poorest as well as the wealthiest, the highest as well as the weakest in life, liberty, and property."

TWENTY-SIXTH DAY

TUESDAY, OCTOBER 5, 1875[52]

The Executive Article

The question pending was Mr. Stayton's amendment to add after the word "invasions," in line 44, Section 7, "by troops under the direction or control of other states or governments or predatory bands therefrom."

MR. STAYTON defended his amendment. In the first place, it has been contended that the executive had power, as the section stood, to do all that is asked in the protection of the frontier, whether the amendment became a part of the Constitution or not.

Such was not his understanding of the clause presented in the committee report. On the contrary, he conceived that it would limit the executive to a course of action different from that contemplated in his amendment. As defined by Judge Reagan the word invasion embraced every attack, whether made by troops of an organized government or whether made by predatory bands of foreign territory. Mr. Stayton thought that such a meaning was not generally attached to it, and referred to the legislation of Texas law-making bodies in support of his views. He held that the same provision had been in all the Constitutions of the State, as well as in the Constitution of the United States, but was inadequate to the species of protection desired, since the hands of the President and of the Governor were tied down in express language and confined to repelling troops from a foreign government and attacks by invasion. Such was its construction, and it did not go one inch beyond it. They were told that the practical operation of the provision in Texas was different, and that the government then had troops on the frontier and on the Mexican border.

The troops were there in obedience to and under a special law, an act of the Fourteenth Legislature, and not in accordance with

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[52]The proceedings for this day were taken from the *State Gazette* (Austin), October 6, 1875

any provision of the Constitution similar to that reported by the committee. The object of the amendment was simply to place in the hands of the Governor the power to protect every part of the frontier, even if the Legislature should be derelict in its duty and fail to provide the proper law. At present there was a law authorizing the protection of the border and the Mexican frontier, but withdraw that, and by no provision of the Constitution then existing—which was exactly as the provision reported by the committee—would the Governor have the power desired; nor would he have any power to effect the same object under the provisions of the Constitution of the General Government. The object of the amendment was simply to place in the hands of the Governor a power he might use for repelling raids of that character. The attacks were made almost daily, though they were not the attacks of a foreign power by its organized troops or forces. We occupied an anomolous position inasmuch as while we were at peace with a neighboring republic we shut our eyes to the fact that a state of war actually existed. The Mexican Government denied the state of war but that did not relieve the border of these raids and attacks, and he thought it should be put in power of the Legislature to call forth the entire forces of the State if necessary for the protection of that and every part of our frontier.

MR. ALLISON opposed the amendment. The clause as reported has been operative in other Constitutions and should for all necessary purposes be in this one. It was found equal to all occasions in other states bordering on Canada and Mexico, and he regarded any departure from this as dangerous.

MR. KILGORE proposed, "whether by enemies or by bands of lawless men" as a substitute.

MR. WEAVER said he had had some doubts as to how he should vote, but was convinced by the cogent reasoning of Judge Reagan. He opposed the amendment.

MR. STOCKDALE said that Mr. Kilgore's substitute accomplished the same object as did Mr. Stayton's amendment. Indeed it went further, for it allowed the use of the militia against our own people. It seemed positive that the word "invasion" implied a foreign force led by or under the authority of a foreign government. There was no danger in the amendment. It was specific, certain, and

limited. It gave authority to use the militia to repel raiders, and not to use it against our citizens. In case of rebellion, the Governor had power to use the militia to suppress it, by another section, but not by this amendment It was said that the Constitution of the United States provided for these matters. It was true and was intended with the correlative duty of doing its duty, but did not do it. The neglect of the Government to defend its citizens left them the right to defend themselves, even if they proceeded to extreme measures. The law made it the duty of the United States Government to protect the Rio Grande border. Its failure to do so made it devolve upon the commonwealth to do so, and failing in that, it became the duty of the section injured to defend itself, even to the extent of following its enemies across the Rio Grande chastising them in their strongholds. Unless protection was given the region west of the Nueces, the border would have to be abandoned and his own district would become the border and be subject to the raids and horrors of frontier foes.

MR. SANSOM opposed the motion. He thought the Governor had all the necessary power under the section as reported.

MR. JOHNSON, of Collin, moved the previous question.

MR. WEST explained that it would bring up the whole article to a direct vote, and Mr. Johnson withdrew his motion.

Mr. Kilgore's substitute was voted down.

JUDGE BALLINGER proposed as a substitute, "to provide by law for the protection of the frontier from armed incursions and bands of raiders and for calling forth the militia for that purpose." The amendment was lost.

