was a greater number of votes polled for than against said constitution, then this constitution shall be deemed to be adopted as the constitution of the state of Minnesota, and all the provisions and obligations of this constitution and of the schedule thereunto attached shall thereafter be valid to all intents and purposes as the constitution of said state.

SEC. 19. At said election the polls shall be opened, the election held, returns made and certificates issued in all respects as provided by law for

opening, closing and conducting elections and making returns of the same except as hereinbefore specified, and excepting also that polls may be opened and elections held at any point or points in any of the counties where precincts may be established as provided by law ten days previous to the day of election, not less than ten miles from the place of voting in any established precinct.

SEC. 20. It shall be the duty of the judges and clerks of election in addition to the returns required by law from each precinct, to forward to the secretary of the territory by mail immediately after the close of the election a certified copy of the poll book containing the name of each person who has voted in the precinct, and the number of votes polled for each person for any office, and the votes polled for and against the adoption of this constitution.

SEC. 21. The returns of said election for and against this constitution and for all state officers and members of the house of representatives of the United States shall be made and certificates issued in the manner now prescribed by law for returning votes given for delegate to congress, and the returns for all district officers, judicial, legislative or otherwise shall be made to the register of deeds of the senior county in each district in the manner prescribed by law, except as otherwise provided. The returns for all officers elected at large shall be canvassed by the governor of the territory, assisted by Joseph R. Brown and Thomas J. Galbraith, at the time designated by law for canvassing the vote for delegate to congress.

SEC. 22. If, upon canvassing the votes for and against the adoption of this constitution, it shall appear that there has been polled a greater number of votes against than for it, then no certificates of election shall be issued for any state or district officer provided for in this constitution; and no state organization shall have validity within the limits of the territory until otherwise provided for, and until a constitution for a state government shall have been adopted by the people.

Done in Convention at St. Paul, the twenty ninth day of August, In the the year of our Lord, one thousand Eight hundred and fifty seven, and of the Independence of the United States the Eighty Second, In witness whereof, we have hereunto subscribed our names.

[Republican]

Done in Convention, this Twenty Ninth day of August in the year of our Lord, One Thousand Eight hundred and fifty Seven, and of the Independence of the United States, the Eighty Second year. In witness whereof, we have hereunto subscribed our names at the Capitol, in the City of Saint Paul, this Twenty-ninth day of August, in the year of our Lord, one thousand eight hundred and fifty seven. [Democratic]

NOTE. For the names of the signers, see Appendix 2.

APPENDIX I

TABLE SHOWING THE DIFFERENCES BETWEEN THE REPUBLICAN AND THE DEMOCRATIC ORIGINALS OF THE MINNESOTA CONSTITUTION

Art.	Sec.	After the word	And before the word	Dem. version has	Rep. version has	Version followed
Preamble		liberty	and	comma	no punc.	R
		posterity	do	no punc.	comma	R
1	1	inherent	together	no punc.	comma	R
		government	whenever	no punc.	comma	D
	2	disfranchised	or	no punc.	comma	R
		thereof	unless	no punc.	comma	R
		land	or	no punc.	comma	R
	3	inviolate	and	no punc.	comma	R
		write	and	no punc.	comma	R
		subjects	being	no punc.	comma	R
	4	inviolate	and	no punc.	comma	R
	5	required	nor	comma	semicolon	R
	6	speedy	public	no word	word *and*	R
	7	by	of	*justices*	*justice*	D
		peace	or	no punc.	comma	R
		war	or	comma	no punc.	R
		offenses	when	comma	no punc.	R
		require	———	*it*	no word	R
	8	purchase	completely	comma	no punc.	D
		completely	and	comma	no punc.	R
		delay	conformably	no punc.	comma	R
	9	enemies	giving	no punc.	comma	R
	10	papers	and	no punc.	comma	R
		seizures	shall	no punc.	comma	R
	11	attainder	ex post facto	no punc.	comma	R
	13	therefor	first	no punc.	comma	D
	14	power	and	comma	no punc.	D
	15	incidents	are	no punc.	comma	R
		made	in	comma	no punc.	D
		kind	shall	no punc.	comma	R
	16	attend	erect	no punc.	comma	R
		worship	or	no punc.	comma	R
		permitted	or	no punc.	comma	R
		secured	shall	comma	no punc.	R
		practices	inconsistent	comma	no punc.	R
		state	nor	comma	period	D
	17	property	shall	comma	no punc.	R
2	1	(around the words	*State of Minnesota*)	no quot. marks	quot. marks	R
		consist of	and	no punc.	comma	D
		Beginning at	point	article *a*	article *the*	R
		same	thence	no punc.	comma	neither
		Big Stone Lake	thence	no punc.	comma	neither
		Mississippi river	thence	comma	semicolon	R

(The punctuation here, insofar as it relates to the boundaries is made to conform to that in the enabling act, from which the boundaries were copied. Both the Democratic and the Republican originals are somewhat inconsistent and uneven in punctuation.)

2	and	all other	no word	the word *on*	D

(The word *on* does not appear in the enabling act, sec. 2.)

	waters	and	no punc.	comma	R
	highways	and	no punc.	comma	R
	free	as	comma	no punc.	D
	tax	duty	no punc.	comma	R

(The punctuation in this section has also been made to conform as far as possible to that in the almost identical provision in the enabling act, sec. 2. But the latter has the words *or bounded* after the word *formed* and also the word *the* before *navigable waters.)*

	3	ratified	and	no punc.	comma	R
		same	by	no punc.	comma	D
		United States	or	no punc.	comma	R
3		(No differences.)				
4	2	state	in	comma	no punc.	R
	3	election	returns	comma	no punc.	D
		returns	and	comma	no punc.	D
	4	behavior	and	comma	no punc.	D
		two-thirds	expel	comma	no punc.	R
	5	officer	and	comma	semicolon	R
		same	and	comma	semicolon	R
	6	shall	during	comma	no punc.	D
		days	(Sundays excepted,)	comma	no punc.	D
		assembled	without	no punc.	comma	R
	9	shall	during	comma	no punc.	D
		postmaster	and	comma	semicolon	R
		state	which	comma	no punc.	D
	11	representatives	in	comma	no punc.	D
		shall	before	comma	no punc.	D
		If	after	no punc.	comma	R
		(Sundays excepted)	after	no punc.	comma	R
		sign	and	comma	no punc.	D
		legislature	any	no punc.	comma	D
		session	and	no punc.	comma	D
	14	convicted	without	no punc.	comma	D
	17	by law	the	no punc.	comma	D
	20	house	where	no punc.	comma	D
		depending	shall	comma	no punc.	R
		passed	by	no punc.	comma	D
	21	bill	having	comma	no punc.	D
		houses	shall	comma	no punc.	D
		enrolled	and	comma	no punc.	D
		legislature	or	comma	no punc.	D
		profit	in	no punc.	comma	D
		shall	by	comma	no punc.	D
		rule	provide	comma	no punc.	D
		manner	in	no punc.	comma	D
		passed	by	no punc.	comma	D
	22	houses	but	period	comma	D
	23	sixty-five	and	comma	no punc.	D
		made	and	comma	no punc.	D
		districts	and	comma	no punc.	D
	24	territory	at	comma	no punc.	D
		chosen	and	comma	no punc.	D
		manner	and	comma	no punc.	D
		series	and	comma	no punc.	D
		numbers	shall	comma	no punc.	R
		first year	and	comma	no punc.	D
		second year	and	semicolon	no punc.	D
		two years	except	comma	no punc.	D
	25	state	and shall	comma	no punc.	D
		state	and six	comma	no punc.	R
	29	shall	before	comma	no punc.	D
		trusts	take	comma	no punc.	D
		United States	the	comma	no punc.	D
		Minnesota	and	comma	no punc.	D
	30	viva voce	and	comma	no punc.	D
	31	lottery	or	comma	no punc.	R
5	1	treasurer	and	comma	no punc.	D
	2	section	shall	comma	no punc.	D
	4	may	an extraordinary	comma	no punc.	R
		occasions	convene	comma	no punc.	R
	5	three years	and	comma	semicolon	R
	8	article	shall	no punc.	comma	D
		shall	before	comma	no punc.	D
		duties	take	comma	no punc.	D

