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MR. STOCKDALE said that the road in course of construction to San Antonio was more likely to be completed that one by a new company chartered to run from San Antonio and connect with it.

Mr. Robertson's amendment was lost by a vote of 14 to 52.

Colonel Crawford's substitute was lost by a vote of 17 to 48.

MR. MCCORMICK said he hoped the Waelder amendment would be adopted, for he was convinced that if San Antonio once got its road they should hear no more talk of State division.

Mr. Waelder's amendment was adopted by a vote of 53 to 12.

The article was then engrossed by a vote of 42 to 20.

The Judiciary Article

MR. DOHONEY argued at length against the Flournoy substitute. He said he favored the majority report, and next to that the minority report of Mr. Norvell.

JUDGE BALLINGER opposed the substitute of Mr. Flournoy, and spoke for the majority report.

MR. FLOURNOY replied to both speakers, condemning the county court system, which he said was really nothing but additional district courts. He held that they would not reduce the expense of the judiciary in the least, but on the contrary would increase it.

FIFTY-EIGHTH DAY

THURSDAY, NOVEMBER 11, 1875¹¹⁴

The Judiciary Article

The article on judiciary came up as unfinished business.

GENERAL WHITFIELD moved to lay the Flournoy substitute on the table.

The convention refused by a vote of 32 to 33.

MR. HENRY, of Smith, said he supported the majority report. He spoke, not as a lawyer, but as a citizen. He thought efficiency should be consulted before cheapness. A cheap but inefficient judiciary would be blighting to the public interests. He claimed that the system of the majority report was the best adapted to the wants of the time. The system advocated by the substitute would fill the county

¹¹⁴The proceedings for this day were taken from the *State Gazette* (Austin), November 12, 1875.

jails with prisoners to be kept at an enormous expense. This was the crying evil of the day, the counties being burdened by taxation to keep prisoners. The proposition to make their labor available was all very well if it could be done, but even that would involve heavy expenditures in the employment of guards and the ramification system in all the counties. His conviction was that prisoners should be kept under lock and key in the jails; and yet to incarcerate them in the county jails for minor offenses and misdemeanors would entail such vast expense that the jails would have to be opened in time and the prisoners released to save the counties from pecuniary ruin. He believed that the county court system, advocated by both the majority report and the Reagan substitute, was the only mode of relieving the district courts. It would cost something, but, as he had said before, a cheap judiciary must in his opinion be inefficient. He pointed out the advantages of the county court system, and was of the opinion that the majority report furnished the only solution of the difficulty.

Mr. Flournoy's substitute was lost by a vote of 11 to 52.

MR. WAELDER moved to insert in Section 1, "in a court of appeal," adding another court to those already suggested. He said he considered this essential if the Supreme Court was to be at all relieved. Without this relief, any judicial system they should adopt would be a failure, and the Convention itself would be a failure. There were at that time 1,600 undecided cases before the Supreme Court. If they disposed of those cases by the appointment of commissioners they would have to do the same thing two years later. What was wanted was permanent relief, and the only way it could be obtained was by means of a court of appeals.

Mr. Waelder's amendment was adopted by a vote of 37 to 23.

MR. RUSSELL, of Wood, offered to amend by striking out all after "law" in the fourth line of Section 4. It struck out the power of the Legislature to establish district criminal courts in cities of 15,000 population and upwards. He said he protested against the establishment of the new court authorized by the last amendment.

MR. STEWART defended the clause as it stood.

MR. NUGENT moved to table the Russell amendment, but the House refused to table by a vote of 18 to 41.

JUDGE BALLINGER said there were probably thirty new ships daily coming into the Galveston harbor, whose crews were coming ashore daily. Many crimes were committed by this class of men. The criminal court, before which such cases came, sat for only five months in each year. It was necessary to free the jails and to make justice prompt. If the amendment passed it would strike a serious blow at Galveston, as those cases, now promptly disposed of, would have to be held six months for trial.

MR. RUSSELL, of Wood, withdrew his amendment.

MR. DOHONEY offered an amendment that allowed the Legislature to provide criminal district courts for cities of 35,000 population and upwards.

MR. WAELDER opposed the amendment. He said that if his county were left a district in itself they would require no criminal court, but if incorporated with another district they would, and this was equally true of Austin and Dallas. The number of inhabitants was no criterion as to the necessity for a criminal court.

