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JUDGE BALLINGER said that there was a provision in the Constitution of 1845 that required that compensation should first be made. Writers and courts held to this opinion also.

MR. STOCKDALE moved to strike out all of Section 17 down to the word "money," and insert, "provided property shall not be taken except for public use, nor shall it be so taken without just compensation being made to the owner, if taken for public use to be applied by any corporation, except the State, the compensation shall first be made therefor."

MR. FLOURNOY said a case never would arise when the State would take personal property for her own uses, but counties and incorporated cities would be cut off from making roads or taking any property for public use without payment in advance.

MR. STOCKDALE inserted the word "county," but declined to insert "incorporated cities." He objected to the latter, that whole blocks might be taken to open streets, and the homes of people pulled down over their heads, without previous compensation, as was done in New York City.

MR. ROBERTSON, of Bell, said he objected to the word "county" for the same reason that Mr. Stockdale urged against "city." The roads should have been laid out before they were settled, and it was unjust to cut through a man's plantation and occasion him the expense of erecting long strings of fences, without first having compensated him for the damage. This was already a question in his county. He moved to strike out the word "county." His motion was adopted.

THIRTY-FOURTH DAY

THURSDAY, OCTOBER 14, 1875⁷¹

MR. NUGENT moved to reconsider an amendment to Section 11 of the Bill of Rights, passed the preceding day, with reference to granting bail on the writ of habeas corpus in capital offenses after indictment was found. It was reconsidered and voted down.

JUDGE BALLINGER moved to amend by inserting the words "in such manner as prescribed by law," which was adopted.

⁷¹The proceedings for this day were taken from the *State Gazette* (Austin), October 15, 1875.

MR. WAELDER moved to strike out of Section 29 "and no appropriation of money shall be made to aid immigration to the State." He said that the part proposed to be stricken out in the first place did not properly belong to the Bill of Rights and ought not to be there, or as he had contended, in any part of the Constitution. How would this inhibition be regarded by the people living in other parts of the Union and in other countries? It would be regarded as a policy of exclusion. Immigration should be encouraged rather than prohibited. The opposition was not founded on reason or the good judgment of those who opposed it, but was rather an expression against the mode of administering the bureau in 1870 and prior to 1874. Whether the bureau was administered wisely or well was not the question, but the inhibition in it would be regarded as if Texas had shut her doors on the stranger. He did not defend the bureau as it had been administered up to 1874, but Texas did desire immigration and in his judgment it ought to be encouraged. He was opposed to restricting the Legislature in this respect.

MR. MCKINNEY, of Walker, said he was opposed to the restriction. It was against all of their traditions, because the State had been formed by immigrants and had grown up in that way.

MR. ROBERTSON, of Bell, said he was opposed to the amendment because it was in opposition to the policy of the State. This provision aiding immigrants by grants of money had prevailed only within the last few years. By and by he would be willing to aid all in his power in bringing immigrants to the State by increasing the donations of land to actual settlers, but he was opposed to permitting the Legislature to appropriate money without stint to such a purpose, contrary to the original policy of the State and adding to the burdens of the people.

MR. ERHARD moved to amend by inserting: "But immigration shall be encouraged by the Legislature by all means within its power."

MR. RUSSELL, of Harrison, moved as a substitute to strike out the whole section.

Mr. Waelder's amendment was lost by a vote of 23 to 49.

MR. WAELDER moved to strike out the following: "Immigration from the states shall not be prohibited, and no money shall be paid to immigrants for coming to this State."

MR. CHAMBERS said he did not understand that money was paid to immigrants, but only thought that money was used to aid them in coming to the State.

MR. SCOTT offered the following substitute: "But we cordially invite all who desire to better their conditions to make their homes among us."

The amendment and substitute were tabled.

MR. RUSSELL, of Harrison, offered the following as an additional section, to follow Section 29: "Importation of persons under the name of 'coolies,' or any other name or designation, or the adoption of any other system of peonage, whereby the helpless and unfortunate may be reduced to practical bondage, shall never be authorized or tolerated by this State, and neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall ever be adopted in this State."

MR. WEAVER said that it seemed to him that not only the ghost of the Twelfth Legislature but all future legislatures were constantly rising before them. He opposed the amendment because it was a question that had been settled by the great Civil War. The United States Government was supreme in the land, and while he would not agitate the importation of coolies or the establishment of peonage, the phraseology of the amendment would strike at the humanity of the people of Texas, and yet only to get at the facts that slavery has been abolished. The Convention might pass a dozen ordinances establishing slavery, and it would amount to no more than if he had promulgated the ordinance. If they were to charge their Constitution with legislation, it would be as large as Paschal's *Digest*.

