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Citation: *Debates in the Texas Constitutional Convention of 1875 Texas. Constitutional Convention (1875). Austin: Published by the University of Texas, c1930.*

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THIRTY-FIFTH DAY

FRIDAY, OCTOBER 15, 1875⁷²*Public Lands and the Land Office*

Colonel Crawford's substitute was the question pending. It read as follows: "All unsatisfied genuine land certificates barred by Section 4, Article X, of the Constitution of 1869, are hereby revived: all unsatisfied genuine land certificates now in existence, shall be surveyed and returned to the General Land Office within five years after the adoption of this Constitution, or be forever barred, and all genuine land certificates hereafter issued by the State shall be surveyed and returned to the General Land Office within five years after issuance or be forever barred."

MR. STOCKDALE moved to strike out the first three lines of the substitute and add the balance to the section as it then stood, or it would in effect cut off Mr. Stayton's amendment which had been adopted.

JUDGE REAGAN said he had thought a good deal respecting Mr. Stayton's amendment, and the more he thought of it the more he was convinced of its impropriety. He quoted the thirty-eighth section of the Act of 1866, and fourth section of Article 19 of the Constitution of 1869, to show that the class of persons sought to be relieved by Mr. Stayton's amendment had no equities as far as he could see, which entitled them to relief. Land locators and agents were going about locating certificates on land held by valid title and occasioning trouble, for the opportunity of compromising and the money it would bring. He knew men who had made a business of it, and still made a business of it. He desired the passage of the Crawford substitute because it would stop this fraud and give repose to title. There was a practice in vogue of lariatting land. A man would lay his certificate on a choice piece of land, sell it, list his certificate and relocate it on a choice of piece of land, and so continue. The Act of 1869 prevented location of certificates on titled lands under pain of forfeiture of certificate. He supported the substitute in its entirety.

⁷²The proceedings for this day were taken from the *State Gazette* (Austin), October 16, 1875.

MR. WEAVER said he was in favor of doing justice to the old patriachs. He had recently received a letter from the heirs of David Crockett, in Tennessee, claiming that certificates in their possession were barred by the Act of 1869. He also read from the *Marshall Herald*, showing that the heirs of Bowie held a certificate that was unsatisfied.

MR. RUSSELL, of Harrison, supported the substitute as a whole.

MR. STOCKDALE said there were few instances in his and his colleagues' district where the certificates were barred, because they were located outside the jurisdiction of the officers having such land in charge. It was not a matter that their constituency was interested in, but was proposed for the general good.

MR. GAITHER proposed as an amendment to the substitute: "Provided, that all land certificates heretofore, or to be hereafter, issued shall be located, surveyed, or patented only upon vacant, unappropriated public domain, and not upon land titled or equitable, owned under color of title from the sovereignty of the soil, appropriation of which is upon the county records or in the General Land Office."

Mr. Stockdale's amendment was lost.

MR. WRIGHT said he would advise caution. Possession of land was evidence of title, and a man might have good claims to his lands which might not be found on the records.

MR. KILGORE said he thought they were burdening the Constitution with many things that the Legislature could better dispose of. He moved to table Gaither's amendment. The Convention refused to table, and the amendment was adopted.

Colonel Crawford's substitute was also adopted.

MR. SCOTT moved to strike out "shall be at the seat of the Government" in Section 1 and insert, "to be self-sustaining, and to be kept at the seat of Government." It would make the Land Office self-sustaining or it would be abolished.

MR. STOCKDALE said as it seemed to him the intention to give away all the land to educational purposes and to actual settlers, they had better abolish the Land Office.

MR. DARNELL offered an amendment that the Legislature should make the General Land Office self-sustaining as soon as practicable.

JUDGE REAGAN was opposed to crippling one of the departments of the Government.

MR. ROBERTSON, of Bell, said he was in favor of maintaining the General Land Office.

MR. WEST said the committee members were opposed to innovation in the general land system of the State. There had been no innovations in the policy of the State since 1837, and the Constitution of 1869 was the first that had ever attempted to interfere with it. Efforts of the committee were directed to restoring it to its former basis, and leaving it with the Legislature to regulate. If the Legislature required the Land Office to be self-sustaining it might so regulate it.

MR. DARNELL withdrew his amendment.

MR. GERMAN renewed it and it was adopted.

MR. SCOTT thought, as the business of the office increased from the railroad and other certificates, the expenses would diminish, and that some limit ought to be put to the time when it should cease to be an expense to the State.

Mr. Scott's amendment, as amended by Mr. German, was adopted.

JUDGE REAGAN moved to strike out Mr. German's amendment from the section and substitute the following: "The Legislature may by appropriate legislation make the General Land Office self-sustaining." He said the difference between his resolution and that of Mr. German was that the latter was imperative on the Legislature to make the Land Office self-sustaining, while his amendment left it discretionary.

