

On motion of Mr. Pettit, the Senate resolved itself into committee of the whole.

Senator Thompson in the chair.

After some time spent therein the committee arose, and through their chairman reported back certain bills with recommendations as follows :

S. F. No. 170, A bill for an act to amend chapter thirteen of the general statutes, relating to roads, cartways and bridges,

S. F. No. 167, A bill for an act to amend section thirty, of chapter fifty-three. of the general statutes relative to the payment of the debts of deceased persons,

And

S. F. No. 158, A bill for an act to provide for the disposal of unclaimed freight by railroad companies in this State,

To be engrossed for third reading.

S. F. No. 119, A bill for an act to promote immigration,

And

S. F. No. 180, A bill for an act granting certain lands to the Saint Paul, Stillwater and Taylor's Falls railroad company,

With amendments, and to be engrossed as amended for third reading.

The report was amended by striking out the following amendments, reported by the committee of the whole, to

S. F. No. 180, A bill for an act granting certain lands to the Saint Paul, Stillwater and Taylor's Falls railroad company :

That nothing contained in this act shall be so construed as to impair or interfere in any right heretofore granted to the Stillwater and St. Paul Railroad Company.

*Always Provided,* That no part of said lands shall vest in said Company until said company shall have completely constructed their road from original plat of the city of Stillwater on the most direct and feasible route to the city of St. Paul, with the rolling stock thereon.

The report as amended was adopted.

The following communication was received from His Excellency, the Governor :

STATE OF MINNESOTA,

EXECUTIVE DEPARTMENT,

ST. PAUL, February 27, 1871. }

*To the President of the Senate:*

SIR :—I return herewith to the Senate, in which it originated, an act entitled "an act to amend subdivisions fourth and sixth, of section two hundred and nine, of chapter sixty-six of the general statutes of Minnesota, relating to civil actions."

The first section of the act arbitrarily fixes the order and manner in which counsel shall present and argue their causes to the jury. I deem it for the better that some discretion be left to the courts to control the order of procedure in mere matters of practice before them.

according to the nature and circumstances of each case. However, I should not return the bill on this account alone, but I deem the next section still more objectionable.

Section two provides: "That subdivision sixth of said section two hundred and nine of chapter sixty-six of the general statutes be amended so as to read as follows: Sixth—The court may then charge the jury, all of which charge shall be reduced to writing by the court before delivering the same to the jury, and upon the delivery thereof shall file the same with the clerk of the court as one of the papers in the case."

It very frequently, indeed almost always, occurs in cases of any considerable importance, that the evidence is lengthy and complicated; that there are some points upon which it is really contradictory, while there are many others on which it is only apparently so, and may be harmonized and reconciled by a mind accustomed to analyze and weigh testimony; that the jury keep no minutes of the evidence, and after the lapse of several days, which often transpire during the accumulation of testimony and the argument of counsel, find themselves unable to recall, with any clearness, the testimony of any particular witness, and many of the facts proven.

This condition enables unscrupulous and overzealous attorneys to not only misstate the testimony with that positiveness and assurance which often inspires belief and conviction, but also to assume facts to be proven and established which have no foundation in proof. Now suppose this to occur, as it not infrequently does, in a long argument of hours, and sometimes of days, in duration, in which the plaintiff's counsel closes the case just before it becomes the duty of the court to charge the jury—the case must be adjourned to afford the court time to write out a long charge (for nothing less would save the jury from being imposed upon, and subserve the ends of justice) or content himself with such brief and unsatisfactory presentation of the case as he could embody in writing while at the same time conducting the trial or listening to the argument of counsel. Besides, I am fully convinced that there can never be in a written charge that facility of illustration and fullness of presentation by which a capable and upright judge can command the attention and reach the understanding of a jury as in a spoken address.

But it may be said that it is the duty of each attorney to anticipate and correct the other in these particulars, and that it is not the duty of the court to go beyond the presentation of the essential principles of the law involved in the case. It is difficult for lawyers themselves, even those of acuteness and experience, to anticipate all the false constructions and, too often, wilful perversions of testimony and misstatements of fact that an ingenious, skillful and audacious advocate can so make as, if not contradicted, to deceive the jury and procure a false verdict. Then, if the attorney of one party has great tact, skill and experience, while the other client would be better off without any than with the one he has, (as is often the case in the frontier counties where a majority of the bar is made up of young and inexperienced men,) thus enabling the former to gain a great advantage in the trial and presentation of the case. Shall we say that this is an advantage to which

he party who being plaintiff, and thus having an opportunity for the first selection, or from having the pecuniary ability, is able to retain the better lawyer, is justly entitled, although it should result in a verdict adverse to the merits of the case? Courts are instituted not only to administer *law* in the abstract, but to see to it that *justice* prevails in every case and all powers which contribute to that end should be left untrammelled—in full play.

It can perhaps be said upon the other side of this question, that here are judges who cannot be safely entrusted with the exercise of these powers; that such judges sometimes misstate the law, by design or from an intellectual inability to do better, and present the evidence or the facts in a garbled or partial manner, and then from the same causes prevent the aggrieved party from obtaining a truthful record of the charge. I cannot believe that this state of things is so prevalent that the evils arising from it affects the advantage flowing from the free exercise, by upright and capable judges, of this prerogative of the bench, with which it has been armed by the law ever since and wherever the English jury system has prevailed, and which has been found so potent a power in the interests of justice.

The true remedy of the evils complained of is not to be found in bridging the powers of *all* courts, but in putting men of greater legal attainments, and more exalted character, on the bench, and that, perhaps, can never be fully accomplished until an elective judiciary be abandoned and the position bestowed upon men with reference to their fitness for the place, rather than as a reward for the strength which they can contribute to the other candidates in a partizan convention in exchange for their own promotion; or the accident of their belonging to the party of the greatest numerical strength.

Very respectfully,

Your obedient servant,

HORACE AUSTIN,  
Governor.

On motion the rules were suspended, and

S. F. No. 180, A bill for an act granting certain lands to the Saint Paul, Stillwater and Taylor's Falls Railroad Company,

Was read the third time and put upon its passage.

The roll being called, there were yeas 16 and nays 2, as follows:

Those who voted in the affirmative were—

Messrs. Baxter, Becker, Bonniwell, Buck, Case, Chewning, Doran, Hill, Hodges, Lord, Macdonald, Pfaender, Tefft, Thompson, Wait and Young.

Those who voted in the negative were—

Messrs. Buell and Farmer.

So the bill passed and its title was agreed to.

Mr. Baxter moved to reconsider the vote, whereby

S. F. No. 122, A bill for an act to amend an act entitled an act to provide for the collection of taxes in unorganized counties,

Was lost.

Mr. Pettit moved a call of the Senate.