not do his duty the land owner would escape taxation, but his substitute provided a remedy for that contingency.

Upon the motion of Mr. Fleming, the DeMorse amendment was laid on the table.

FIFTY-FIRST DAY

WEDNESDAY, NOVEMBER 3, 1875[100]

The Judiciary Article

MR. NORVELL presented his report as a substitute for the majority report on the judiciary. He contended that the latter failed to meet the wants of the country. Even the members of the committee signing it had not agreed to all its parts, but only to certain clauses of their report. It would fail to reduce the increasing business of the Supreme Court, which was accumulating at the rate of 159 cases a year. He objected to dividing the State into five Supreme Court districts; to a decision of nine men out of a jury of twelve being sufficient to find a verdict; to the fact that appeals given from the county courts to the district courts only on the record whose decision would be final, thus depriving the party of a trial by jury, and said the offenses appealed would consist of the largest proportion of crime in the State. He said there would be no uniformity of decisions, because the ruling of the judge would depend upon the conditions in his particular district, and his decision might be controverted by a neighboring judge.

MR. MURPHY said he favored the substitute. He regretted that the report had not been printed and presented in that form, because it gave the reasons for its presentment. He dissented from it in only one respect, which was in the amount of salaries, which he considered entirely inadequate to secure efficient judges. There was blame somewhere for neglect to print this report and lay it on the desk of the members.

MR. BROWN said the report would be there in one hour.

MR. MURPHY said it would be there one hour too late. He explained the advantages of the three judges of the Supreme Court, to the advantage of the Court of Appeals as in New York and other

[100]The proceedings for this day were taken from the *State Gazette* (Austin), November 4, 1875.

states, in the reduction of the number of judges. He spoke of a case in his own county where it cost the county $1,500 to pay a guard to watch two prisoners for a few months in jail. The minority report provided for the speedy trial of criminals, as the county courts would be open all the time for the transaction of business.

MR. DEMORSE said that having made a report he deemed it only necessary to say that the proposition of Judge Ballinger, the majority report, was an entirely fair one, and he considered it immaterial which report was taken as a basis of action by the Convention. He hoped, however, that the Convention would give attention to all the reports and examine each one fairly. He said he did not propose to make any speech urging the adoption of the report presented by him as a basis of action. One of its objects was to relieve the pressure of the business of the Supreme Court, and the other was to relieve the mass of the people of the very heavy burdens which they carried, from the expenditures necessary and unavoidable under the existing system. He thought that he had reported a system that would relieve the people in that respect, and all that he asked was mature consideration for it. He did not stand there to say that his report was superior to any other, but merely asked mature consideration respecting it.

JUDGE BALLINGER gave his reasons why the Norvell and DeMorse reports should not be taken as a basis of action by the Convention. The majority report was the result of the deliberations of twenty men, or one-third of that body, and, though the members of the committee did not agree as a whole to the majority report, yet each section had received a majority in its favor. In misdemeanors they said a party should not have the right of appeal, except with the consent of the judge. The extension of jurisdiction to $500 would also greatly relieve the district courts. He objected to the Court of Appeals proposed by the minority report of Mr. Norvell, as it was the same in effect as the Supreme Court, although it would be relieved of writing opinions.

Mr. Norvell's report was rejected by the Convention by a vote of 12 to 46.

JUDGE REAGAN presented eight sections of a minority report as a substitute for the corresponding sections in the majority report. He spoke in support of his report.[101]

JUDGE BALLINGER replied to Judge Reagan. He said the views of the latter had been presented to the majority committee with all his weight of argument, and respect for his opinion. He thought there must be something faulty in Judge Reagan's system, as he called it, or it would have met with greater confidence in the committee than it did. He thought the gentleman had gotten up greater enthusiasm on a smaller amount of capital in this matter than in any other case he had ever heard of. He had put the mountain in labor, and what had be brought forth? His system was to be the great panacea for the ills under which the people groaned. He said justices of the peace had had jurisdiction up to $100 only since 1845, but he, Judge Reagan, proposed to give them jurisdiction up to $200, and would give the Legislature the power to increase this jurisdiction to any extent.

The majority report gave justices of the peace all the jurisdiction they had ever had in this country except in one or two cases. They had jurisdiction hitherto only in petty cases. Judge Reagan had proposed to give them enlarged powers to such an extent that it seemed to him they would stir up strife among neighbors, in order to get costs. The officer who was the greatest nuisance, and did the most harm by stirring up strife to secure the small costs attaching to this office, was the justice of the peace.

In reply to Mr. Kilgore, Judge Ballinger admitted that the majority report did provide for an increase in the number of the justices of the peace, but it would confine them to their proper duties, such duties as the office was intended to cover. Was there anything practical in Judge Reagan's views? He did not think so. The remedy of the majority report was to try cases before a county judge and six men, and if they could convince him wrong had been suffered to carry the case to the district court on a writ of *certiorari* and to have a new trial. Judge Reagan's plan would grant a new trial in every petty case by carrying it up to the county court. Was this

[101]Judge Reagan was probably the most highly respected of all the delegates It is a peculiar fact that no paper printed in full any one of his speeches in the Convention.

a proper time to incorporate a new régime? Was it the time to enlarge the jurisdiction of justices of the peace and turn them loose on the people? He thought not. He said he thought the scheme of increasing their jurisdiction from $100 to $200 would only aggrevate the evil, as it gave two trials where there should be only one. Again, with respect to the county courts, he proposed to give them jurisdiction from $200 to $500. The grand juries empanelled in the district court might inquire into and return a bill for a trial in the county court, but the majority report also determined to what extent the county court should have jurisdiction.

FIFTY-SECOND DAY

THURSDAY, NOVEMBER 4, 1875[102]

The Judiciary Article

The judiciary article came up in the order of unfinished business.

JUDGE BALLINGER continued his argument of the preceding day. He urged his objections to the county court system advocated by Judge Reagan. This gave it exclusive jurisdiction of all misdemeanors of which justices did not have jurisdiction. The majority report provided for cases where the justice of the peace was incapacitated from trying a case by ties of blood and personal interest, but Mr. Reagan's report did not, and if a justice refused to try a case it could not be tried at all. Was that sensible or right? He regarded it as a burlesque. He condemned Judge Reagan's plan of sending indictments from the county court to the justice court for trial. This was an anomoly; was such a thing ever heard of before? The majority proposed no such novelty, but provided that in cases where the county court could not try the district court should have jurisdiction. Judge Reagan's system gave exclusive jurisdiction to both the justice and county courts. The majority report gave county courts jurisdiction in cases involving from $100 to $500; Judge Reagan's plan gave them jurisdiction in cases of from $200 to $500. The majority report contemplated an enlargement of the jurisdiction of county courts, if it was found to work well, up to $1,000, and in criminal cases up to felony.

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[102]The proceedings for this day were taken from the *State Gazette* (Austin), November 5, 1875.