MR. KING moved to amend by adding after the word "and" "protect the frontier from hostile incursions by Indians and other predatory bands."

MR. STAYTON accepted the amendment and the substitute was adopted by a vote of 52 to 27.

MR. STOCKDALE presented the following amendment: Strike out of Section 14 all after the word "adjournment" in line 110, and insert the following: "If any bill, except the general appropriation bill, containing appropriations for more than one object be presented to the Governor, he shall return it for that reason to the

House in which it originated, without his approval, if the Legislature be in session; if not, then to the State Department, as heretofore provided."

MR. STOCKDALE explained his reasons for his amendment. He thought it was exceedingly dangerous to allow a Governor the liberty of returning a portion of an appropriation bill and sanction another part of the same bill. He did not refer to general appropriation bills. Did any one want to give the Governor power, after the adjournment of the Legislature, to strike out the judges' salaries in an appropriation bill? They placed restrictions on the Legislature, then why not on the Governor? The Governors were but men, like the delegates in the Convention, and an imprudent man might get into the Governor's chair and trouble would ensue. He (Mr. Stockdale) would not give the Governor the power to veto an appropriation bill, unless he vetoed the whole of it.

Mr. Stockdale's amendment was lost.

MR. FLOURNOY proposed to amend Section 14 as follows: Strike out of lines 109 and 110 the words "and give notice thereof by proclamation," and also "and make proclamation of the same" in line 124.

JUDGE BALLINGER opposed the amendment, and insisted upon the wisdom of a publication of the Governor's proclamations.

MR. FLOURNOY said they did not go to the Journals for the laws, but to the Secretary of State. If the Governor vetoed a bill it did not become a law, and there was no use going to the expense of publishing his reasons, and if he did not veto it, it would be found in the laws as certified by the Secretary of State, where all lawyers look for them.

Mr. Flournoy's amendment was lost

MR. MILLS proposed to amend by striking out "$2,000" and inserting "$1,800" as the salary of the Secretary of State.

MR. MURPHY opposed the amendment. The responsible duties of the office were worth $2,000, and the most zealous advocate of retrenchment and reform ought not to desire to reduce it beyond that figure.

MR. MCCORMICK said that if there were no other reason than that it came from the wrong side of the House he should oppose it.

MR. MILLS said that he was willing to stand on his record for the last six or seven years on retrenchment and reform, and no member could do more, whichever side of the House he belonged to. He was a Republican, elected as such, and he should do what he conceived to be his duty, despite the slights he might receive from the member from Colorado or any other member on that floor.

Mr. Mills' amendment was lost.

GENERAL WHITFIELD offered an amendment to Section 22, to increase the Attorney-General's term of office from two years to four years.

MR. DARNELL opposed the amendment. He thought two years was a sufficient term of office for any state official, except the judiciary, and if their duties were performed satisfactorily they could be reëlected.

GENERAL WHITFIELD replied that the Governor's term had been put at four years, and he had been made responsible for the good conduct and honest management of all other State officers. Then why not let the Attorney-General hold his office for four years, and if he were incompetent or dishonest let the Governor turn him out.

MR. DARNELL inquired if the Governor were responsible for all of the acts of the subordinate officers of the Executive Department. Being answered in the affirmative, he said he hoped he would be forever delivered from the office of Governor. He said the increase of the Governor's tenure had not passed from the control of the House, and he hoped some one would move a reconsideration of the vote increasing it to four years, and put the term down to two years, where it ought to be. He did not hold to the doctrine that the Governor was to be held responsible for all acts of the other State officers, and believed that every man should stand on his own foundation.

General Whitfield's amendment was lost.

MR. FLOURNOY moved to amend Section 22 in regard to the Attorney-General, by inserting "and shall especially inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporations from exercising any power, in demanding or collecting any species of tax, toll, freight, or wharfage not authorized by law; and shall, whenever

sufficient cause exists, seek a practical forfeiture of such charters, unless otherwise expressly decreed by law."

MR. STAYTON thought it would be burdening the office of Attorney-General too much to impose such duties on him, considering the salary.

MR. FLOURNOY said the additional duties would consist merely of giving proper instructions to the district attorneys, and the office of Attorney-General with the fees was one of the most lucrative in the State.

MR. SANSOM said the Legislature would determine whether it was necessary for the Attorney-General to perform the duties.

Mr. Flournoy's motion was adopted.