MR. FERRIS opposed the amendment, taking the same view of the case as Mr. Waelder. He said Dallas had petitioned for a criminal court. A floating population required such courts. There was a large class of that kind of people in Dallas, and though she had only 15,000 inhabitants, such a court was as necessary to her as to the larger cities. He thought the clause was sufficiently restricted as it stood.

Mr. Dohoney's amendment was adopted by a vote of 41 to 22.

MR. RUSSELL, of Wood, moved to amend Section 1 by adding, "provided such town or city shall support such district court when established."

MR. STEWART said the city of Galveston was willing to pay for her civil court, but thought the State ought to pay for the criminal court.

MR. RUSSELL, of Wood, said he was opposed to such a plan. If Galveston did pay a larger proportion of the taxes than other cities, she ought to be satisfied with the same protection given to other sections.

Mr. Russell's amendment was lost.

MR. BRUCE moved to amend Section 2 by reducing the term of the Supreme Court judges from eight to six years, and to reduce their salaries from \$4,000 to \$3,000 a year.

MR. GERMAN moved to amend by reducing the term to four years.

GENERAL WHITEFIELD moved a substitute for the section, which reduced the number of judicial districts to three, each district to elect one Supreme Court judge and—district judges. He said his substitute was a plea for the black belt, in which he lived. If they voted that amendment down they would destroy the hope of fifteen counties, and put them under negro rule. Not that he had the least prejudice against the negro, but it would force upon them a set of district judges elected by the negroes of those districts. He said he had no feeling in the matter, not in the least. His heartfelt sympathy was with the freedmen of the State, but they all knew that they were not competent to elect a judiciary for the country. The hope of fifteen counties was hanging in the balance on the amendment. If they voted it down they forced on those counties a negro elected judiciary, and forced every Democrat to vote against the Constitution.

The substitute was defeated by a vote of 29 to 38.

MR. KING opposed the German amendment. He said there was no state in Union where the term was as short as four years. The term of Supreme Court judges was usually double that of other state officers. Long terms in other states were the result of long experience. With short terms the ablest lawyers and jurists in the state would be unable to give up their practice and risk the results of an election. He urged other objections against the change.

JUDGE BALLINGER said the new Constitution of Missouri made the term of their judges ten years. The Constitution of Illinois, adopted in 1870, fixed the term at nine years. The new state Constitution of Pennsylvania, a Constitution highly commended on the floor of the convention, had fixed the term at twenty-one years, while New York, by recent amendments, had made the term in that state fourteen years.

Mr. German's amendment was tabled by a vote of 54 to 15.

MR. SANSOM offered a substitute for the Bruce amendment, reducing the salaries of Supreme Court judges from \$4,000 to \$3,500.

General Ross spoke against a cheap judiciary.¹¹⁵

He said: "Mr. President, I have been content hitherto to sit silent, but I regard this question as of too much importance not to give the reasons that will control me in casting my vote. In listening to the debates, I have felt something like the old donkey who was carried to hear his master speak. When asked how he liked the speech, he said: 'When he first commenced I liked it so much that I prayed he might never quit, and before he got through, I thought the Lord had answered my prayer.' (Laughter.)

"I have demonstrated by my votes as great a desire for retrenchment and reform in governmental expenses as any delegate present, and while I have not gone as far as some, yet I have been willing to see the salaries of officers graduated in a just proportion to the revenues derived from the various industries of the country. In fixing the compensation of the judges of our courts I am unwilling to overstep the boundary lines which I think separate a wise and commendable economy from a niggardly parsimony.

"In looking to retrenchment, we should bear in mind that it is not the rock that stands out boldly, giving warning to the mariner of danger, against which the ship is wrecked, but the sunken reef over which the flowing waters tempt the bounding keel to swift destruction. So in government; it is not that which the people see and understand which undermines the prosperity of the State and depletes the treasury, but the secret leak, the insidious and unseen advance of corruption and extravagance hidden away in the complications of the machinery of government, so as not to be visible to the public eye.

