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MR. DOHONEY moved to strike out the word "request" and insert the word "authorize" in the resolution.

MR. MILLS asked the gentleman from Navarro to withdraw his amendment, at is would be impossible to obtain in time, to be of service, the general returns of an election held under the State laws existing. The Convention had done away with the constitutional oath, and if they had the right to order an election they could do it in two days or ten weeks, just as the Convention in North Carolina had done. If the Convention in North Carolina had the right to call an election in ten days, then the Texas Convention could do the same thing, for the Constitution of North Carolina was very much like that of Texas. The people of the Fifteenth Senatorial District asked to be represented, not in part but fully, on that floor, and he hoped they would elect a better man and be represented more competently than they had been at the start. He wished to strike out of Mr. Martin's resolution "in conformity with existing laws" so as to read, "that the said election be ordered by the President of this Convention."

MR. MARTIN said he would accept the amendment, but the amendment, as amended, was lost by a vote of 32 to 41.

The question recurring on Mr. Dohoney's amendment, Mr. Johnson, of Franklin, moved to amend by striking out the word "requested" in the resolution and inserting the word "instructed."

MR. SANSOM moved to lay the amendment on the table, but his motion was lost by a vote of 29 yeas to 49 nays.

MR. WEST explained that "requested" meant about the same as "instructed" or "ordered." The legal effect was the same, and the first expression was the most courteous of the three.

MR. JOHNSON withdrew his amendment.

MR. DOHONEY's amendment was accepted and the resolution of the committee was adopted.

TENTH DAY

THURSDAY, SEPTEMBER 16, 1875¹⁵

MR. MILLS moved to take up the unfinished business of the Convention.

¹⁵The proceedings for this day were taken from the *State Gazette* (Austin), September 17, 1875.

GENERAL L. S. ROSS, of McLennan, moved to reconsider the resolution employing a stenographer.

MR. WRIGHT rose to a question of order. He said the Convention had just refused to employ a stenographer. Mr. Flournoy had moved to reconsider the resolution of refusal, and under that consideration the stenographer was employed. The motion today was to reconsider that consideration. If such a rule were held valid they might move to reconsider and reconsider without end. He referred to Rule 35 of the Rules of the Convention in support of his position.

MR. MILLS thought that if the Journals showed that the House had acted on the motion to reconsider then Mr. Wright's point of order was well taken, otherwise not.

MR. McCORMICK spoke against the employment of a stenographer. He thought it would cost thousands of dollars. He hoped no attempt would be made to force the opposition to appeal from the Chair.

MR. STOCKDALE favored strict adherence to the rules of the Convention. It was assumed that a majority of the Convention desired to get rid of the contract; it was an assumption against the record. They had no vote on the question and were then actually spending as much time in discussing the matter as the stenographer's services would cost the Convention. The rule was that only one consideration could be had on the same question. It might be urged that an amendment had been made to the original resolution by Mr. Mills, but it simply indicated the duty of the stenographer and was not material to the resolution.

MR WEST denied that the employment of a stenographer was being forced upon the Convention. It was a question of little importance, and had been acted upon with more deliberation than any act before that body. He appealed to the delegates to carry out the Rules of Order so that business might be more easily attended to. The amendment of Mr. Mills did not alter the original resolution, and the authorities—Cushing on "Legislative Assemblies," among the rest—said that if the amendment was unimportant a second reconsideration of the original question could not be held.

JUDGE W. P. BALLINGER, of Galveston, was of the opinion that where a motion had been put, voted on, and reconsidered, it was not

in order to repeat the motion; but it was different where an amendment had been adopted. He did not understand that there was any limitation to that rule. He cited instances of voluminous debate of an expensive character in a discussion of the merits of the question as a reason why such expense should be incurred, but did not think they would apply in the case under discussion.

MR. DEMORSE defended the action of the Committee on Printing in a pertinent speech. He had advocated the printing of the debates in a condensed form in the newspapers, and had urged that the papers containing the debates should be placed on the desks of members. His idea was to diffuse information among the people, although he thought that in book form they would be of service only to the legal profession. He submitted an estimate showing that the salary of the stenographic reporter and the publication of the reports in newspaper and volume form would not total together more than \$4,500.

JUDGE REAGAN said that, while he was not in sympathy with those who desired to reconsider, he did not think the question would be a reconsideration of any vote theretofore taken. The question yesterday had been a vote to reconsider the vote adopting the resolution appointing the reporter. Hence, he thought the motion to reconsider was in order. He was anxious to see the debates published in proper form, but not at the expense of the rules of the body.