	9	union	to	no punc.	comma	D
6	1	supreme court	as	no punc.	comma	R
	2	government	and	no punc.	comma	R
		each	or any	no punc.	comma	D
		state	one clerk	no punc.	comma	D
		qualified	and	semicolon	period	D
		supreme court	or	no punc.	comma	R
		of them	shall	no punc.	comma	R
		supreme court	until	no punc.	comma	D
	3	seven years	and	no punc.	comma	D
	4	said court	and whose	no punc.	comma	R
	5	district	shall	*courts*	*court*	D
		one hundred dollars	and in all	no punc.	comma	R
		imprisonment	or	no punc.	comma	D
		convenience	the	*of*	*or*	R
	6	times	as	no punc.	comma	R
	7	county	of	no punc.	comma	R
		duties	term of	no punc.	comma	R
	8	county	whose	no punc.	comma	R
	9	constitution	shall	no punc.	comma	D
		district	county	no punc.	comma	R
	10	become	before	*vacant*	no word, comma	D
	11	supreme court	and	no punc.	comma	D
		district courts	shall	no punc.	comma	D
		United States	nor	no punc.	comma	D
		office	shall be	no punc.	comma	R
	12	time	change	comma	no punc.	R
		boundaries	when	no punc.	comma	R
	13	said court	whose	no punc.	comma	R
	14	pleadings	and	no punc.	comma	D
		be	*The State* etc.	no punc.	comma	D
	15	state	to be	no punc.	comma	R
		commissioner	with	no punc.	comma	R
		election	confer	no punc.	comma	D
7	1	one year	and	no punc.	comma	R
		resident	for	no punc.	comma	R
		may be	elective	no punc.	comma	R
		language	customs	no punc.	comma	R
	2	section	no	dash	semicolon	R
		treason	or	comma	no punc.	R
		rights	and	semicolon	comma	R
	3	United States	nor	dash	semicolon	R
		state	or	comma	no punc.	R
		United States	nor	comma	semicolon	R
		learning	nor	dash	semicolon	R
		asylum	nor	comma	semicolon	R
	4	United States	shall	no punc.	comma	D
	7	who	by	no punc.	comma	D
		election	shall	no punc.	comma	D
		now is	or	no punc.	comma	R
		election	except as	dash	semicolon	R
8	1	people	it shall	comma	no punc.	D
	2	ten (10) years	but	semicolon	colon	D
		sold first	provided	comma	semicolon	R
		provided	that	no punc.	comma	D
		other property	granted	no punc.	comma	R
		purposes	shall	no punc.	comma	R
		state	in proportion	no punc.	comma	D
8	2	twenty-one years	and	no punc.	comma	R
	3	provisions	by	no punc.	comma	R
		otherwise	as	no punc.	comma	R
		as	with	no punc.	comma	R

	4	Minnesota	as	no punc.	comma	R
		confirmed	and	no punc.	comma	R
		purposes	shall	no punc.	comma	R
9	3	shall	by general laws	no punc.	comma	R
		by general laws	be	comma	no punc.	D
	5	of such	within ten	*debt*	*debts*	D
		repealed	postponed	no punc.	comma	R
		postponed	or	no punc.	comma	R
		improvement	or be	no punc.	comma	D
		works	except	comma	semicolon	D
		grants of	or other	*land*	*lands*	D
		state	especially	no punc.	comma	R
		grants	and may	no punc.	comma	R
	6	on interest	payable	comma	no punc.	D
		such debt	and	semicolon	comma	D
		unpaid	and to whom	no punc.	comma	D
	8	loan made	or debt	no punc.	comma	D
		or debt	or liability	no punc.	comma	D
		purpose	(end of sentence)	*whatever*	*whatsoever*	D
	11	treasurer	in at least	comma	no punc.	D
	12	interest	contrary	no punc.	comma	R
	13	United States stock	or	no punc.	comma	R
		thereof	to the amount	comma	no punc.	D
		or more	on the	no punc.	comma	R
		said stocks	shall	no punc.	comma	D
		bank notes	shall be	comma	no punc.	D
		liable	in an amount	no punc.	comma	D
		amount	equal to	no punc.	comma	D
		by them	for all	no punc.	comma	D
		corporation	or association	no punc.	comma	D
		article	shall	no punc.	comma	D
10	2	acts	except for	no punc.	comma	D
	4	such land	and	no punc.	comma	D
11	1	may	from time	no punc.	comma	R
		counties	but no	no punc.	comma	R
		thereby	at the next	no punc.	comma	R
		thereof	and be	no punc.	comma	R
	2	situated	voting thereon	no punc.	comma	R
12		(No differences)				
13	1	profit	in this state	no punc.	comma	R
14	2	legislature	shall think	no punc.	comma	D
		convention	and if	comma	semicolon	R
		electors	voting at	no punc.	comma	D
		legislature shall	at their	comma	no punc.	D
		representatives	who shall	comma	no punc.	D
15	1	by law	for a	comma	no punc.	R
		government	or may	*by the people*	*by a vote of the people*	R
		seat of government	the state	*to*	*for*	R
		state	and in	no punc.	semicolon	R
	2	lands	within	no punc.	comma	D
		state	shall	no punc.	comma	D
		state	and shall	no punc.	comma	R
	4	officially	and shall	no punc.	comma	R
	5	shall	after	no punc.	comma	R
		constitution	be	no punc.	comma	R
Schedule						
	1	actions	prosecutions	comma	no punc.	D
		contracts	as well	comma	no punc.	D
		bodies corporate	shall	comma	no punc.	D
		place	and all	semicolon	comma	D
		Minnesota	previous	comma	no punc.	R

