The article on railroads was taken up and passed to its third reading. An amendment was passed, providing that railroads running within three miles of a county seat must run through the county seat. A clause was also passed, allowing any portion of the real or personal property of a railroad company to be levied upon under execution.

The remainder of the session was consumed with reports of the Judiciary Committee. Four were presented.

FORTIETH DAY

THURSDAY, OCTOBER 21, 1875[81]

Railroad Article Reconsidered

MR. RUSSELL, of Wood, moved to reconsider the vote engrossing the railroad article. The motion carried.

COLONEL CRAWFORD moved as a substitute for Section 6, "No railroad company organized under the laws of this State shall consolidate by private or judicial sale, or otherwise, with any railroad company organized under the laws of any other state or of the United States." He said he thought the policy of the State should require that her railroad companies be kept exclusively under her own control.

MR. STOCKDALE said the Legislature could not create a foreign corporation, but Congress had chartered railroads running through several states, and he would like to be informed how they could prevent it. He thought the object of building railroads was to go to the sea, and failing that, to connect with other roads in the interest of commerce. As Judge Black said in a celebrated Pennsylvania case, towns on the border ought not to be permitted to compel railroads to dump their freight for the benefit of local communities. The idea that we were to break lines of transportation, not consolidate with other roads, was preposterous. It mattered not how much companies consolidated according to the Supreme Court of the United States, the company was like a citizen and could be tried where its locus was. Let us have through lines of communication, bridge at Red River, and not be compelled to stop and break the

[81]The proceedings for this day were taken from the *State Gazette* (Austin), October 22, 1875.

transportation of the commerce of the nation to and from our State. He hoped they should not go quite wild. To have cheap rates, where there was no local competition, freight in bulk ought not to be stopped until it reached its destination. He hoped they would not put a ring of fire around their State in the manner suggested. The Texas & Pacific was the only consolidated road in the State.

COLONEL CRAWFORD said his proposition did not contemplate the breaking of lines of communication, but to prevent consolidation so as to keep them within the jurisdiction of State courts. He reminded them of a case in Cass County where a person was compelled to accept a ruinous compromise with a railroad company, having no protection in the State courts and being unable to carry the case through the Federal courts. He denied that competing lines gave relief and referred to the railroad system of the West. In case one company was unable to buy up the other, both would join in oppressive tariffs.

MR. MILLS moved the previous question and was sustained.

Colonel Crawford's substitute was adopted by a vote of 35 to 28.

The article was then engrossed.

School Lands on Third Reading

MR. DARNELL moved to substitute after the word "settlers" in line 11, "said lands shall be sold on a credit of not less than ten years, bearing interest at the rate of not more than 10 per cent per annum—the proceeds to be held by such counties alone as a trust for the benefit of the State or of the United States." He said he thought that if the county courts had the right to sell these lands at any time it might be dangerous and operate injuriously to the settlers in their anxiety to obtain funds for schools.

GENERAL WHITFIELD said he would support the substitute.

MR. WEAVER said he was of a similar opinion. He did not want the settlers left at the mercy of land-sharks, who were heartless and soulless and had no more sympathy for a poor widow than an alligator for a baby.

MR. GAITHER moved to amend by adding, "provided that the payment of one-fifth of the purchase money be required on all sales of said lands."

JUDGE REAGAN said he joined in the opinion of the three first named gentlemen that the interest of the actual settlers ought to be considered and they ought to have the privilege of remaining on the lands. The Legislature in all its current action had looked not only to the sale of these lands but to securing their purchase to those who had settled them.

MR. MCKINNEY said he favored Mr. Gaither's amendment.

MR. SCOTT moved to amend by inserting in line 6, "to actual settlers on ten years credit with 10 per cent interest."

MR. ROBERTSON, of Bell, moved to add "provided it may be paid by the purchaser at any time and the amount invested in State or United States bonds."

Mr. Scott accepted the amendment.

MR. ALLISON insisted that if "actual settlers" were specified exclusively it would prevent their being sold to any other parties under any other circumstances.

MR. WADE said he was in favor of trusting the county courts.

MR. CHAMBERS said that in view of so many conflicting opinions he would move to refer the whole matter to a select committee of five.

JUDGE REAGAN submitted an amendment to be added after line 11: "said lands shall be sold on a credit and payment shall be made in ten equal installments with interest on such sum as may be due at the rate of 8 per cent per annum, secured by a lien on such land."

MR. NUNN said he thought the counties had the paramount right and those of settlers were merely subsidiary, and while disclaiming any injustice to the latter, thought the counties ought to realize in the interest of the school fund.

MR. JOHNSON, of Franklin, said he was in favor of the fullest justice to the settlers.

MR. GAITHER said it was evident that the Convention would not go very far in the way of free schools, and thought that something should be done to realize something at once, say one-fifth, as proposed in his amendment.

JUDGE BALLINGER said he thought the county courts ought to be entrusted with this matter. They could be elected by the people and he did not think they would be composed of a set of rascals, who would combine with speculators. Surely on ten years credit to the highest bidder was not a wise investment. In timbered lands the

timber would be cut, and under any circumstances it would be a ruinous policy and would cost more in fees to collect than it was worth. Settlers were protected by the refusal of the land and in their improvements as they ought to be. Offer it on ten years credit and they would convert the whole State into speculators.