MR. WEST maintained that the motion to reconsider was not in order, because Mr. Mills' amendment had been engrafted on the original resolution since its first reconsideration. He referred to Cushing and Barclay for authority to support his view.

MR. RUSSELL, of Harrison, supported reconsideration with a short speech.

MR. RUSSELL, of Wood, dissented from the views of Mr. West that Mr. Mills' motion did not change the resolution. He thought that it did, as it specified how the reporter's work was to be done. He opposed the appointment of a reporter on the ground of expense.

MR. J. W. BARNETT, of Parker, said Mr. West's argument referred exclusively to the practice in the British Parliament and in Congress, while the Convention was acting under laws of its own creation.

MR. JACOB WAELDER, of Bexar, argued that if there was no doubt in the mind of the Speaker as to the point of order being well taken, it should be given to the Convention.

MR. STOCKDALE appealed for caution in the decision of the Chair, as it was a question affecting the future government of the Convention. It was not a question whether the motion to reconsider was on a resolution decided either in affirmative or negative, but whether or not it was a reconsideration of the same subject. It had been once considered, and no further consideration could be had, except under suspension of the rule. They had analogous cases in legislative bodies where questions were passed and reported from one House to the other. In such cases a message had been sent to recover possession of the bill or resolution. In this case they had accepted a proposition to make a contract, it had passed from the possession of the Convention, and they could not recover it.

MR. MCLEAN said it was not clear to him whether the President had decided the question of order. If it was a question of order, what was the decision of the Chair.

THE PRESIDENT stated that it was allowable under parliamentary law to permit the expression of views pending a decision by the Chair, though not strictly in order.

MR. MILLS said he could not admit the correctness of the analogy suggested by Mr. Stockdale. There was but one House in this case, and it was the Convention.

MR. FORD maintained that Mr. Mills' amendment was unimportant and did not affect the material part of the resolution. At previous conventions reporters had been appointed, and no such instructions had been given. The report would not be a report unless transcribed into common writing.

THE PRESIDENT said as he understood the point of order made by Mr. Wright, of Lamar, it was on these grounds. The report of the committee contained a resolution to employ Mr. Gibbons. The amendment of Mr. Mills described how the work should be performed. He read Rule 35, as follows:

"After a question shall have been decided in the affirmative or negative, any member who voted with the majority, may on the day on which the vote was taken, or within the next succeeding of actual session, move the reconsideration thereof, unless the resolution,

ordinance, message, report, amendment, or motion, upon which the vote was taken, shall have passed out of the possession of the convention."

Cushing, edition of 1866, had said that if when a motion to reconsider either an affirmative or a negative proposition had prevailed no other motion to reconsider was admissable, but if it had been altered by amendment so as to be no longer the same it might be reconsidered. Barclay, three years later, said: "When a motion to reconsider has been once put and decided, it is not in order to repeat the motion, but it is otherwise where an amendment has been made." It was not declared that the amendment must be material or important. The Chair felt bound by the latest authority. Without doubt the amendment was a substantial and material change, and if he had not felt bound by Cushing he should do so by Barclay, a still later authority. Therefore, he held that the amendment, in the most liberal construction, was a material amendment. He felt convinced that were this not so that the opinion of the gentleman from Bexar, that if any doubt existed it should be given in favor of the State, should have weight. He decided that the point of order was not well taken.

A motion to refer to the Committee on Printing was declared out of order.

MR. WEST moved to postpone until the next day and to make it the special order.

THE PRESIDENT declared Mr. West's motion out of order except the part making it the special order.

MR. WEST's motion was lost by a vote of 14 to 68.

The motion to reconsider then carried by 60 yeas to 23 nays.

THE PRESIDENT said the question then before the Convention was the resolution reported by the special committee to employ a stenographic reporter.

MR. FLOURNOY offered the following as a substitute for the resolution:

Resolved, That the stenographic reporter be employed to report only the debates on the proposed Constitution, or some part thereof; and that the Committee on Printing be instructed to contract with him, at reasonable rates, and also for the publication of same in

some daily newspaper, and for the furnishing of fifteen copies of such newspaper to each member of the Convention.

MR. RUSSELL, of Wood, moved to indefinitely postpone the whole subject matter.

MR. DARNELL said he thought it was unfair to those who might wish to give their constituents some information with regard to the action of the Convention to muzzle the Convention in that way. He hoped the gentleman would withdraw his motion.

MR. RUSSELL withdrew his motion.