MR. GERMAN moved to table Judge Reagan's motion, and it was tabled

MR. BRADY moved to amend the section by adding, "Provided no Land Office shall be established at all until such time as it shall be self-sustaining, and thus the Legislature shall provide for." It was tabled.

JUDGE BALLINGER moved to insert in line 19, Section 4, "or shall not hereafter be."

MR. WEST accepted the amendment for the committee.

MR. NUNN moved to strike out after "and" in line 19, Section 4, and insert "shall accrue to the benefit of the general school fund of the State, and the Legislature shall provide for resuming control of the same."

MR. DAVIS, of Brazos, moved to strike out Section 4.

Mr. NUNN said the object of the amendment was that the land alienated should accrue to the benefit of the school fund and not to individuals.

Mr. ROBERTSON, of Bell, said he opposed the amendment. He believed that the school fund then had more land than could be settled for many years, while if the lands referred to in the amendments were held out for actual settlement, it would render the school lands valuable, and would the sooner enable them to realize a fund for the education of the children of Texas. Under one of the sections passed over, in accordance with this policy, the committee had provided that headrights should be given to actual settlers.

Mr. DAVIS, of Brazos, supported his amendment on the ground that Section 4 was in conflict with the Constitution of the United States prohibiting the impairment of the obligations of a contract.

Mr. MCLEAN said that the forfeiture of lands for non-alienation was one of the conditions of the charters.

Mr. DAVIS replied that under the terms of the charters by the Act of 1854 no forfeiture was provided. He read from *Paschal's Digest*, page 826. There was no forfeiture under that act, nor could the Legislature pass any law impairing the obligation of contract. The only mode of action, if the companies failed to comply with the conditions of their charter, was to proceed by sale as provided for in the act.

JUDGE REAGAN moved to insert in the section the following: "It shall be the duty of the Attorney General to institute the necessary suit to declare a forfeiture;" he explained that where land had not been alienated in accordance with the terms of their charters it was necessary for a judicial decision to be obtained before further action could be obtained.

In reply to Mr. Johnson, of Franklin, Judge Reagan explained that if the alienation of lands had not taken place in accordance with the terms of the charters, such lands might be sold by the Comptroller, and the proceeds be handed over to such corporation, the purpose being to secure the alienation of lands.

Mr. STAYTON presented the following as a substitute to the amendment for the section: "It shall be the duty of the Attorney General to cause proceedings to be instituted, for the purpose of having forfeiture declared of all lands granted, or that may

hereafter be granted, to railroads, that have not been alienated in conformity with the terms of their charters and the laws under which the grants were, or may hereafter be made; and after such forfeiture such lands shall be subject to location or sale as other vacant lands." He explained that there were two classes. The first, as had been argued, carried no forfeiture with them but might be sold for the benefit of the railroads. The second, and by far the larger class, was where railroads had taken the lands subject to forfeiture for failure to alienate, and they could claim no proceeds from the sale of same. His substitute provided for this class, the proceeds of which could be applied to the school fund or to any other purpose as the Convention might determine.

JUDGE BALLINGER said that while having a general knowledge of the subject before them, he did not thoroughly understand it. He referred to the able opinion of Mr. Davis, of Brazos, but this only went to prove that the matter required further consideration. He moved to pass from the section for the present.

MR. DOHONEY moved an amendment looking to the forfeiture of lands granted to persons or companies for canals or ditches, which were required not by the terms of their charters, to be filled with water, and all lands granted for cleaning out rivers and streams not navigable.

JUDGE REAGAN moved to refer Mr. Stayton's substitute and pending amendments back to the committee.

After explanations from Mr. Robertson, of Bell, and Mr. West on behalf of the committee, a substitute from Mr. Waelder was read for information and the whole section, with substitute and amendments were referred back as asked for.

MR. FLOURNOY moved to recommit the entire article, and it was so recommitted.

The Convention next took up the report of the Committee on Revenue and Taxation, in connection with relieving from taxation the coast counties which had been struck by a recent tornado. The committee members were of the opinion that they lacked authority in the premises, and doubted the propriety of such a step.

MR. RUSSELL, of Harrison, spoke in favor of the relief of the coast counties.⁷³

⁷³Mr. Russell's remarks were printed in full in the *Austin Statesman* of October 17, 1875.

He said: "Mr. President, having had the honor to introduce the ordinance providing for the relief of the people residing in the counties named therein, I feel it to be my imperative duty to say something in their behalf. This duty, sir, is actuated by the sole purpose to subserve the public interest and a desire to alleviate the sufferings of a large class of our fellow-citizens, who have been made destitute and desolate by the ravages of the late tornado on our unfortunate coast. Strange, sir, is the action of the committee to whom was referred the ordinance declaring that it was not in the power of the Convention to grant the relief, in contrast with the action of the Convention postponing the general election. In the one case, the Convention was asked to abolish the laws of the country, and it did so; it was asked to set at naught the Constitution of the State as amended in 1873, forbidding the suspension of the laws except by the Legislature, and did so. In fact, sir, it was asked to assume extraordinary powers of government to pass an ordinance, revolutionary in its tendencies, and which will prove, in my humble judgment, wrong and revolutionary in its results, and it did so.

