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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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is crippled by this policy. Stop it, and then the certificates already in the hands of the present railroads or other parties may become valuable. Let us perfect some of the measures already on foot. But, if the substitute of the gentleman from Marion is to pass in lieu of the original proposition, I trust that this amendment which I offer and which I regard as essential to the protection of the interests of the country, will be coupled with it."

Mr. Stayton's substitute was lost by a vote of 23 to 39.

Mr. Nugent's amendment was lost by a vote of 24 to 40.

Colonel Crawford's substitute was lost by a vote of 23 to 38.

### FIFTY-SIXTH DAY

TUESDAY, NOVEMBER 9, 1875<sup>111</sup>

#### *Public Lands and the Land Office*

JUDGE REAGAN moved to strike out the proviso in Section 3, which read as follows: "evidence of the appropriation of which is on the county records or in the General Land Office."

MR. STEWART offered to amend by inserting before the word "record," "or on the county map."

MR. FLOURNOY offered a substitute for both amendments, as follows: "Constructive notice of title of real estate shall be held good as against *bona fide* purchasers for valuable consideration, or a *bona fide* location thereon, unless the evidence of the cause shall have therefore been of record in the county or on file in the county treasurer's office."

JUDGE REAGAN withdrew his amendment and supported the substitute.

After some debate Mr. Flournoy withdrew the substitute

Mr. Stewart's amendment was lost.

JUDGE REAGAN moved to strike out Section 8.

COLONEL FORD said that he would state for the information of the gentleman from Anderson, that the country between the Nueces and the Rio Grande had formerly belonged to the State of Tamaulipas; that the people thereof could not have been called in question for want of loyalty to the Republic of Texas; that instructions had been issued to the Texas Minister to the United States to abandon the

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<sup>111</sup>The proceedings for this day were taken from the *State Gazette* (Austin), November 10, 1875

claim of Texas to the country beyond the Nueces should it be necessary to do so.

President Santa Anna, when a prisoner of war after the battle of San Jacinto, had entered into a treaty with the Government of Texas, by which the Rio Grande was made the boundary between the two republics. Under the provisions of that treaty, the Mexican troops were permitted to withdraw without molestation from the territory of Texas. After having received the benefit of the treaty, Mexico had endeavored to repudiate, but such a thing was not permissible under the law of nations.

General Canalizo had issued an order commanding the residents between the Nueces and the Rio Grande to abandon the country, and denouncing those failing to do so as spies, had provided to have them punished as such. At that time there had been a large and prosperous population in that section. They had erected buildings, established ranches, and had become the owners of thousands of horses, cattle, and sheep. They had left many horses and cattle behind them. The Texans had made inroads into that section—they drove horses and cattle into Texas—hence the term “cow-boys.” These were acts of war. The Mexicans also went into the country and had driven animals into Mexico. The inhabitants could not occupy their lands under such conditions.

After the conclusion of the war between Mexico and the United States, about the year 1849, the people began to return to their lands.

Those people occupied a different position towards the State of Texas from that occupied by others. They required the benefits of legislative relief, and various acts of the Legislature had been passed to enable them to complete their titles. These acts extended from 1850 to 1870.

Section 8 did not provide for the validating of any title to land not previously validated and recognized by the State Legislature. It simply allowed them five years more to return their field notes to the General Land Office, and to furnish plots of their surveys. It did not propose to change the status of the claim. This relief had been asked for by men who had paid taxes on their lands, who were acting in good faith, and who were obeying the laws of the State.

The unsettled condition of the country—the incursions of Indians and marauding Mexicans—had prevented them from complying with the law and returning their field notes prior to January 1, 1875. He believed that there were no adverse claims to any of the lands. The terms of the section showed its meaning. He had written the greater portion of it himself, and had procured its adoption by the Committee on Lands and Land Office. He was not of that class of men who favored the revival of old land claims, and only asked for that relief which he considered the claimants justly entitled to receive at the hands of the Convention.

MR. MURPHY said he thought Judge Reagan imagined from his official and distinguished position, that he could rush through any motion he desired. The section he had proposed to strike out he did not even understand; he had said so himself. Neither he nor the Convention had the right to deprive the people between the Nueces and the Rio Grande of their rights, for they were vested rights, secured by the United States treaty of Guadalupe Hidalgo, and could not be divested by any act of that body. Judge Reagan's previous amendment that morning, as well as his present action, seemed to evince a desire to strike out those rights, and to allow the lands between the two rivers to be subjected to be floated by outside parties. These titles had long existed, but, as Colonel Ford had shown, it had been impossible to comply with the terms of previous acts because of the unsettled condition of the country, which even then they were defending day and night. If Judge Reagan had inquired of the members from the Rio Grande it would have saved all this valuable time spent in debate. He regretted that he had apparently been actuated by unfriendly feelings toward the section which he partly represented.