2	Minnesota	not repugnant	comma	no punc.	R
	constitution	shall remain	comma	no punc.	R
	limitation	or be	comma	no punc.	R
3	penalties	or	comma	no punc.	D
4	taken	or which	comma	no punc.	D
	valid	and shall	comma	no punc.	D
	name	of the state	comma	no punc.	R
4	state	and all	semicolon	comma	R
	territory	or to any	comma	no punc.	R
	office	for the uses	comma	no punc.	D
	expressed	and may	semicolon	no punc.	D
	accordingly	and all	semicolon	no punc.	D
	property	real	comma	no punc.	D
	real	personal	comma	no punc.	D
	personal	or mixed	comma	no punc.	D
	bonds	specialties	comma	no punc.	D
	specialties	choses	comma	no punc.	D
	of	description	*whatsoever*	*whatever*	D
	description	of the	comma	no punc.	D
	inure to	and vest	comma	no punc.	R
	vest in	the state	comma	no punc.	R
	Minnesota	and may	semicolon	comma	R
	manner	and to	comma	no punc.	R
	same extent	by the	comma	no punc.	R
	Minnesota	as the same	comma	no punc.	R
	penal actions	which	comma	no punc.	R
	have arisen	or	comma	no punc.	R
	may arise	before	comma	no punc.	R
	be pending	shall be	comma	no punc.	D
	execution	in the name	comma	no punc.	R
	government	and which	comma	no punc.	D
	name	and by	comma	no punc.	R
	taken place	and all	comma	no punc.	D
5	officers	civil	comma	no punc.	D
6	next	and shall	comma	no punc.	D
7	officers	shall	no punc.	comma	D
8	thereof	cause	no punc.	comma	R
	and if	after	comma	no punc.	R
	provided	it shall	comma	no punc.	D
	the same	together	comma	no punc.	D
9	election	the state	comma	no punc.	R
	district	and shall	comma	no punc.	D
10	representatives	the state	comma	no punc.	D
	as follows	viz	comma	no punc.	D
	viz	1st district	colon	comma	D

(No attempt has been made to follow the punctuation of the original constitutions in the list of districts and counties, which constitutes the greater portion of this section.)

11	section	shall not	comma	no punc.	D
	state line	but shall	comma	no punc.	D
12	representative	as follows	*district*	*districts*	R
	follows		*to wit*	*viz*	D

(As in the case of section 10, above, no effort has been made to follow the original punctuation in the list of districts which constitutes the main part of this section. Like most of the sections of the schedule, this apportionment of representation has now only an historical interest.)

13	judges of	election	no word	*the*	D
14	provide	the state	comma	no punc.	D
	districts	viz	*as follows*	no words	D

(The notes under sections 10 and 12, above, apply also to the list of judicial districts in this section.)

15	may	at the	comma	no punc.	D
	election	elect one	comma	no punc.	D

16	Tuesday	the 13th	comma	no punc.	D
	1857	an	comma	no punc.	D
	United States	governor	comma	no punc.	D
	district judges	members	comma	no punc.	D
	judges	members	no word	*and*	D
	legislature	and all	comma	no punc.	D
	constitution	and also	comma	no punc.	D
17	aforesaid	every	comma	no punc.	D
	free	white	comma	no punc.	R
	inhabitant	over	comma	no punc.	R
	years	who	comma	no punc.	D
	such election	and also	comma	no punc.	D
18	constitution	the words	comma	no punc.	D
	For Constitution	or	comma	no punc.	D
	voter	but no	period	comma	R
	this constitution	and if	colon	no punc.	D
	polled	it shall	comma	no punc.	R
	said constitution	then	comma	no punc.	D
	adopted	as the	comma	no punc.	R
	Minnesota	and all	comma	no punc.	D
19	opened	the election	comma	no punc.	D
	made	and	comma	no punc.	D
	specified	and excepting	comma	no punc.	D
	counties	where	comma	no punc.	R
	election	not less	comma	no punc.	D
20	precinct	to forward	comma	no punc.	D
	election	a certified	comma	no punc.	R
	name of	person	*each*	no word	D
	precinct	and the	comma	no punc.	D
	by law	for	comma	no punc.	R
	returns	except	*of the same*	no words	D
20	any office	and	comma	no punc.	D
21	constitution and	members of	*for all state officers and*	no words	D
	congress	and the	comma	no punc.	D
	officers	judicial	comma	no punc.	D
	by law	except	comma	no punc.	D
	territory	assisted by	comma	no punc.	D
	Galbraith	at the	comma	no punc.	D
22	If	upon	comma	no punc.	D
	constitution	it shall	comma	no punc.	D
	for it	then	comma	no punc.	D
	state	or district	comma	no punc.	R
	constitution	and no	semicolon	no punc.	D
	provided for	and until	comma	no punc.	D

APPENDIX 2

THE MEMBERS OF THE CONVENTIONS, AND THE SIGNERS OF THE CONSTITUTION

In the printed versions of the original constitution to be found in the debates and in the congressional documents, it is made to appear that fifty-two of the fifty-five members of the Democratic convention, and all the fifty-nine members of the Republican convention signed the constitutions approved by their respective bodies. An examination of the original manuscripts proves that the printed lists of signers are inaccurate. In fact only fifty-one Democrats and fifty-three Republicans signed the several documents. Mr. H. C. Wait, whose name appears in the printed lists of Democratic signers, did not append his signature. Other Democrats who did not sign were D. A. J. Baker and Wm. H. Taylor of Ramsey county, and Charles G. Leonard of Washington county. Both Wait and Taylor were strong opponents of the compromise constitution. Six Republicans, namely Frederick Ayer, H. W. Holley, Aaron G. Hudson, Joseph Peckham, S. W. Putnam, and Charles B. Sheldon, also did not sign the constitution, although their names appear in the printed Republican list. Four of these men were probably absent from the final sessions, Peckham was present and voted for the compromise constitution, and Holley voted against it.

Alphabetical lists of the acting members of the two conventions are given here with such explanations of their claims to membership as seem to be needed. All members whose names are printed without special notation were the holders of undisputed credentials and signed the constitution at the end of the proceedings. The asterisk (*) indicates a member who did not sign the constitution. The dagger (†) indicates a member who held credentials but whose right to sit in the convention was disputed. The double dagger (‡) indicates a member who was given a seat despite the fact that he held no credentials. The letter P denotes a member from Pembina, and the letter F a federal office-holder; objection was raised by the Republicans to either of these groups of men sitting in the convention. The names of the signers of the constitution as given in the appended lists are faithful reproductions in the matter of spelling, in the use of initials, and in the abbreviation of given names, of the signatures at the end of the several manuscript versions of the constitution.

A. MEMBERS OF THE DEMOCRATIC WING OF THE CONVENTION

A. E. Ames
Michael E. Ames
‡Thomas H. Armstrong
Francis Baasen
Henry G. Bailly
*D. A. J. Baker
R. H. Barrett
Geo. L. Becker
Joseph R. Brown
Daniel J. Burns
Josiah Burwell
Chas. J. Butler
Escaviere Cantell (P)
‡Charles L. Chase (F)
Gold T. Curtis
W. A. Davis
James C. Day
Lafayette Emmett (F)
Paul Faber
Chas. E. Flandrau (F)
Newington Gilbert
David Gilman
W. A. Gorman
William Holcombe
Jerome Jerome (P)
Andrew Keegan
Robert Kennedy
W. W. Kingsbury
‡W. M. Lashells
*Charles G. Leonard
James McFetridge (P)
William B. McGrorty
William R. McMahan
‡B. B. Meeker
Wm. P. Murray
Patrick Nash
James S. Norris
John S. Prince
Jos. Rolette (P)
R. H. Sanderson
Henry N. Setzer
James C. Shepley
M. Sherburne
Henry H. Sibley
E. C. Stacy
‡O. W. Streeter
Wm. Sturgis
J. H. Swan
*William H. Taylor
John W. Tenvoorde
‡Calvin A. Tuttle
Louis Vasseure (P)
*H. C. Wait
Frank Warner
J. P. Wilson (P)