"But, sir, when the Convention is asked, in the name of mercy, justice, and right, to pass a simple ordinance relieving a portion of our distressed and ruined people from the payment of the State tax for one year only—for the relief of a people who, in their dark hour of gloom and sorrow, with their all destroyed, with nothing left them in their sad hour of despair to cheer and comfort them for the loss of dear ones, homes, and the actual necessities of life—we are told by the honorable committee 'that the power does not exist; that the right ought not to be exercised.' Mr. President, in one act of the Convention the right and power is recognized to revolutionize the Government and clog its machinery by suspending and abolishing its laws on the plea of expediency and of saving dollars to the State; while the report of the committee on the relief ordinance denies the expediency and the right of the saving of a few dollars to a people groaning now under burdens too heavy to bear, wrought by a fearful tornado, which crushed their lives and energies, their hopes and homes.

"Sir, in one case we have precedents in point sufficient to grant the relief, while at the other none in point existed; but, bowing to the will of the Convention, I concede for 'expediency's' sake the right and power to adopt the election ordinance.

"The Constitutional Convention of 1866, composed as it was of men of preëminent ability, sound legal learning and statesmanship, adopted an ordinance relieving and exempting the people of Orange County from the payment of the State tax for the years 1865 and 1866, because the ravages of a tornado in September, 1865,

rendered them almost destitute. I quote the language of the ordinance: 'Be it ordained by the people of Texas in convention assembled, that all persons who resided in the County of Orange on the thirteenth day of September, 1865, and all the property in said county, be, and they are hereby relieved and exempted from the payment of the State tax now due, and of any State tax that may hereafter be imposed for the year 1866.'

"Are we at a loss for further precedents? No, sir. The Congress of the United States in the exercise of its powers, with commendable magnanimity, relieved the people of Chicago from the payment of all import duties on marble and other material to rebuild their beautiful city after the destructive fire of 1871. This, sir, was the loss of millions to the government; but, sir, 'like bread cast upon the waters' it returned in good season. The saddened hearts of those people, while acknowledging with reverence and humility the divine will of the Omnipotence, also acknowledged with grateful hearts the kind munificence of their government. Do we stop here for precedents? No, sir; the feeling of sympathy and sorrow, of sadness and of interest, that should actuate and burn within the bosom of every man, is a precedent for the righteous and merciful relief sought by this ordinance. Are we to be less generous than the Convention of 1866, or more guardful of the interests of Texas, and refuse this relief? Are we to be less generous than the Congress and turn a deaf ear to the sufferings of our immediate people and mock them in their wailings and their distress? Are we to be less generous than the good people of Boston, renowned for their liberality in the hour of distress, who, far removed from the scene of tears, of blood and of destruction, heard the wails and moans of desolated homes, and sufferings of helpless women and children, as wafted to them on the wings of the tornado, heaven's terrible chastising instrument? Noble and generous people, the prayers of our distressed and ruined will burn with glowing accents of your praise, the proud heart of every Texan throbs in unison with them and chance praises of your unbounded charity. I am not, Mr. President, unmindful of the conduct of our own noble men and women in coming to the relief of our prostrated friends. In their name, I thank them; than them, sir, in a manner befitting chivalric people, who, though prostrated by the winds of heaven, will one day rise from the fiery ordeal and be as the gold from the crucible. What, sir, is their true condition? Go to Wallisville and gaze upon homes devastated; go to Indianola and witness the awful misery and devastation there; go to Velasco and behold the destruction of property and homes; go to the Benard, where resided some of the purest men and women of the old mother country, Brazoria, and nothing remains to tell of the misery of that awful night but a mound here and there of some kind friend, mother and brother;

go to Saluria, and all is gone; go to Matagorda, the beautiful little town on the coast, twice born, twice erected, and on that fearful night, the seventeenth of September, it again grappled with death and destruction, losing near her all; in fact, Mr. President, go where you will, in all those counties all along our lovely coast and witness the desolation, destruction, and suffering, and you can come to no other conclusion but that one wreck, one ruin, is the portion of all.