MR. BROWN moved the following as a substitute: "No form of compulsory servitude, except as a punishment for crime, shall ever be allowed in this State."

The House refused to table the amendment and the substitute.

The Chair held that the last half of Mr. Russell's amendment was out of order, as the subject matter contained therein had been passed on the preceding day.

JUDGE BALLINGER moved to add to Mr. Brown's substitute: "Except that of children to parents and lawful apprentices."

JUDGE REAGAN said the whole matter was settled by the Fifteenth Amendment, and any further action was unnecessary.

MR. McCORMICK said the question of slavery had been settled, and he hoped there was no man sunk to a condition so low and degraded in the State that he would reduce any helpless individual to a condition of servitude.

MR. KILGORE said he saw no necessity for action in the matter.

MR. RUSSELL, of Harrison, said that since he was compelled to speak he referred in the first part of his amendment to the law of 1866, the labor law. He called the previous question, and was sustained.

MR. REYNOLDS (colored) said he could vote for Judge Ballinger's amendment if the word "legitimate" was placed before the word "children," otherwise not. (Laughter.)

Judge Ballinger's amendment was adopted by a vote of 50 to 27.

Mr. Brown's substitute as amended, was adopted by a vote of 40 to 22.

MR. STOCKDALE moved to strike Judge Ballinger's amendment from the section just substituted, and insert "infants."

MR. FLOURNOY moved to amend Section 29 by adding, "but liberal preemption laws shall be passed to encourage and protect actual settlers on the public domain."

COLONEL CRAWFORD, Chairman of the Committee on the Bill of Rights, moved to strike out all of Section 29.

MR. DOHONEY said that the provision sought to be incorporated by Mr. Flournoy was already provided for in the article on public lands.

MR. McCORMICK said the idea sought to be conveyed by that section was that we intended to catch immigrants when they came to Texas and keep them here. The idea that anyone would want to leave was strange enough, but it was preposterous to put a section in the Bill of Rights saying that "immigration from the State should be prohibited." He thought the whole section was misplaced in the Bill of Rights.

MR. RUSSELL, of Wood, insisted on the whole section being retained. He believed the preëmption system was far superior in encouraging immigrants to the immigration bureau, and that it was the proper place for the section.

MR. McCORMICK said he thanked God that he had learned the science of government from other sources than from the gentleman

from Wood, who was opposed to educating children, opposed to immigration, opposed to every kind of taxation but what he called the *legitimate* purposes of Government. When the subject of immigration came up in its proper form he would be glad to debate it.

MR. NUNN supported the motion to strike out Section 29.

MR. KING said he favored the motion to strike out.

MR. GRAVES said he was tired of the debate, moved the previous question, and was sustained.

The section was stricken out, and the article on Bill of Rights was then engrossed.

Public Lands and the Land Office

This article was taken up in the afternoon session.

MR. STAYTON moved to amend Section 2 as follows: "And any genuine land certificates, which under former laws have been declared invalid, because located on title land, or on lands held by older locations, are hereby revived and may be located on any of the vacant lands of the State."

MR. STAYTON explained the object of his amendment, which was to enable persons who had located lands in conflict with other titles, to lift them and locate them on a new part of the public domain.

MR. FLEMING moved to strike out Section 2.

MR. WEST said he was opposed to the last motion. He explained that the object of the committee was to place the headright and bounty warrants of the veterans on the same footing as the certificates of railroads and dry ditch companies. The former were barred by the Constitution of 1869 unless located by the first of January, 1875. The object of the committee was to place these certificates of the old veterans on an equal footing with others. With regard to Mr. Stayton's amendment, he was not aware there was such a class unprovided for, but if such, they ought to be provided for equally with other meritorious claims.

MR. DARNELL, chairman of the committee, was anxious to do equal justice to all classes of genuine certificates.

MR. FLEMING said he did not wish to deprive any old San Jacinto veteran of the opportunity of locating his land, but he had had thirty or forty years to locate it in. He thought the extension of time

would only benefit land sharks and speculators. It could not be ascertained now whether many of them were genuine or not.

MR. WEST said they must be genuine or they could not be located.

MR. DARNELL said he could not see why the railroad or dry ditch company should have preference over the old veterans.

MR. RUSSELL, of Harrison, said that to repudiate the claims of the veterans would be flat repudiation. He spoke of two cases of orphans, whose father's certificate had descended to them, but in consequence of the death of their lawyer had not been located and were barred.