MR. WRIGHT said he endorsed the remarks of Judge Ballinger. He opposed converting the Convention into a guardian of the counties, for they had the titles to these lands, and why not permit them to manage their own affairs? It ought to be left to the special and discreet management of the county courts. It might be that the lands would increase in value. It was for them to decide, and why should the Convention interfere with their rights? The settler ought not to expect better terms than were offered in the report of the committee.

MR. ROBERT LACY, of Leon, said those grants were made to the counties and it was their property under the Texas Republic, and they ought to be allowed to control them. He could not see who had a greater interest in the welfare of the school lands than the county courts.

Upon the motion of Mr. Fleming the pending amendment was tabled.

Bill of Rights on the Third Reading

MR. STOCKDALE proposed the following as a substitute for Section 12: "The writ of habeas corpus is a writ of right; the right to have this writ from the proper court or judge, shall never be suspended except by act of the Legislature; the Legislature shall never suspend this right except there be such hostile invasion of the State by organized arm force as shall put in peril the safety of the State, or such rebellion within the State as shall make it necessary in order to preserve the authority of the State Government, and only in those cases in reference to arrest upon charges made upon oath of treason, conspiracy to commit treason, or some other offense defined by law, against the authority of the Government, nor shall any person be held in arrest upon a charge of offense against the authority of the Government, except under a judicial warrant; when the writ shall be suspended in accordance with the foregoing conditions, then a person under arrest under judicial warrant, may be held in a place

of safety and removed, as circumstances may require, by the executive or under his authority, and shall be so safely held without the benefit of trial, bail, or main force, until the act suspending the right shall be repealed or expire by its own limitation; every suspension of the right to the writ of habeas corpus by the act of the Legislature shall be for a time certain not to exceed —— months."

MR. STOCKDALE said in support of the substitute that it would be well to regulate the suspension of the writ, as it was sure to be practically suspended when necessary, whether prohibited in the Constitution or not. His substitute would prevent the suspension except by the highest legislative authority in the State, and would regulate the manner of its suspension to the very nature of the case.

MR. LYNCH said he opposed the substitute, and referred to the operation of the writ in England, which could not be suspended by the Queen herself, and only by the Parliament.

MR. KING said that he would admit that during the war the laws were always silent, and that guarantees on paper were worth nothing. But they were making a Constitution for a time of peace. The substitute seemed to him to be paradoxical. It provided for the disposition of a person in time of war when no law existed. He was willing that there should be no suspension of the writ except by act of the Legislature. He regarded the amendment as an innovation upon similar clauses in other Constitutions, and thought it went further than was necessary.

MR. DOHONEY said he regarded the liberty of the citizen as a natural right and one that should be zealously guarded and never suspended by any government, civil or military. He said he was opposed to the substitute.

JUDGE REAGAN said he thought there must be a mistake about "natural rights" being capable of being suspended by a political government. He did not understand what was meant by the term.

MR. WRIGHT asked what was the meaning of civil liberty if it was not a curtailment of natural rights?

JUDGE REAGAN said he did not understand what was meant by natural rights.

MR. WRIGHT said he was not surprised at that but could not furnish the gentleman with capacity.

JUDGE REAGAN said they talked about natural rights before they were formed into a political society, and then they talked of civil rights, political rights, and civil liberty. He did not agree with Mr. King that they could make a government by law and not prescribe by law for a condition of things when there should be no law to restrain the political or military powers of the State. If they were always to have a condition of peace then it would be right that the writ should never be suspended. He was willing to take the usual words suggested by Mr. King, but would support the substitute that recognized the fact and made it imperative that the writ should never be suspended except by act of the Legislature.

MR. WRIGHT said that his colleague (Mr. Dohoney) had laid down the proposition that liberty was a personal right, and the writ of *habeas corpus* was the right to protect that natural right, therefore it was called the writ of right. It is the right to preserve the liberty of the citizen, a natural right as defined and understood. The gentleman from Anderson had said he did not understand it. He was not surprised at that. What was a natural right? It was the right of personal liberty. It was the right surrendered by the citizen only so far as was necessary for the public good and the benefit of the Government. Of what advantage was it to a man to surrender his natural right if he received no benefit therefrom, such as law and order. The original section provided that it should never be taken away from him, except by due course of the laws of the land, and here it was that the writ of right came in protecting him in his natural right of liberty. He maintained that the Legislature should not have the power to suspend that writ, no matter what the circumstances, and that a man's liberty should not be taken except by due course of law. He was opposed to putting in the Constitution the power, even to the Legislature, to suspend the writ of habeas corpus. History repeated itself, and they could not tell what legislatures might do in the future when they obtained control of those halls, but they knew what they had done in the past ten years. He reminded delegates of General Jackson's surrender to the court of Judge Hall, thus recognizing the fact that the military must always be subordinate to the civil authority. If suspended under certain exigencies, then he wanted twelve honest men to exonerate the offender if they could, but he was not willing to leave it to the Legislature to interfere

with this right, the natural right of the citizen not to be restrained in his personal liberty, without due course of law. He supposed the gentleman from Anderson understood what his colleague meant now by natural right.