“Sir, I believe that if this Convention could know and appreciate their condition, there would not be a dissenting voice in granting the relief. Gentlemen say that they are acquainted with the condition of the helpless there. If this be true, in God’s name vote the pittance to them. It amounts to nothing to the State of Texas, but to them it looms upon mountain high. They have not sought or implored this aid; their condition is their only advocate. Their forefathers clung to Texas in her hour of adversity; they sacrificed their lives that her star might shine the brightest in the constellation; that she might be the rich and powerful empire State of the Union. Their sons, resting on their proud Texan honor, achieved for them at Anahuac, the Alamo, and San Jacinto, expect of Texas to cling to them in their hour of adversity. Will she do justice to her past? Will she refuse the pittance asked? Better, Mr. President, if it is to be refused, that it was never asked for. Bad enough, that the winds of heaven should desolate their homes and sever the family circle; bad enough for the drenching rain to have pelted their naked forms; bad enough, to live and hear the weeping and wailing for bread, clothing, and shelter and unable to give it; but, sir, this Convention, to refuse the pittance sought through this ordinance, would be mocking them in their misery— a burden too heavy to bear.”

MR. ALLISON said he hoped the report would be adopted and they not suffer their feelings to get the better of their duty, as it was apart from the legitimate purposes of the Convention. The property of these people had been destroyed and there was none on which a tax could be collected.

MR. STOCKDALE said the town of Indianola, which was the greatest sufferer, had been entirely swept away and that the people were moving to other localities. They had nothing left, and it was utterly impossible to collect taxes. Three-fourths of the property of the county was at Indianola, and had been swept away, and if it was a real estate tax which was to be collected, it was impossible—utterly—to collect it. If taxation were remitted it would relieve the

officers from seeking to collect taxes. Some few of the richer inhabitants might be able to pay, and would pay. He had had no hand in introducing the resolution, which had emanated from the kind and generous heart of the gentleman from Harrison, for which he thanked him most sincerely.

MR. McCORMICK moved to refer the subject to a select committee of five, and expressed sympathy with the counties mentioned.

MR. CHAMBERS said he was ready for the question then, and believed that they had authority to do whatever was needed. The Legislature would not assemble until too late to relieve them.

MR. WEAVER said he was of a similar opinion. He referred to Reade's "Put Yourself in His Place" as worthy of consideration.

MR. MCKINNEY, of Walker, was opposed to converting the Convention into a missionary society. Its duties would be interminable if not confined to its proper work.

MR. DEMORSE proposed an amendment which gave power to the tax collectors to remit taxes for 1875, in all cases of inability to pay from injury by the storm, in the counties named; also in the counties of Harris and Galveston. He said that one other member of the committee besides himself, did not doubt their authority in the premises, but as to the best mode of doing it. He said this to say in expression of his individual sympathy, and hoped that his amendment or something like it would be adopted.

MR. SMITH, a member of the committee, doubted their authority. The House declined to refer to a special committee.

The ayes and noes were called for on Mr. DeMorse's amendment and it was adopted by a vote of 35 to 33.

MR. McCORMICK moved to reconsider and lay on the table.

MR. MOORE said he doubted their authority to remit taxes, and asked them to consider where such acts of legislation would take them.

MR. McCORMICK withdrew his motion to reconsider.

A report of the Committee on Counties and County Lands, by Mr. King, Chairman, was taken up. It provided that each county might sell and dispose of its lands in a manner to be provided by the police court of said county; actual settlers to be protected in prior right of purchasing to the extent of 160 acres; said lands,

when sold, are to be held by counties as the trust fund for public schools, the proceeds to be invested in State or United States bonds. The article was engrossed. A motion to reconsider was voted down.

MR. ERHARD moved to reconsider the vote remitting taxes in the coast counties.

MR. FLEMING moved to table. The Convention refused, and the vote was reconsidered.

JUDGE REAGAN said that the Convention had the power to do it, and that he was in sympathy with the resolution. He referred to the passage of the election ordinance in support of his views.

MR. DOHONEY, while in sympathy with the objects in view, said he doubted their power to act in the premises.

MR. FERRIS said that their power in the election ordinance was implied and incidental to the work of framing the Constitution, and was not parallel to the present case. They had no power to make laws.

MR. WRIGHT said he was of a similar opinion, and feared that it would open the door to fraud in making the collector the judge of exemption.

COLONEL CRAWFORD said that Galveston paid a large proportion of the taxes, and this tax from which relief was sought would amount to one-fifth of the entire tax. He asked that his people be exempt from taxation on account of the drought.

MR. SCOTT moved that his county should be included.

MR. STOCKDALE said the ordinance did not propose to relieve those who could pay their taxes, hence he had voted for the resolution, because he was able to pay his, but if Mr. Crawford seriously meant to compare the drought of his section with the fearful sufferings of his people he had a lively imagination.

COLONEL CRAWFORD said, in both instances, the trouble was due to the visitation of God, and men in his section were without food.

MR. MILLS moved the previous question, which was sustained and the DeMorse resolution was voted down by a vote of 24 to 44.

The Convention refused to adopt the ordinance of the committee by a vote of 16 to 52.