MR. GERMAN moved to amend by reducing the salaries of the Comptroller, Treasurer, and Commissioner of the General Land Office from $2,500 to $2,000 per year.

JUDGE REAGAN moved to strike out $2,500 and insert $3,000 for the above salaries, and supported his motion with a speech. He said the salary was the lowest that ought to be offered for such responsible and important positions and though men might be got for less, it was degrading the laws and glory of our proud State to reduce these salaries beyond reasonable compensation for the sake of saving $1,500 a year in these three important offices. The Convention had provided for biennial sessions, reduced the mileage and per diem of members and thereby effected an annual saving of $200,000 and by such amendments as would be made in the judicial organization of courts and other matters they would be enabled to save annually more than twice $200,000 for the people's benefit. This was what he called organic retrenchment.

MR. DEMORSE cautioned the Convention in its zeal for retrenchment, not to go as far from a just medium as had previously characterized the other side of the question. He was one of those who gave volume to the cry of reform, and did not fear to go before his constituency and tell them that he did not believe in reducing these officers' salaries, for the purpose of saving a few hundred dollars per annum. He took the same position that he had taken before the committee in opposing these reductions. He had favored, then, a salary of $3,000, as the gentleman from Anderson knew, as the lowest possible amount of remuneration, to fix them in their new

homes and maintain them respectably. He found from inquiry since he had been in Austin that the cost of living was two or three times greater than it was in his home in Paris. He had been silenced in the committee by the statement that the incumbent Comptroller would be glad to get the office again at $2,000 a year, but during the last twenty-four hours he had learned that, though living three miles from the city and practicing the most rigid economy, he could scarcely make the salary clear his expenses. It would be stated that plenty of men could be gotten to fill the positions. If the offices were restricted to single men, who could board, there might not be much difficulty in filling the offices.

The question was, should they disfranchise every poor man in the State? Should they say that no man who was not rich should not serve the State in these positions—say to them virtually, "You shall not serve the State; you have not sufficient money, and if you go to Austin with a salary of $2,000 you must speculate at the expense of the people or get into debt." Did the Convention propose to disfranchise three-fourths of the people of the State from serving them? He was proud to say that he represented a constituency who would not sanction this thing. He had come to Austin with the intention of favoring a substantial retrenchment, and they had lessened the expense so much that all would admit it. All that could be saved by this amendment was a mere $1,500 in these high and responsible offices. He was not in favor of that sort of economy, and he had no fears that his constituency would fail to support his action, for they were men of common sense and desired only a reasonable economy.

MR. GERMAN charged Mr. DeMorse with inconsistency. He said the latter had favored a reduction in the mileage and per diem pay, but was not in favor of reducing the salaries of officials. No sooner did the Convention settle down to the work of retrenchment and reform than some members fled the track.

In the salary of department officials was to be found the main question. They had cut down the salaries in the legislative department, so why not do the same for the executive department? They had inaugurated a wise principle, and he hoped they would continue in it.

Judge Reagan's amendment was lost by a vote of 21 to 55.

Mr. German's amendment to reduce the salaries of the three officials from $2,500 to $2,000 was tabled.

MR. BRADY moved to reconsider the vote abolishing the office of Superintendent of Public Instruction. He said he was desirous of reconsidering on the ground that the gentleman from Colorado refused to vote for it yesterday because it came from the wrong side of the House. He wanted to see if Mr. McCormick would support it because it came from the wrong side of the House again.

The Convention, by a vote of 32 to 46, refused to reconsider the question.

TWENTY-SEVENTH DAY

WEDNESDAY, OCTOBER 6, 1875[53]

The Executive Article

MR. RAMEY called up his motion to reconsider the vote reducing the salary of the Secretary of State to $2,000. He thought members of the Convention had voted under a misapprehension. He said the office of Secretary of State was equal in importance to the other State offices, except that of the Governor, and stood next to the governorship. He showed its relative importance in both the National and State Governments, and eulogized the incumbent Secretary of State.

By a vote of 33 to 40 the Convention refused to reconsider.

MR. GRAVES moved to strike out Section 26, which provided for the appointment of notaries public. He thought it would be better to let justices of the peace act as notaries *ex officio*. It was so in the Constitution of 1869, though this might be the principal reason of some for opposing it.

MR. ALLISON opposed the motion. He said ladies sometimes had to ride a long distance to find a justice, when a notary was much more convenient.

MR. GRAVES said he had never found a notary public to be more convenient than a justice of the peace.

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[53]The proceedings for this day were taken from the *State Gazette* (Austin), October 7, 1875.