JUDGE REAGAN denied any unfriendly feeling for the West. He said he was not to be smothered, however, and had a perfect right to ask for information, not only for himself but for other delegates as well.

MR. WEST explained that this section did not propose to validate any invalid titles. It had been put in out of deference to western members, though he felt with Mr. Stayton that the section was not necessary.

JUDGE REAGAN said he did not think the section was in the interest of actual settlers, but that it would react in favor of speculators.

Judge Reagan's amendment was lost by a vote of 18 to 43.

MR. GERMAN moved to strike out Section 3.

COLONEL CRAWFORD offered an amendment for the section. It provided that no lands should ever be granted except in a manner prescribed by general laws, and that no law should be passed granting to any citizen or class of citizens any of the public lands or privileges not equally belonging to other citizens. It gave entry to genuine land certificates, to actual settlers, for educational purposes, sixteen sections to first-class railways, and twelve sections to second-class railways.

MR. FLANAGAN made the point of order that the same subject matter had been decided the day before.

COLONEL CRAWFORD said that the language and a great part of the subject matter were different.

PRESIDENT PICKETT ruled that the amendment was in order.

COLONEL CRAWFORD claimed that the section as it stood was imperfect, and that the construction of railroads should be made subsidiary to the benefit of the education of the youth of the State.

MR. McCORMICK moved the previous question on the engrossment of the article, and was sustained.

Colonel Crawford's substitute was adopted by a vote of 33 to 32.

Mr. German's amendment to strike out was lost by a vote of 33 to 35, a number of members, including Mr. German himself, changing their votes to "no" after a closer perusal of the section.

The article was then engrossed by a vote of 40 to 20.

#### *Judicial Department*

The question pending was the substitute of Mr. Flournoy for that of Judge Reagan, which had been adopted as a basis for action. It increased the jurisdiction of justices of the peace to \$200, did away with Judge Reagan's county court provision, with civil and criminal jurisdiction, and with its appellate jurisdiction from the justice court; it proposed to relieve the district courts by limiting appeal to the Supreme Court to cases originating in the district courts, and permitting no appeal from the justice courts to go beyond the district courts.

MR. McCORMICK spoke for the majority report, which had been substituted, he said, by a very small majority. He said he was entirely opposed to the Flournoy substitute, as it would not give the relief of the courts asked for.

## FIFTY-SEVENTH DAY

WEDNESDAY, NOVEMBER 10, 1875<sup>112</sup>

The vote engrossing the article on public lands and Land Office was reconsidered by a vote of 44 to 16.

The pending question was then the motion of Mr. McLean to table Mr. German's motion to reconsider the vote adopting the substitute of Colonel Crawford. The Convention, by a vote of 22 to 49, refused to table, and reconsidered the substitute by a vote of 50 to 21.

JUDGE REAGAN gave his reasons for voting for the substitute, the principal one of which was that it allowed actual settlers on the lands to be hereafter granted to railroads, and settle thereon on payment of the actual value of the land, the price of which was to be regulated by law.

MR. FERRIS contended that the substitute allowed the Legislature to set apart a reservation of lands to railroads. This was denied by its friends, but there was nothing in it prohibitory that he could see. The section providing for broad and narrow guage roads, he thought was out of place in a Constitution. He objected to the language in the last clause, which might furnish means for litigation, as it opened all lands granted to railroads to actual settlers, on the payment of the maximum value, \$2.50 an acre, while railroad lands in his own county were worth \$5 an acre. He favored the bill as reported by the committee.

MR. ROBERTSON, of Bell, moved to amend the substitute by adding: "Provided that the Legislature shall have no power to extend the time or grant relief to any company obtaining a grant or a certificate after the adoption of this Constitution."<sup>113</sup>

COLONEL CRAWFORD defended his substitute. He claimed it was just to the railroads, just to the citizen, just to the high interests of

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<sup>112</sup>The proceedings for this day were taken from the *State Gazette* (Austin), November 11, 1875

<sup>113</sup>Mr. Robertson's defense of this amendment has been given heretofore. See page 269 above.