MR. FLOURNOY defined the writ of habeas corpus, and the meaning attached to it in England from the time of the barons down to the present time. It was the same today in that country and in this. It was the right of a citizen of Texas when arrested in peace and war, to demand of the courts of the country, not to discharge him, but to say whether he was properly held or not. The Bill of Rights said that a man shall be bailable, except in capital cases, where the proof is evident. Treason was a capital offense, and if the proof was there he should be held, whether in time of peace or war. He regarded the clause as it stood as the embodiment of the true idea of liberty. It merely told a citizen that when arrested he could appeal to the courts. When would a case arise that a citizen did not want to appeal to the courts of his country? In peace? Certainly not. If in war, why then, as Cicero told us, 'in the midst of war all laws were silent,' and this no more than the rest. We were not preparing for a condition of war, human foresight could not do that. If it came they must meet it. Self preservation was the highest law of nature, but they should not, under an impression of possible danger, authorize any power to place the citizen in duress and hold him there in defiance of the laws of the country. As long as they had a judicial tribunal it should be appealed to. If he were guilty let him suffer; don't bail him. If he were there through the connivance of power, the result of prejudice, or of false evidence, let him be restored to his liberty, in his observation, when the suspension of the writ did not work great wrong. It might be from the best of motives, to prevent danger, the clash of cymbals and the tocsin of war, but the result was the same. He did not care if Missouri had adopted this proposition. It was the essence of liberty in England and could only be suspended by Parliament. That was a supreme power, which made constitutions for the whole land. He could not foresee any condition of things when it should not be lawful for a citizen of Texas to appeal to the courts of his country to say whether or not he was guilty of crime.

MR. DEMORSE said that the little clause there reported contained the whole charter of human liberty capable of expression on paper, and he trusted that body would not change it in one word or sign. If personal liberty was not a natural right under organized government as well as in unorganized society he could not conceive what a natural right was. He could not conceive in case of war necessity in a critical emergency when a military commander might consider it necessary to suspend the writ of habeas corpus. If he were in command and disregarded it, it would be under a sense of patriotic necessity, and holding himself amenable to the law and public opinion thereafter however much he might disregard it in the present. No part of the clause ought to be changed. It was the only security remaining for the liberty of the citizen, and he hoped never again to see upon the continent of America such action as was taken during Mr. Lincoln's administration, when men were picked up from the streets and immured in dungeons without knowledge of the offense with which they were charged, and continued in prison without intimation to their families or their friends as to their whereabouts or the crime until released at the pleasure of the authorities. He was opposed to the alteration or omission of a word and hoped the substitute would not be adopted.

MR. DILLARD moved to table the substitute and it was tabled.

JUDGE BALLINGER moved to insert before the word "regulate," the words "prohibited and," in Section 23. It had reference to the bearing of arms.

MR. BROWN said that, after what he had seen in the last fifteen years, he would not prohibit the bearing of arms, but would leave it with the Legislature to regulate.

MR. WAELDER said he thought it led to more crime than any other cause did.

The amendment was tabled.

MR. STOCKDALE moved to substitute for Section 28: "No law or laws of this State shall be suspended except by the Legislature, which may only suspend in the same manner as laws are made and repealed; whenever a law is suspended, it shall be for a certain time."

MR. STOCKDALE said he did that in order that the Legislature might not have the power to suspend the laws at one fell swoop. Since

they had refused to regulate the suspension of the writ of habeas corpus, he hoped the necessity of preventing the suspension of all law would be seen.

The substitute was lost by a vote of 26 to 34.

COLONEL CRAWFORD moved to substitute the original clause as reported by the committee.

MR. WEAVER combatted the idea of "independence" as applied to the states as apart from the Federal Constitution. He said he had fought four years over that little question.

MR. DEMORSE said he hoped that the word "subject" would not go into the Constitution. He did not object to Mr. King's amendment, but the word "subject" did not belong to the Constitution of the State of Texas, whether subordinate to the United States or not.

MR. FERRIS held that it was an appropriate word in this instance as applied to the Constitution of the United States. Missouri had adopted it, and why not Texas? He said they were all subject to the Federal Constitution, which was the law of the land.

Colonel Crawford's substitute was lost and the article was then passed by a vote of 66 to 9.

FORTY-FIRST DAY

FRIDAY, OCTOBER 22, 1875[82]

Revenue and Taxation

(Mr. Brown in the Chair.)

JUDGE REAGAN offered a substitute for the entire article. It declared taxation should be equal and uniform. All property should be taxed in proportion to its value, except that made exempt by a two-thirds vote of the Legislature. It taxed all occupations, trades and professions—occupations not to be construed as applying to agricultural and mechanical pursuits.

MR. NUGENT moved to table.

JUDGE REAGAN said things had come to this pass, that a substitute taken bodily from the Constitution of 1845 was not thought worthy

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[82]The proceedings for this day were taken from the *State Gazette* (Austin), October 23, 1875.