MR. STOCKDALE reminded Mr. Fleming of his promise, if he could find any one genuine claim of a veteran unsatisfied that he would withdraw his opposition. He reminded them of the case of General Somerville, a San Jacinto veteran, and two others, who had sold their certificates to another veteran, because they were in need of money, and the latter had bought the certificates to help them out. The fact was that where the certificates had gotten into the hands of speculators and had already been located. They lost no time about such matters.

MR. ROBERTSON, of Bell, a member of the committee, said he opposed Mr. Fleming's amendment. He thought great injustice had been done to a meritorious class of citizens. They were the claims of men who had won the liberties as well as the territory of this country, but had been cut off by the Constitution of 1869. He reminded them of the case of the heirs of Thomas A. Graves, a man who scaled the breastworks of Santa Anna at San Jacinto, who had appealed to him, Mr. Robertson, for help in the matter. General Burleson, a member of the Convention, had not located his headright certificate until within two years ago—another proof that they were in the hands of the original holders in many cases.

MR. MCLEAN moved an amendment extending the time to original grantees or their heirs.

MR. BROWN reminded them of cases he had experienced as a land agent at Dallas, which convinced him that all the land certificates of this class in the hands of land sharks, as they were called, had been located. They were too smart to leave them unsatisfied. He could say on his honor as a man that the proportion of certificates

in the hands of speculators was very small. They were in the hands of widows, minors, and heirs.

JUDGE BALLINGER said he would not vote on this question because he was personally interested. He had married the daughter of a San Jacinto veteran. After the death of her father his headright was discovered and he (Judge Ballinger) paid \$70 in gold to have it located, as he desired, in conjunction with other owners, to preserve it as a memorial, but owing to an accident it failed to reach the Land Office by the first of January, 1875, and was barred.

On motion of Mr. Dillard, the amendments of Mr. Fleming and of Mr. McLean were tabled by a vote of 66 to 10.

MR. ALLISON moved to amend as follows: "All unsatisfied genuine soldier's or donation headright certificates, barred by Section 4, Article X, of the Constitution of 1869, by reason of the owners failing to have them surveyed and patented, may be located on any of the vacant lands of the State."

MR. KILGORE moved to table the last amendment, and it was tabled by a vote of 40 to 36.

Mr. Stayton's amendment was adopted.

MR. DARNELL pleaded that the Convention should place all certificates on an equal basis.

COLONEL CRAWFORD proposed a substitute for Section 2 to have all land certificates surveyed, patented and returned to the General Land Office within five years after the adoption of the new Constitution or be forever barred.

Mr. Allison's amendment was lost.

COLONEL CRAWFORD explained that the Land Office was maintained only at great expense, and while he did not desire to do any injustice to any veteran or any one else, a sound State policy required that a limit should be fixed when the certificates might all be located, and our expensive land system come to an end.

MR. STOCKDALE also thought it a sound State policy that some limit should be fixed with respect to our land system.

MR. GAITHER moved to amend Section 2 as follows, "provided that none of the land certificates hereby revived shall ever be located, surveyed or patented on lands held under previous title or color of title from the sovereignty." This was adopted.

JUDGE REAGAN moved to reconsider. It was carried. He explained that the amendment, if passed, would tend to place a certain class of certificate holders in the very same condition from which Mr. Stayton's amendment sought to relieve them, for parties located on lands that were covered by older titles, or color of title, his certificate would be forfeited. He thought Mr. Gaither's amendment was dangerous.

JUDGE BALLINGER thought they ought to say to the holders of revived certificates and all other certificates, "go to the unoccupied lands and don't attempt to locate on land which may have older title or even the color of title." If a man attempted to seek a flaw in another's title for the purpose of locating his certificate he ought to forfeit it.

MR. WRIGHT supported Judge Ballinger's views.

MR. WEST said he opposed the amendment, because it failed to give repose to actual settlers. It was useless for a man to locate on titled lands for the law would protect the title, if good, while it would be equally difficult where there was colorable title, because the holder had the chain of title behind him and the best prospect of retaining his land. But it might happen that a man might discover a flaw in title to his own land, and desire to cover it with his certificate, but would be prohibited from so doing by this amendment.

MR. WRIGHT said he had misunderstood the purport of the amendment originally.

MR. GAITHER said that after the extension of certificates on a former occasion, his section was covered with a cloud of surveyors, with land certificates, who sought to dispossess a large class of settlers whose claims had been tested and proved. It was a great annoyance and occasioned considerable trouble.

MR. NUNN opposed the amendment.

MR. STOCKDALE moved the following as a substitute: "No location or survey, by virtue of any general land certificate, shall hereafter be made on any land that seems to be located, deeded, or patented by the records of the county or General Land Office."

This substitute was adopted.