"Upon investigation we find that the salaries of all the officers paid by the State amounts to \$247,000, and when the number is reduced as is contemplated by this Constitution, if the salaries remain as now fixed by existing laws, the sum total will be about \$200,000. But when these salaries have been reduced about one-fourth, as recommended by the extremest advocates of retrenchment, there will be saved to the State about \$50,000. Then, if we reduce the salaries of the supreme judges each \$500, as is proposed in the report of the committee, we have \$3,500; and when you reduce the number of district judges to twenty-five, you will have added \$52,500; and if we then abide by the report of the committee and reduce their salaries \$500 each, there is \$12,500 more, making the aggregate amount saved the State by reductions in the judicial department, \$57,500, which is quite as much as the people demand at your hands from this source.

"The present State tax of one-half of 1 per cent is not the tax that is proving so onerous to the people of our State, and this will be

¹¹⁵His speech was printed in the *State Gazette* (Austin), November 13, 1875.

reduced by the action of this Convention one-fifth without reference to salaries.

“It is the vicious criminal system of Texas that is burdening the State and bankrupting the counties, and of which the people so justly complain, and it is here that the pruning knife should be vigorously applied.

“The cost for executing the criminal laws for the year ending August 31, 1875, to the State amounted to \$373,120.

The cost to the counties for	
keeping prisoners	\$216,667.60
Jail guards	58,063.21
Juries in criminal cases.....	235,216 67—
	<hr/>
Total	\$519,807.48
	<hr/>
	\$893,017.48

“Besides this, there was the further cost of \$132,748.18 for grand juries and juries in civil cases, and we find that with all this expenditure there were 972 men sent to the State penitentiary at an average cost of *one thousand dollars* for each convict. It required \$100,000 to pay the mileage of these prisoners to Huntsville, and the fees of district attorneys and other officers concerned in securing convictions amounted to about \$200,000 more. It is safe to say that this expense might have been reduced to one-third that amount, and the officers very justly compensated. The jail fees in many counties of the State are double what they should be, and that, with the ruinous cost of jury service, exceeds the whole ad valorem tax levied and collected in the counties.

“In McLennan County these two items of expenditure bring the county upon the wrong side of the balance sheet about five thousand dollars annually.

“The people desire retrenchment certainly, but they want intelligent, reasonable action on that subject, looking to consequences, and estimating and weighing results.

“They want a government as economical as an efficient good government can be made, but they do not desire that efficiency in any sense shall be sacrificed to a mistaken idea of economy, which saves a dime on one hand and squanders thousands of dollars on the other.

“You may construct the best Constitution ever devised by the wisdom of men, and unless you have men of brain, integrity, and patriotism to execute and enforce its provisions, it will be as a dead letter on the statute books.

“Since the time of the great Burke it has been a recognized axiom in political economy that that government is the best which is best administered, and no better illustration of this truth can be adduced than by inviting your attention to the difference between the present

Democratic administration and the administration which preceded it, under the existing Constitution. The Constitution under which they both administered the government was the same, and yet we know that the results have been widely different. The present administration, by a judicious system of retrenchment, inaugurated in the several departments in one year, saved to the Treasury of the State an amount nearly equal to the salaries paid to all the officers of the State Government.

“Men, not territory, constitute the State, and in a large measure the men to whom the government is confided give tone, character, prestige, and strength to the departments. Good men will give you a good government under a bad Constitution, while incompetent though well meaning men will often, under a wise Constitution, give you a weak and unwise government.

“In view of this fact, it is the duty of the State to attract to its councils and elevate to its judicial honors its most eminent men. Those who will give it character and prestige at home will build up its greatness and power. The people of every country are judged by their government, and those who compose its officials being deemed representative men, they give their government character for excellence and wisdom, or for weakness and imbecility.

“Then instead of economy, it is the most profuse extravagance and the most puerile statesmanship for any people to lower the standard of their government. High character, ability, learning, and statesmanship in the personnel of the government has a material money value to the State.

“All history proves that the most powerful conservator of free government is an able, honest, and fearless judiciary, chaining down by judicial construction the other departments where there is a tendency to become restive under the restraints of the law, or a desire to invest might with any of the prerogatives of right.

“When the Legislature or the Governor transgresses the Constitution and the citizen appeals to the courts for protection against the usurpation, we want a judge with the brain to perceive the right and the nerve to pursue it.

“There is not a page of British history, full as it is of deeds of renown both civil and military, that gives character and dignity to the race from which we spring, brighter than that which records the struggles of the English judiciary in behalf of English liberty.