B. MEMBERS OF THE REPUBLICAN WING OF THE CONVENTION

Cyrus Aldrich
John A. Anderson
*Frederick Ayer
St. A. D. Balcombe
Benj. C. Baldwin
R. L. Bartholomew
Erastus N. Bates
H. A. Billings
Thos. Bolles
A. H. Butler
Peter A. Cederstam
John Cleghorn
†Charles A. Coe
Amos Coggswell
N. P. Colburn
A. W. Coombs
Edwin Page Davis
David D. Dickerson
William J. Duley
Henry Eschle
W. H. C. Folsom
Thomas Foster
Thos. J. Galbraith
Charles Gerrish
†D. M. Hall
Charles Hanson
Simeon Harding
Wentworth Hayden
*H. W. Holley
*Aaron G. Hudson
S. A. Kemp
David L. King
Charles F. Low
†Robert Lyle
James A. McCan
Charles McClure
Lewis McKune
Frank Mantor
B. E. Messer
W. H. Mills
David Morgan
†John H. Murphy
John W. North
*Joseph Peckham
Oscar F. Perkins
Boyd Phelps
†*S. W. Putnam
N. B. Robbins, Jr.
William F. Russell
†David A. Secombe
‡*Charles B. Sheldon
T. Dwight Smith
L. K. Stannard
C. W. Thompson
Alanson B. Vaughan
Lucius C. Walker
Geo. Watson
Thomas Wilson
Ph. Winel

APPENDIX 3

TABLE OF PROPOSED AMENDMENTS[1]

Number of amendment In order of proposal	Citation		Provision of constitution to be amended		Purpose of amendment	Adopted or rejected	Vote on amendment		Total vote at election[2]
	Sess. Laws	Chap.	Art.	Sec.			Yes	No	
1	1857-58	1	9	10	To authorize $5,000,000 railroad loan.	A	25,023	6,733	(Special election.)
2	1857-58	2	5	7	To establish state government May 1, 1858.	A	([3])		
3	1860	22	4	1	To limit legislative sessions to sixty days.	A	19,785	442	Presidential vote 34,737
4	1860	Concur. Resolution No. 1	9	2, 10	To require popular approval of tax to pay railroad bonds; to repeal the $5,000,000 amendment.	A	18,648	743	Presidential vote 34,737
	1861	No amendments were proposed.							
	1862	No amendments were proposed.							
	1863	No amendments were proposed.							
	1864	No amendments were proposed.							
5	1865	57	7	1	To authorize negroes to vote.	R	12,135	14,651	For Governor 31,160
	1866	No amendments were proposed.							
6	1867	25	7	1	To authorize negroes to vote.	R	27,479	28,794	For Governor 64,376
7	1867	118	9	4	To subject shares in state and national banks to state taxation.	R	8,742	34,351	For Governor 64,376
8	1868	106	7	1	To authorize negroes to vote.	A	39,493	30,121	Presidential vote 71,818
9	1868	107	1	7	To abolish requirement of grand jury.	R	14,763	30,544	Presidential vote 71,818
10	1868	108	15	Add § 6	To authorize sale of 500,000 acres of internal improvement lands and investment of proceeds in state or national securities.	R	19,398	28,729	Presidential vote 71,818
11	1869	50	11	Add § 7	To abolish Manomin county.	A	13,392	1,671	For Governor 54,525
12	1869	51	9	1	To authorize special assessments for local improvements.	A	26,636	2,560	For Governor 54,525
13	1870	21	10	3	To exempt holders of railroad stock from double liability.	R	7,446	11,210	(Legislative election)
14	1871	18	4	Add § 32(a)	To require popular approval of changes in railroad gross earnings tax law.	A	41,814	9,216	For Governor 78,172
15	1871	19	9	Add § 14	To authorize state loan for asylum buildings.	R	6,724	40,797	For Governor 78,172

16	1872	11	9	Add § 14(a)	To authorize state loan for asylum buildings.	A	29,158	26,881	Presidential vote 90,919
17	1872	12	10	3	To exempt stockholders in manufacturing or mechanical businesses from double liability.	A	23,091	21,794	Presidential vote 90,919
18	1872	13	9	Add § 14(b)	To restrict issuance of county, town, and municipal bonds to aid railroads.	A	27,916	7,796	Presidential vote 90,919
19	1872	14	4	Add § 32(b)	To provide for sale of internal improvement lands.	A	55,438	4,331	Presidential vote 90,919
20	1873	3	4	1	To provide for biennial sessions of legislature.	R	14,007	31,729	For Governor 77,057
21	1873	3	4	24	To extend terms of representatives and senators to two and four years, respectively.	R	11,675	24,331	For Governor 77,057
22	1873	3	5	2	To provide for state canvassing board.	R	12,116	25,694	For Governor 77,057
23	1873	4	9	12	To provide more effectively for the safe-keeping of public funds.	A	27,143	5,438	For Governor 77,057
	1874	No amendments were proposed.							
24	1875	1	6	4	To provide for an indefinite number of judges in each judicial district.	A	22,560	18,534	For Governor 84,017
25	1875	2	7	Add § 8	To authorize legislature to grant women the suffrage in school affairs.	A	24,340	19,468	For Governor 84,017
26	1875	3	8	2	To prescribe manner in which school funds could be invested.	A	28,755	10,517	For Governor 84,017
27	1875	4	10	3	To establish single liability for stockholders in ordinary business corporations.	R	16,349	25,858	For Governor 84,017
28	1876	1	4	11	To authorize governor to veto items of appropriation bills.	A	47,302	4,426	Presidential vote 123,931
29	1876	2	10	3	To establish single liability for stockholders in all corporations except banks.	R	21,721	22,830	Presidential vote 123,931

[1] The material for this table, while derived from a variety of sources, came chiefly from the Session Laws, 1857-1919, the Legislative Manuals, 1869-1919, and the House Journals, 1866-1878.

[2] The "total vote" recorded in this column for the years up to and including 1898 is put in only to facilitate comparisons. It was not until the election of 1900 that it became necessary to procure the favorable vote of a majority of all the voters voting at the election to carry an amendment. The figures on the total vote for governor and total presidential vote were taken mainly and without verification from the 1919 Legislative Manual, pp. 284-86. As therein recorded the vote does not include the small number of votes cast for the least important candidates, and in any case it will be understood that the total vote for governor or the total presidential vote is always somewhat less than the "total number of ballots cast and counted" at the election. It is the latter figure which is today taken as the basis for determining whether an amendment has been adopted and which is given in this column for the elections from 1902 to 1920, inclusive.

[3] While the vote was light, this amendment seems to have carried. It appears, however, that its adoption was not proclaimed and it is possible the vote was not canvassed. No official report of the vote has been found.

