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.

He objected to Judge Reagan's plan of making the district courts appellate courts by appealing cases from the county courts. The majority report contemplated that a party might make a statement of his case to the district judge—not upon the technicalities, but substantially, if he could show that he had sustained wrong. The district judge might say, 'send your case up here for trial and that will be a finality.' On the other hand, Judge Reagan's report allowed appeals on technicalities, on the record, and thus made it in reality an appellate court, and the case might be sent back to the lower court, tried again, sent back, and the process repeated interminably. The majority report gave the district courts criminal jurisdiction in all cases, and in all civil suits of above $100. Judge Reagan had objected that this plan would not relieve the district courts, but experience proved that it would. Their idea was that the county courts would determine all plain cases, suits for notes, etc., and cases where no technicalities were involved. The majority report was based on the Constitution of 1866 with respect to district and county courts. They had the results of experience in its favor, and nineteen cases out of twenty between $100 and $500 would be brought in the county court, because of its cheapness and prompt settlement of suits, for the district judge would permit no trial in his court unless he was convinced that substantial wrong had been done. Judge Reagan's plan said there should be no appellate jurisdiction to the Supreme Court for less than $500. He, Judge Ballinger, thought that the people would not submit to that, for suits for small sums might represent the complaint of a large class, and involve principles as important as those of a large sum. The majority report proposed to unburden the Supreme Court of Appeals in all misdemeanors except such as the Legislature might decide should be of an appellate character, and on which an examination of the record showed errors had been committed. Judge Ballinger then referred to the strong points of the Supreme Court as presented by the majority report, which, though elective, was so guarded as to secure a fair expression of the people's will. He thought that Judge Reagan's plan would surround it with all the evils of the political convention system. The majority report plan of allowing the justices of the Supreme Court to select their own chief justice would

enable them to select the man who had the best administrative ability, and this would facilitate the rapid dispatch of business.

MR. NUNN opposed Judge Reagan's system and supported the majority report. He said the appeals from the justice courts constituted one-third, and in some counties one-half, of all the cases appealed. He condemned Judge Reagan's plan of "localizing justice." He thought this was the very thing that needed amending, for it was utterly impossible to secure the administration of justice if it was to be controlled by the passions and prejudices of a community in which the disturbing cause of action was to be decided where it originated. The majority plan had, too, an advantage in its proposition to relieve the district court from the gambling cases. He was opposed to paying the county judge in fees and to the increase of the justice's jurisdiction to such an extent as would induce him to stir up strife for the sake of fees.

MR. MCCORMICK moved to close the debate, which was carried.

JUDGE REAGAN moved a call of the House, which was carried.

The vote on the Reagan substitute resulted in a tie, the vote being 37 for and 37 against.

MR. WEAVER changed his vote from "no" to "yea," which made it 38 to 36, and the Reagan substitute was adopted as a basis of action for the Convention.

MR. MCCORMICK proposed a substitute for Section 2 of the report before the Convention (Judge Reagan's), which had been adopted as a basis for action. The substitute made the Supreme Court convertible, giving the judges alternate jurisdiction in civil and criminal cases; the judges were to be six in number and elective.

MR. DEMORSE proposed to substitute new sections for Sections 2, 3, 9, and 10. He said he was under the impression that nothing was to be gained by long speeches, as most members had made up their minds or would readily do so; hence he would speak a few words directly to his substitute. The system he had proposed had been maturely considered at least by him, and he proposed only to state its advantages. He supposed that nearly every member of that body knew that the object to be obtained in the election of a judicial system was to relieve the mass of the people from the burdens they were carrying, which were plunging them into debt and filling their jails and keeping them filled at the expense of the people of the

counties. He desired a dual Supreme Court for this reason, so that when appeals in criminal charges come before them from criminal courts there should be a speedy response, so that the party might be either punished or released, and the county relieved of the burden of keeping the prisoner. Mr. McCormick had moved that the three judges should be convertible; that they should sometimes take charge of appeals in criminal cases, and sometimes in civil cases. He agreed with the gentleman from Colorado, only instead of making them convertible, as the latter proposed to do, he could select the judges with special reference to their capacity and fitness in civil and criminal cases. If it was thought that the convertibility of the judges would sharpen their intellects so that they would respond more readily to the exigencies of the cases that would come before them, he claimed superior advantages for his system, as the Supreme Court judges, three of them, would be selected with reference to their ability to act in civil cases, and three in criminal cases.