“This judiciary is the political ark of the poor man, to which he must flee in time of danger, and the only shield by which he can protect himself from the attempts of power to deprive him of his rights.

“No man can tell when through the frailties and temptations of his life, misfortune may be brought to his own door. And it is under such circumstances that he can best appreciate the value of

a tribunal, fair, honorable, and worthy of a free people, which is to try him.

“The judiciary deals with the person and property of the individual members of society, while the other departments deal only with the general body politic. Wrongs done by the latter attract universal public attention, demand and receive speedy redress, while those done by the former fall upon the individual citizen, impose upon or crush him and he is without remedy, because the unjust judgment is law to him and his case. So that, in the ability, integrity, and learning of the judge, each individual citizen finds his most powerful, and frequently his only, assurance of protection for his person and property.

“Unjust and oppressive laws may be repealed, but unjust and oppressive judgments, rendered in the lower, and affirmed in the higher, courts are irrevocable and fixed, and the luckless citizen is wronged without remedy and his wrongs do not even attract attention beyond his immediate neighborhood.

“What is the boasted writ of habeas corpus, the very mention of which carries the mind of every freeman in our broad land back to that glorious struggle at Runnymede, which commemorates the grandest exploits of the heroes of the middle ages, without an honest, fearless judge to give it efficiency. That great writ and an independent judiciary go hand in hand, and either is powerless without the other, but combined they form the cornerstone of the citizen’s liberty.

“Such being the importance of this department of our government and the character of the men required to fill with dignity and honor this branch of the public service, can we hope to secure them by the illiberal salary proposed in the substitute?

“I hold it to be an honest rule to estimate a man’s ability by his achievements, taking into consideration, of course, the difficulties surmounted. Then, is it true that any lawyer possessing the requisite ability for a judge, cannot make more than \$2,000 or \$2,500 per annum? Half of that is made by hundreds of commercial travelers and clerks in the State. And we should bear in mind that the judge, when he takes his seat upon the bench, is excluded from money making, that the salary is to be his whole dependence, and he must expect to lose his practice, for others will fill his place in the community. When his term expires his former clients and supporters will have formed new ties and business connections, from which he may not hope to wean them.

“Uniformity in the decisions of the courts, so essential to the well being of the people, can be secured only by obtaining and by keeping in office good judges. Rotation in political office is a wise rule, but when we get a good judge in judicial office, we should desire to keep him as long as he is able to do efficient work. If his salary

is so meagre that he can lay aside nothing for his comfort in old age—if he serves the public while he is able to work—he is subject to charity when no longer able to earn the salary and goes off the bench.

“In the judicial districts comprising the cities of Galveston, Houston, Dallas, San Antonio, Jefferson, Austin, and Waco—being one-fourth of the entire number—I think it will be admitted that no man with a family can live decently upon the salary here proposed. Will you ostracise the talent of these cities or compel judges who live there to labor for the public good for about half what it costs them to live?”

“When we come to compute the amount saved the State, we find it much too small to justify the risk of the occupation of the bench by incompetent men. The destruction of the public confidence in the judicial tribunals—the greatest curse that can befall a country—and the demoralization consequent upon it, besides hundreds of thousands of dollars in costs and damages to the people, would result from cheap judges. For when they have no confidence in the court that adjudicates their rights, they will always appeal in search of justice to their great damage and the consequent detriment of the state by multiplying the cases on the docket, and delay the legitimate purpose designed to be attained through the courts.

“Then, it seems to me that when we realize the importance of this branch of the public service, as a matter of economy we should provide such salaries as to justify the most intelligent men to seek the positions.”

JUDGE REAGAN opposed the amendment. He thought, like the last speaker, that the State would suffer if the salaries were reduced.

MR. JOHNSON, of Collin, said that as a “rutabaga” he would protest against high salaries for the judiciary. He thought that \$2,500 was sufficient for any judge.

Upon motion of Mr. Gaither all the amendments were tabled.

FIFTY-NINTH DAY

SATURDAY, NOVEMBER 13, 1875¹¹⁶

Article on Judiciary

A motion was made to reconsider the vote on Mr. German's amendment, refusing to reduce the salaries of Supreme Court judges from \$4,000 to \$3,550.

¹¹⁶The proceedings for this day were taken from the *State Gazette* (Austin), November 14, 1875.