TABLE OF PROPOSED AMENDMENTS—Continued

Number of amendment In order of proposal	Citation Sess. Laws	Chap.	Provision of constitution to be amended Art.	Sec.	Purpose of amendment	Adopted or rejected	Vote on amendment Yes	No	Total vote at election
30	1876	3	6	3	To authorize district judges to sit on supreme bench when supreme court justices disqualified.	A	41,069	6,063	Presidential vote 123,931
31	1877	1	4	1	To establish biennial sessions of legislature.	A	37,995	20,833	For Governor 98,614
32	1877	1	4	24	To extend terms of representatives and senators to two and four years, respectively.	A	33,072	25,099	For Governor 98,614
33	1877	1	5	2	To provide for state canvassing board.	A	36,072	21,814	For Governor 98,614
34	1877	2	7	Add § 9	To authorize women to vote in local option elections.	R	26,468	32,963	For Governor 98,614
35	1877	3	8	3	To prohibit use of state school funds to support sectarian schools.	A	36,780	16,667	For Governor 98,614
36	1877	4	10	3	To establish single liability for stockholders in all corporations except banks.	R	24,415	26,020	For Governor 98,614
37	1877	5	4	32(b)	To authorize sale of internal improvement lands and use of proceeds to pay railroad bonds.	R			For Governor 98,614
	1878	No amendments were proposed.							
38	1879	1	9	Add § 15	To restrict issuance of county, town, and municipal bonds to aid railroads.	A	54,810	1,700	For Governor 99,048
39	1881	1	9	1	To authorize levy of water-mains assessments on a frontage basis.	A	35,019	18,320	For Governor 102,193
40	1881	2	4	1	To remove time limitation from sessions of legislature.	R			For Governor 102,193
41	1881	2	4	7	To regulate compensation of legislators.	R			For Governor 102,193
42	1881	3	4	Add § 33, § 34	To prohibit special legislation on certain subjects.	A	56,491	8,369	For Governor 102,193
43	1881	4	8	2	To provide for sale of swamp lands and appropriation of proceeds of swamp land funds.	A	51,903	8,440	For Governor 102,193
	1881	(Special session)			No amendments were proposed.				

44	1883	1	5	5	To make auditor's term four years, to conform to system of biennial elections.	A	74,375	24,359	For Governor 130,713
45	1883	2	7	Add § 9	To establish the official year and to provide for a system of biennial elections.	A	75,782	24,082	For Governor 130,713
46	1883	3	6	2	To make term of clerk of supreme court four instead of three years.	A	73,565	24,016	For Governor 130,713
47	1883	3	6	3	To make terms of justices of supreme court six instead of seven years.	A	73,565	24,016	For Governor 130,713
48	1883	3	6	4	To make terms of district judges six instead of seven years.	A	73,565	24,016	For Governor 130,713
49	1885	1	8	Add § 5	To provide for loans of state school funds to counties and school districts.	A	131,533	17,914	For Governor, 1886 220,558
50	1887	1	4	Add § 35	To prohibit the monopolization of the markets of food products.	A	194,932	13,064	For Governor, 1888 261,632
51	1887	2	1	12	To guarantee the payment of liens of workmen and material-men out of exempted property.	A	153,908	48,649	For Governor, 1888 261,632
52	1887	3	4	1	To extend biennial sessions of legislature to ninety days each.	A	150,003	52,946	For Governor, 1888 261,632
53	1889	1	1	4	To provide for verdicts by five sixths of jury in civil cases.	A	66,929	41,341	For Governor, 1890 240,892
54	1891	1	4	33	To extend and strengthen the prohibition against special legislation.	A	77,614	19,583	For Governor, 1892 255,921
55	1891	2	9	3	To authorize various gross earnings taxes and a tonnage tax on iron ore.	R	53,372	82,910	For Governor, 1892 255,921
56	1893	1	9	1	To authorize inheritance taxes.	A	108,332	41,242	For Governor, 1894 296,249
57	1895	2	5	4	To take pardoning power from governor and to confer it on a pardon board.	A	130,354	45,097	For Governor, 1896 337,229
58	1895	3	7	1	To prohibit aliens from voting.	A	97,980	52,454	For Governor, 1896 337,229
59	1895	4	4	Add § 36	To authorize home rule for cities.	A	107,086	58,312	For Governor, 1896 337,229
60	1895	5	1	13	To require compensation for property destroyed or damaged for public use.	A	101,188	56,839	For Governor, 1896 337,229
61	1895	6	8	Add § 6	To permit cities, towns, and villages, as well as counties and school districts, to borrow school and university funds.	A	127,151	36,134	For Governor, 1896 337,229

TABLE OF PROPOSED AMENDMENTS—Continued

Number of amendment In order of proposal	Citation		Provision of constitution to be amended		Purpose of amendment	Adopted or rejected	Vote on amendment		Total vote at election
	Sess. Laws	Chap.	Art.	Sec.			Yes	No	
62	1895	7	9	Add §	To provide flexible system for taxing large corporations.	A	163,694	42,922	For Governor, 1896 337,229
63	1897	175	7	8	To permit women to vote for and serve on library boards.	A	71,704	43,660	For Governor, 1898 252,562
64	1897	185	14	1	To make it more difficult to amend constitution.	A	69,760	32,881	For Governor, 1898 252,562
65	1897	280	4	36	To amend the municipal home rule section.	A	68,754	32,068	For Governor, 1898 252,562
66	1897	333	9	Add § 16	To provide state road and bridge fund.	A	70,043	38,017	For Governor, 1898 252,562
67	1899	92	8	6	To increase debt limit of municipalities borrowing permanent school funds.	R			For Governor, 1900 314,181
68	1901	p. iii	9	16	To increase state road and bridge tax, and to eliminate restrictions on expenditure of fund.	R	114,969	23,948	276,071
69	1901	p. iv	8	6	To increase debt limit of municipalities borrowing permanent school funds.	R	116,766	20,777	276,071
70	1902	1 Extra sess.	9	1, 2, 3	To simplify the taxing provisions of the constitution.	R	124,584	21,251	276,071
71	1903	25	8	6	To increase debt limit of municipalities borrowing school and university funds.	A	190,718	39,334	322,692
72	1903	269	1	7	To abolish the requirement of a grand jury.	A	164,055	52,152	322,692
73	1905	168	9	1, 2, 3, 4, and 1895 amendment	To simplify the taxing provisions by a "wide open" section.	A	156,051	46,982	284,366
74	1905	212	9	16	To increase state road and bridge tax, and to reduce restrictions on expenditure of funds.	R[4]	141,870	49,232	284,366
75	1905	283	1	Add § 18	To permit farmers to sell their produce without licenses.	A	190,897	34,094	284,366
76	1907	477	9	1	To limit the exemption of church property from taxation to that "used for religious purposes."	R	134,141	65,776	355,263

[4] In subsequent litigation this amendment was declared to have been adopted.