JUDGE REAGAN said that if the House adhered to its vote of that morning a dual Supreme Court would be unnecessary.

MR. DEMORSE withdrew his substitute.

MR. RUSSELL, of Wood, said he was in favor of three Supreme Court judges at a salary of $3,500, or at $4,000 if he could not get the former figures. He also favored twenty-five district judges at $2,500 each. He was in favor of the county court system advocated by Judge Reagan, and of an increase in the jurisdiction of the justice of the peace. He would oppose two Supreme Courts, or a Supreme Court of five justices. He was in favor of striking out Section 1 of the majority report, which favored the creation of criminal courts.

GENERAL WHITFIELD presented a substitute for Mr. McCormick's substitute and for Section 6 of the majority report. It divided the State into five judicial districts, each to elect a Supreme Court judge and five district court judges, with a tenure of eight and six years and a salary of $4,000 and $3,000 respectively.

MR. STOCKDALE said General Whitfield's proposition had been given a great deal of consideration by the committee, and was at first incorporated in the majority report. He had given a good deal of consideration to the question and should, if they were not in an anomolous condition, but in the condition they were in fifteen or twenty years ago, still favor the elective system. As regarded the

appellate court, the matter had been very fairly stated by Judge Ballinger. It took the election of the justices of the Supreme Court out of the maelstrom of state politics, a great argument in its favor. If nominated by a convention it would be by a convention of men selected with special reference to the duty of selecting a judge. This system had been adopted in his native state, Kentucky, and in part adopted in the states of Illinois and New York, and had stood the test of time favorably. By that system four out of the five justices of the Supreme Court would be removed entirely from local surroundings in their election and decisions. In the district in Kentucky in which he had lived, a Democrat, who had made himself odious by his opposition to the Whig party, was elected over the Whig candidate by a majority of 5,000, and this notwithstanding the fact that the Democrats were in the minority in that district, but local feelings and jealousies could not operate over the whole district. It might be assumed that the principle would be reversed in the election of district judges, but it was not, as a man had to have character and ability such as would be recognized over the whole district, or he would not be elected. He alluded to the difficulties in the way of the election of judges in some localities, owing to the ignorance and prejudices of a certain class of the communities which ought not to control in judicial election, and said that by his method it would be placed out of the power of local majorities to elect men to the bench who were inimical to the interests of the state.

JUDGE REAGAN spoke in favor of the substitute.

MR. BROWN supported the substitute, saying that the same plan had been successful in Maryland.

MR. FLANAGAN said that if the gentleman from Lavaca had proposed a plan based upon high and statesman-like principles it would probably not have met with his opposition. The object was virtually to say to the people of Texas that no Republican should be elected judge of any district in the State. How much easier it would have been for gentlemen to have arrived at the matter in a cheaper and more direct way, by placing in the organic law a prohibition of the election of any Republican to the position of judge He would much preferred to vote for it, for it would not look so much like whipping his Satanic majesty around the fallen timber; but they would have come squarely up to the question. He would have

favored a provision that not only should a candidate for judge be well grounded in the law, but that he should have continued in it for twenty-five years, which would have excluded all danger that might have been apprehended from the colored man. He would go as far as anyone in presuming the purity and ability of the judiciary, but was utterly opposed to the substitute.

MR. MCKINNEY, of Walker, said it was necessary for certain districts in the State to be protected from a certain class of voters.

JUDGE REAGAN disclaimed the construction placed upon the substitute by Mr. Flanagan.

MR. WEAVER spoke in favor of the elective system.

MR. RUSSELL, of Wood, opposed the substitute.

MR. WAELDER opposed it on several grounds.

GENERAL WHITFIELD struck out the salary of the judges in his substitute, leaving it blank.

FIFTY-THIRD DAY

FRIDAY, NOVEMBER 5, 1875[103]

The Judiciary Article

GENERAL WHITFIELD denied the charge of "gerrymandering" made by Mr. Flanagan with reference to his substitute, but said he believed if his plan could be adopted it would be a good thing for Texas. He said he would not give a fig for a party which would not take care of itself.

MR. SCOTT moved to print 200 copies of the majority report, including Judge Reagan's substituted sections, and the substitutes of General Whitfield and Mr. Davis, of Brazos, and to postpone consideration until the next day. His motion was carried.

Railroads—Third Reading

PRESIDENT PICKETT moved to strike out of Section 2: "Railroads heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways and railroad companies public carriers." It had occurred to him that the declaration that

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