MR. DARNELL said he had come to Austin determined to do all in his power to bring retrenchment and reform into the Government and into the Convention. He had also hoped to have an opportunity of giving to his constituents the action of the Convention while it was in progress. Was it the intention of the Convention, not only to muzzle the press, but also to muzzle their own action and to deprive their constituents of a knowledge of their proceedings? He asked the privilege of sending home to his constituents an account of his action and that of every member of the Convention. How were they to know what members were doing? Did they not wish to understand the situation always? He knew it was the wish of his constituents that they should be informed of the work of the Convention. The question of the adoption of the Constitution would soon be up before them, and they would be in the dark regarding members' action, and would not have time to ascertain it. He had hoped the Convention would extend to the people of Texas an account of the action of the body. He was prepared to vote for any object which would accomplish that end. He had been in favor of taking the daily papers, but delegates had objected and said that the people could not read and understand them. He thought they could understand whether they voted yea or nay on any question. He could have sent ten copies of daily papers if he could have obtained no more, and his people could have understood from them the action of the Convention on the various questions. He was deprived of that privilege, and now he appealed to them, for God's sake, to send them some information. If he did so it would have to be at his own expense, and his constituents did not expect that sacrifice of him. He asked the Convention if their constituents should be denied in the matter. If it could be done by a stenographer reporting the

debates in the papers, they would have the opportunity of sending out the results of the action of the Convention, and the people would know that they were doing something. But if the Convention intended to muzzle the press, and keep back a knowledge of their doings, he was not one of those who would consent to it. He was in favor of giving information to the people and giving it in the best manner possible.

MR. F. J. LYNCH, of DeWitt, spoke against the resolution. Considering the fact that many people could scarcely support themselves he was opposed to it on the ground of expense. The publication of the debates would cost from \$15,000 to \$25,000. It might be all very well for the legal profession and for men who made speeches, but the people had to pay for the music while the frolic lasted.

MR. McCORMICK estimated that the publication of the debates would cost \$12,150, and he was opposed to it on the ground of expense.

MR. D. A. NUNN, of Houston, replied to the arguments of the opposition and showed the necessity for the preservation of the debates, not in the interest of the legal profession but in consideration of the people whose advocates they were in the courts. There were important propositions affecting questions of suffrage, the public schools, judiciary, and title. He deprecated this agitation by perpetual reconsideration, for they would not be able to determine whether or not anything was settled until they adjourned finally. He proposed to amend the substitute as follows:

“The stenographer shall continue in the employ of the Convention under the contract made heretofore, until the further action of this Convention.”

The amendment was withdrawn.

MR. BROWN said he was in favor of the publications of the daily Journals.

MR. FLOURNOY submitted an estimate, showing that the cost of supplying each member with fifteen newspapers containing the debates, for sixty days, and the salary of a stenographer for the same period, would amount to only \$4,650.

MR. CRAWFORD offered the following amendment, which was accepted:

“That the detail of said contract be reduced to writing by the committee, with estimate of the cost of session of forty-five days, and referred to this body for approval or rejection.”

On motion of Mr. Scott the main question was ordered, which was the adoption or rejection of Mr. Flournoy’s resolution. The substitute was lost by a vote of 42 yeas and 43 nays.

MR. CRAWFORD moved to adjourn until the next morning at 9 o’clock, but it was lost by a vote of 23 yeas to 59 nays.

The yeas and nays were then called for upon the adoption or rejection of the original resolution. It was lost by a vote of 31 yeas to 53 nays.¹⁶

ELEVENTH DAY

FRIDAY, SEPTEMBER 17, 1875¹⁷

The greater part of the eleventh day of the Convention was taken up with the introduction of resolutions which were referred to appropriate committees.

MR. FORD reported for the Committee on State Affairs on the subject of using the Constitution of 1845 as a basis for the framing of the new Constitution. He asked that the several portions be given to the various committees for consideration, in order that the various committees should be guided as closely as practicable by the older Constitution.

MR. W. N. RAMEY, of Panola, favored the report.¹⁸

He said:

“Mr. President, in the printed report of the Committee on State Affairs on my resolution to make the Constitution of 1845 the basis of our action on the new Constitution, I find a mistake, one not very

¹⁶The press condemned emphatically the failures of the Convention to provide for publication of the debates. The *State Gazette* of September 16, remarked that time enough had already been consumed in discussing the employment of a stenographer to pay for his services during the entire session. The same paper condemned Judge Reagan for “leading the crusade” against a free and enlightened Democratic press “on the miserable pretext that the Democratic press has no use for organs. . . .”

¹⁷The proceedings for this day were taken from the *State Gazette* (Austin), September 18, 1875.

¹⁸His remarks are printed in full in the *State Gazette* (Austin), of November 23, 1875.