77	1907	478	9	16	To permit unlimited state taxation for road and bridge purposes.	R	154,226	56,557	355,263
78	1907	479	9	Add § 17	To authorize state hail insurance.	R	137,710	61,084	355,263
79	1907	480	7	7	To authorize legislature to establish educational qualifications for county superintendents of schools.	R	169,785	48,114	355,263
80	1909	506	9	16	To permit state to assume half the cost of any road or bridge project.	A	159,746	44,387	310,165
81	1909	507	9	11	To repeal the requirement as to publication of treasurer's report annually in a St. Paul newspaper and also in the biennial session laws.	R	123,787	51,650	310,165
82	1909	508	9	Add § 17	To authorize state hail insurance.	R	108,926	63,205	310,165
83	1909	509	4	23	To authorize reapportionment of legislative representation at any time.	R	95,181	61,520	310,165
84	1909	510	9	Add § 18	To authorize and require an annual state tax for reforestation work.	R	100,168	63,962	310,165
85	1909	511	9	Add § 17a	To authorize tax exemptions to encourage reforestation.	R	87,943	73,697	310,165
86	1911	390	9	16	To authorize a one mill state tax for roads and bridges, and to permit state to assume entire cost of any project.	A	195,724	51,135	349,678
87	1911	391	9	Add § 17	To authorize state hail insurance.	R	145,173	60,439	349,678
88	1911	392	8	6	To authorize investment of school and university funds in first mortgages on improved farms.	R	168,440	39,483	349,678
89	1911	393	4	36	To amend the municipal home rule clause to authorize commission government and for other purposes.	R	157,086	41,971	349,678
90	1911	394	7	7	To authorize legislature to establish educational qualifications for county superintendents of schools.	R	167,983	36,584	349,678
91	1911	395	4	2	To limit size of state senate and number of senators from any county.	R	122,457	77,187	349,678
	1912		(Extra session)		No amendments were proposed.				
92	1913	584	4	1	To establish the initiative and referendum.	R	168,004	41,577	356,906
93	1913	585	6	2	To increase number of justices of supreme court, and to authorize the court to appoint its clerk.	R	127,352	68,886	356,906

TABLE OF PROPOSED AMENDMENTS—Continued

Number of amendment In order of proposal	Citation Sess. Laws	Chap.	Provision of constitution to be amended Art.	Sec.	Purpose of amendment	Adopted or rejected	Vote on amendment Yes	No	Total vote at election
94	1913	586	8	2	To authorize a revolving fund for improving state school and swamp lands.	R	162,951	47,906	356,906
95	1913	587	9	11	To repeal the requirement as to publication of treasurer's report annually in a St. Paul newspaper and also in the biennial session laws.	R	131,213	58,827	356,906
96	1913	588	8	6	To authorize investment of school and university funds in first mortgages on improved farms.	R	159,531	38,145	356,906
97	1913	589	6	7	To extend terms of probate judges to four years.	R	128,601	64,214	356,906
98	1913	590	4	2	To limit size of state senate and number of senators from any county.	R	98,144	84,436	356,906
99	1913	591	9	Add § 17a	To authorize state bounties for reforestation.	R	108,352	63,782	356,906
100	1913	592	8	Add § 7	To authorize certain public lands to be set aside as state forests.	A	178,954	44,033	356,906
101	1913	593	7	Add § 10	To authorize the recall by the voters of "every public official in Minnesota, elective or appointive."	R	139,801	44,961	356,906
102	1913	594	9	Add § 18	To authorize special dog taxes and use of proceeds to compensate owners of animals injured by dogs.	R	136,671	59,786	356,906
103	1915	379	8	2	To authorize a revolving fund for improving state school and swamp lands.	A	240,975	58,100	416,215
104	1915	380	8	6	To authorize investment of school and university funds in first mortgages on improved farms.	A	211,589	56,147	416,215
105	1915	381	9	Add § 17	To authorize the state to mine ore under public waters.	R	183,597	64,255	416,215
106	1915	382	6	2	To increase number of justices of supreme court, and to authorize the court to appoint its own clerk.	R	130,363	108,002	416,215

107	1915	383	4	11	To authorize the governor to cut down items in appropriation bills.	R	136,700	83,324	416,215
108	1915	384	1	13	To authorize condemnation of private lands for construction of private drainage ditches.	R	132,741	97,432	416,215
109	1915	385	4	1	To establish the initiative and referendum.	R	187,711	51,544	416,215
110	1915	386	6	7	To extend terms of probate judges to four years.	R	186,847	72,361	416,215
111	1917	515	15	Add § 6	To prohibit the manufacture and the sale of liquor.	R	189,614	173,665	380,604
112	1919	530	Add art. 16		To provide a state trunk highway system.	A	526,936	199,603	797,945
113	1919	531	6	7	To extend terms of probate judges to four years.	A	446,959	171,414	797,945
114	1919	532	9	1	To authorize state income tax and to change provisions as to property exempt from taxes.	R	331,105	217,558	797,945
	1919	(Extra session)			No amendments were proposed.				

APPENDIX 4

THE NORTHWEST ORDINANCE

An ordinance for the government of the territory of the United States northwest of the river Ohio.

U. S. Rev. Stat., 1878, 2d ed., pp. 13-16.

SECTION 1. Be it ordained by the United States in congress assembled, That the said territory, for the purpose of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of congress, make it expedient.

SEC. 2. Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among, their children and the descendants of a deceased child in equal parts, the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers, shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

SEC. 3. Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

SEC. 4. There shall be appointed from time to time, by congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the secretary of congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their office; and their commissions shall continue in force during good behavior.

SEC. 5. The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to congress from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

SEC. 6. The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by congress.

SEC. 7. Previous to the organization of the general assembly the governor shall appoint such magistrates, and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

SEC. 8. For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

SEC. 9. So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: Provided, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature: Provided, That no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee-simple, two hundred acres of land within the same: Provided also, That a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

SEC. 10. The representatives thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

SEC. 11. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress; any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected the governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons, resident in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress, five of whom congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to congress,

one of whom congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of the council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to congress, five of whom congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly when, in his opinion, it shall be expedient.

SEC. 12. The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office; the governor before the president of congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a right of debating, but not of voting, during this temporary government.

SEC. 13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest:

SEC. 14. It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE I

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territories.

ARTICLE II

The inhabitants of the said territory shall always be entitled to the benefits of the writs of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, bona fide, and without fraud previously formed.

ARTICLE III

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ARTICLE IV

The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted, or to be contracted, and a proportional part of the expenses of government to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district, or districts, or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of those districts, or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ARTICLE V

There shall be formed in the said territory not less than three nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western state, in the said territory, shall be bounded by the Mississippi, the Ohio, and the Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: Provided, however, And it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the Congress of the United States, on

an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government: Provided, The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles, and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

ARTICLE VI

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: Provided always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby, repealed, and declared null and void.

Done by the United States, in congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.

APPENDIX 5

ORGANIC ACT

9 U. S. Statutes at Large, 403-9; 30 Congress, II sess., ch. 121.

CHAP. CXXI.—An Act to establish the Territorial Government of Minnesota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, all that part of the territory of the United States which lies within the following limits, to wit: Beginning in the Mississippi River, at the point where the line of forty-three degrees and thirty minutes of north latitude crosses the same, thence running due west on said line, which is the northern boundary of the state of Iowa, to the north-west corner of the said state of Iowa, thence southerly along the western boundary of said state to the point where said boundary strikes the Missouri River, thence up the middle of the main channel of the Missouri River to the mouth of the White Earth River, thence up the middle of the main channel of the White Earth River to the boundary line between the possessions of the United States and Great Britain; thence east and south of east along the boundary line between the possessions of the United States and Great Britain to Lake Superior; thence in a straight line to the northernmost point of the state of Wisconsin in Lake Superior; thence along the western boundary line of said state of Wisconsin to the Mississippi River; thence down the main channel of said river to the place of beginning, be, and the same is hereby, erected into a temporary government by the name of the territory of Minnesota: Provided, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States.

SEC. 2. And be it further enacted, That the executive power and authority in and over said territory of Minnesota shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs; he may grant pardons for offences against the laws of said territory, and reprieves for offences against the laws of the United States until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, and shall take care that the laws be faithfully executed.

SEC. 3. And be it further enacted, That there shall be a secretary of said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first day of December in each year, to the president of the United States, and, at the same time, two copies of the laws to the speaker of the house of representatives, and the president of the senate, for the use of congress. And in case of the death, removal, resignation, or necessary absence of the governor from the territory, the secretary shall be, and he is hereby, authorized

and required to execute and perform all the powers and duties of the governor during such vacancy or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

SEC. 4. And be it further enacted, That the legislative power and authority of said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall, at its first session, consist of eighteen members, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. The number of councillors and representatives may be increased by the legislative assembly, from time to time, in proportion to the increase of population: Provided, That the whole number shall never exceed fifteen councillors and thirty-nine representatives. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and representatives, giving to each section of the territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the territory to be taken, and the first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected having the highest number of votes in each of said council districts for members of the council shall be declared by the governor to be duly elected to the council; and the person or persons authorized to be elected having the greatest number of votes for the house of representatives, equal to the number to which each county or district shall be entitled, shall be declared by the governor to be duly elected members of the house of representatives: Provided, That in case of a tie between two or more persons voted for, the governor shall order a new election to supply the vacancy made by such a tie. And the persons thus elected to the legislative assembly shall meet at such a place, and on such day, as the governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: Provided, that no one session shall exceed the term of sixty days.

SEC. 5. And be it further enacted, That every free white male inhabitant above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: Provided, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the constitution of the United States and the provisions of this act.

SEC. 6. And be it further enacted, That the legislative power of the territory shall extend to all rightful subjects of legislation, consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher

than the lands or other property of residents. All the laws passed by the legislative assembly and governor shall be submitted to the congress of the United States, and, if disapproved, shall be null and of no effect.

SEC. 7. And be it further enacted, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory of Minnesota. The governor shall nominate, and, by and with the advice and consent of the legislative council, appoint, all officers not herein otherwise provided for; and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the next session of the legislative assembly.

SEC. 8. And be it further enacted, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

SEC. 9. And be it further enacted, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: Provided, That the justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law, but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; and each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal in all such cases shall be made to the supreme court of said territory,

the same as in other cases. The said clerk shall receive, in all such cases, the same fees which the clerks of the district courts of the late Wisconsin territory received for similar services.

SEC. 10. And be it further enacted, That there shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the late territory of Wisconsin received. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the late territory of Wisconsin; and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

SEC. 11. And be it further enacted, That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary, to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation, before the district judge, or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation, before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted, by the person taking the same, to the secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs. The chief justice and associate justices shall each receive an annual salary of eighteen hundred dollars. The secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be paid quarter-yearly, at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof and three dollars each for every twenty miles travel in going to and returning from the said sessions, estimated according to the nearest usually traveled route. There shall be appropriated, annually, the sum of one thousand dollars, to be expended by the governor to defray the contingent expenses of the territory; and there shall also be appropriated, annually, a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 12. And be it further enacted, That the inhabitants of the said territory shall be entitled to all the rights, privileges, and immunities heretofore granted and secured to the territory of Wisconsin and to its inhabitants; and the laws in force in the territory

of Wisconsin at the date of the admission of the state of Wisconsin shall continue to be valid and operative therein, so far as the same be not incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed, by the governor and legislative assembly of the said territory of Minnesota; and the laws of the United States are hereby extended over and declared to be in force in said territory, so far as the same, or any provision thereof, may be applicable.

SEC. 13. And be it further enacted, That the legislative assembly of the territory of Minnesota shall hold its first session at St. Paul; and at said first session the governor and legislative assembly shall locate and establish a temporary seat of government for said territory at such place as they may deem eligible; and shall, at such time as they shall see proper, prescribe by law the manner of locating the permanent seat of government of said territory by a vote of the people. And the sum of twenty thousand dollars, out of any money in the treasury not otherwise appropriated, is hereby appropriated and granted to said territory of Minnesota, to be applied, by the governor and legislative assembly, to the erection of suitable public buildings at the seat of government.

SEC. 14. And be it further enacted, That a delegate to the house of representatives of the United States, to serve for the term of two years, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives. The first election shall be held at such times and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly.

SEC. 15. And be it further enacted, That all suits, process, and proceedings, civil and criminal, at law and in chancery, and all indictments and informations, which shall be pending and undetermined in the courts of the territory of Wisconsin, within the limits of said territory of Minnesota, when this act shall take effect, shall be transferred to be heard, tried, prosecuted, and determined in the district courts hereby established, which may include the counties or districts where any such proceedings may be pending. All bonds, recognizances, and obligations of every kind whatsoever, valid under the existing laws within the limits of said territory, shall be valid under this act; and all crimes and misdemeanors against the laws in force within said limits may be prosecuted, tried, and published in the courts established by this act; and all penalties, forfeitures, actions, and causes of actions, may be recovered under this act, the same as they would have been under the laws in force within the limits composing said territory at the time this act shall go into operation.

SEC. 16. And be it further enacted, That all justices of the peace, constables, sheriffs, and all other judicial and ministerial officers, who shall be in office within the limits of said territory when this act shall take effect, shall be, and they are hereby, authorized and required to continue to exercise and perform the duties of their respective offices as officers of the territory of Minnesota, temporarily, and until they, or others, shall be duly appointed and qualified to fill their places in the manner herein directed, or until their offices shall be abolished.

SEC. 17. And be it further enacted, That the sum of five thousand dollars be, and the same is hereby appropriated, out of any moneys in the treasury not otherwise appropriated, to be expended by and under the direction of the said governor of the territory of Minnesota, in the purchase of a library, to be kept at the seat of government, for the use of the governor, legislative assembly, judges of the supreme court, secretary, marshal, and attorney of said territory, and such other persons and under such regulations as shall be prescribed by law.

SEC. 18. And be it further enacted, That when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

SEC. 19. And be it further enacted, That temporarily, and until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and the places of holding the courts, as to them shall seem proper and convenient.

SEC. 20. And be it further enacted, That every bill which shall or may pass the council and house of representatives shall, before it becomes a law, be presented to the governor of the territory; if he approve, he shall sign it, but if not, he shall return it, with his objections to be entered at large upon their journal, and proceed to reconsider. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall also be reconsidered, and if approved by two-thirds of that house, it shall become a law; but in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly, by adjournment prevent it; in which case it shall not become a law.

Approved March 3, 1849.

APPENDIX 6

ENABLING ACT

11 U. S. Statutes at Large, 166-67; 34 Congress, II sess., ch. 60

CHAP. LX.—An Act to authorize the People of the Territory of Minnesota to form a Constitution and State Government, preparatory to their Admission in the Union on an equal footing with the original States.

Be it enacted by the senate and house of representatives of the United States of America in Congress assembled, That the inhabitants of that portion of the territory of Minnesota which is embraced within the following limits, to wit: Beginning at the point in the centre of the main channel of the Red River of the North, where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux River; thence [up] the main channel of said river to Lake Travers; thence up the centre of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone Lake; thence through its centre to its outlet; thence by a due south line to the north line of the state of Iowa; thence east along the northern boundary of said state to the main channel of the Mississippi River; thence up the main channel of said river, and following the boundary line of the state of Wisconsin, until the same intersects the Saint Louis River; thence down said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and the British possessions; thence up Pigeon River, and following said dividing line to the place of beginning—be and they are hereby authorized to form for themselves a constitution and state government, by the name of the state of Minnesota, and to come into the Union on an equal footing with the original states, according to the federal constitution.

SEC. 2. And be it further enacted, That the said state of Minnesota shall have concurrent jurisdiction on the Mississippi and all other rivers and waters bordering on the said state of Minnesota, so far as the same shall form a common boundary to said state and any other state or states now or hereafter to be formed or bounded by the same; and said river and waters, and the navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said state as to all other citizens of the United States, without any tax, duty, impost, or toll, therefor.

SEC. 3. And be it further enacted, That on the first Monday in June next, the legal voters in each representative district, then existing within the limits of the proposed state, are hereby authorized to elect two delegates for each representative to which said district may be entitled according to the apportionment for representatives to the territorial legislature, which election for delegates shall be held and conducted, and the returns made, in all respects in conformity with the laws of said territory regulating the election of representatives; and the delegates so elected shall assemble at the capitol of said territory on the second Monday in July next, and first determine, by a vote, whether it is the wish of the people of the proposed state to be admitted into the Union at that time; and if so, shall proceed to form a constitution, and take all necessary steps for the establishment of a state government, in conformity with the federal constitution, subject to the approval and ratification of the people of the proposed state.

SEC. 4. And be it further enacted, That in the event said convention shall decide in favor of the immediate admission of the proposed state into the union, it shall be the

duty of the United States' marshal for said territory to proceed to take a census or enumeration of the inhabitants within the limits of the proposed state, under such rules and regulations as shall be prescribed by the secretary of the interior, with the view of ascertaining the number of representatives to which said state may be entitled in the congress of the United States; and said state shall be entitled to one representative and such additional representatives as the population of the state shall, according to the census, show it would be entitled to according to the present ratio of representation.

SEC. 5. And be it further enacted, That the following propositions be, and the same are hereby offered to the said convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory on the United States and upon the said state of Minnesota, to wit:

First. That sections numbered sixteen and thirty-six in every township of public lands in said state, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said state for the use of schools.

Second. That seventy-two sections of land shall be set apart and reserved for the use and support of a state university, to be selected by the governor of said state, subject to the approval of the commissioner of the general land-office, and to be appropriated and applied in such manner as the legislature of said state may prescribe for the purpose aforesaid, but for no other purpose.

Third. That ten entire sections of land, to be selected by the governor of said state, in legal subdivisions, shall be granted to said state for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the legislature thereof.

Fourth. That all salt springs within said state, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said state for its use; the same to be selected by the governor thereof within one year after the admission of said state, and when so selected, to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: Provided, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall, by this article, be granted to said state.

Fifth. That five per centum of the net proceeds of sales of all public lands lying within said state, which shall be sold by congress after the admission of the said state into the union, after deducting all the expenses incident to the same, shall be paid to said state, for the purpose of making public roads and internal improvements, as the legislature shall direct: Provided, The foregoing propositions herein offered are on the condition, that the said convention which shall form the constitution of said state shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that said state shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations congress may find necessary for securing the title in said soil to bona fide purchasers thereof; and that no tax shall be imposed on lands belonging to the United States, and that in no case shall non-resident proprietors be taxed higher than residents.

Approved February 26, 1857.

APPENDIX 7

TERRITORIAL ACT PROVIDING FOR EXPENSES OF CONVENTION

An Act to provide for the payment of the expenses of the convention to form a constitution for the State of Minnesota, in accordance with an act of congress, approved March 3, 1857.

Be it enacted by the Legislative Assembly of the Territory of Minnesota:

SECTION 1. That on the first Monday of June next, the qualified electors of the Territory of Minnesota, shall assemble at their respective places appointed by law for the opening of the polls, and shall there proceed to elect by ballot, certain delegates for a Convention to form a Constitution and State Government for this Territory.

SEC. 2. Every Council District in this Territory shall elect two Delegates for every Councillor it may be entitled to in the Legislative Council, and every Representative District shall elect two Delegates for every member they may be entitled to in the House of Representatives; Provided, That whenever any District has been subdivided in order to elect their Representative in the Legislative Assembly, the same subdivision shall govern in the election of Delegates to the Constitutional Convention.

SEC. 3. That there be appropriated, out of any money in the Territorial Treasury, unappropriated, for mileage and per diem of members, officers and secretaries, and for stationery, the sum of thirty thousand dollars.

SEC. 4. That the members, officers, and Secretaries of said Convention shall be entitled to the same mileage and per diem as members of the Legislative Assembly; Provided, That the presiding officer shall be entitled to three dollars per day extra.

SEC. 5. The compensation herein provided, for the members, officers and secretaries, shall be certified by the presiding officer, and attested by the Secretary, as well as all claims for stationery, printing, and all other incidental expenses, which said certificates, when so certified, shall be sufficient evidence to the Territorial Treasurer of each persons claim.

SEC. 6. The qualifications of Delegates to the Constitutional Convention shall be the same as the qualifications for members of the House of Representatives or the Legislative Assembly.

SEC. 7. This Act shall be in force from and after its passage.

Approved—May twenty-third, one thousand eight hundred and fifty-seven.

APPENDIX 8

ACT OF ADMISSION

11 U. S. Statutes at Large, 285; 35 Congress, I sess., ch. 31.

CHAP. XXXI.—An Act for the Admission of the State of Minnesota into the Union.

Whereas an act of congress was passed February twenty-six, eighteen hundred and fifty-seven, entitled "An act to authorize the people of the territory of Minnesota to form a constitution and state government preparatory to their admission into the union on an equal footing with the original states;" and whereas the people of said territory did, on the twenty-ninth day of August, eighteen hundred and fifty-seven, by delegates elected for that purpose, form for themselves a constitution and state government, which is republican in form, and was ratified and adopted by the people, at an election held on the thirteenth day of October, eighteen hundred and fifty-seven, for that purpose: therefore

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That the state of Minnesota shall be one, and is hereby declared to be one, of the United States of America, and admitted into the union on an equal footing with the original states in all respects whatever.

SEC. 2. And be it further enacted, That said state shall be entitled to two representatives in congress until the next apportionment of representatives among the several states.

SEC. 3. And be it further enacted, That from and after the admission of the state of Minnesota, as hereinbefore provided, all the laws of the United States which are not locally inapplicable shall have the same force and effect within that state as in other states of the union; and the said state is hereby constituted a judicial district of the United States, within which a district court, with the like powers and jurisdiction as the district court of the United States for the district of Iowa, shall be established; the judge, attorney, and marshal of the United States for the said district of Minnesota shall reside within the same, and shall be entitled to the same compensation as the judge, attorney, and marshal of the district of Iowa: and in all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States, upon any record from the supreme court of Minnesota territory, the mandate of execution or order of further proceedings shall be directed by the supreme court of the United States to the district court of the United States for the district of Minnesota, or to the supreme court of the state of Minnesota, as the nature of such appeal or writ of error may require; and each of those courts shall be the successor of the supreme court of Minnesota territory, as to all such cases, with full power to hear and determine the same, and to award mesne or final process therein.

Approved, May 11, 1858.

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