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then advocated. He wished he could call back those dead patriots who had advocated that doctrine and hear their eloquent voices which would once more electrify the people of Texas. But that was impossible. He was the only member of that body present in the Convention then in session. He was old and weak and knew that he would soon be gathered in the great hereafter, with all his compatriots; but while he lived he intended to do all in his power in the cause he believed to be right.

JUDGE REAGAN opposed the amendment.

MR. FLOURNOY supported the amendment. He pictured the sad effect of drunken and worthless husbands bringing their wives to want and poverty in case the amendment were not passed.

PRESIDENT PICKETT took the floor in favor of the amendment.

The article was ordered engrossed by a vote of 62 to 9.

SIXTY-FOURTH DAY

FRIDAY, NOVEMBER 19, 1875¹²¹

The Texas & Pacific

The article on the Texas & Pacific proposed an extension of time to that railroad.

MR. DARNELL opposed the extension of time.

MR. NUGENT moved to add the following proviso to the bill: "and provided further that any reservation of the public domain heretofore made to said railroad, shall be opened to actual settlement under the preëmption laws of the State."

The amendment was adopted by a vote of 39 to 30.

JUDGE REAGAN, before the vote was announced, changed his vote to "aye" so as to move a reconsideration.

The vote having been announced, Mr. Nugent instantly moved to reconsider and table.

JUDGE REAGAN said he thought that was unfair, since Mr. Nugent had heard him express a desire to move a reconsider, and asked him in common fairness to give way.

¹²¹The proceedings for this day were taken from the *State Gazette* (Austin), November 20, 1875.

MR. NUGENT said he refused to do so. If he gave way the House would be debating the question all day. Believing that the Convention had no more right to pass an ordinance extending time to the Texas & Pacific Railroad than the man in the moon, he was opposed to a reconsideration, and would persist in his refusal to withdraw his motion.

MR. KILGORE moved a call of the House, and was sustained.

Pending the call, the House took up other business.

JUDGE REAGAN offered the following as a new section for the article: "That all navigable waters of the State shall forever remain public highways, free to the citizens of the State, and of the United States, without tax, impost, or toll; and that no tax, impost, toll, or wharfage shall be demanded or received from the owner of any merchandising or commodity, for the use of the shores, or any wharf erected on the shores, or in, or over, any of said waters, unless expressly authorized by law."

JUDGE REAGAN amended his section by inserting between the word "state" and "shall" the words "embracing those which form common boundaries between this State and other states, and boundaries between this State and Mexico."

MR. MURPHY moved to amend the section by adding, "Provided, that in no case shall this have the effect of impairing the obligation of contracts or deprive any citizen."

JUDGE BALLINGER said that he had for many years been the attorney of the Galveston Wharf Company in matters of litigation at home. In no case had he mentioned the wharf company since he had been in Austin, unless it had been first mentioned to him. He had declined to discuss the subject other than in a public manner. He was not on that floor as the partisan of the wharf company, much less as their lobbyist. So far as the rights of the company were concerned, he should not discuss them there, except in a single instance. The last speaker had laid down the policy that no man should have the right to build wharves for the benefit of the commerce of the State, unless under the express authority of the law. He contrasted this with his own ideas of what he thought was good for the public interest and for the protection of the law. He quoted the opinion of the Supreme Court—Judge Roberts speaking the opinion of the court—in support of his position.

The House being full, the vote was taken on Mr. Nugent's motion to reconsider and table. The House refused to table by a vote of 21 to 47.

MR. STOCKDALE said he had no interest in the Texas & Pacific Railroad. He did not think it would have the effect of settling one hundred persons on their reservation. Neither would it affect the true interests of the road as far as getting the land was concerned. But if that amendment was put in the ordinance it would have the effect of opening it to settlement and prevent the company using it as a basis for their credit negotiations. The amendment would also be injurious to other roads, in one of which he felt the deepest personal interest, but as a matter of State policy they ought now to facilitate the building of a great road between the oceans, through the State of Texas, especially when it would accomplish no great benefit to others not to do so, and where it would destroy to a great extent, the accomplishment of the results they desired.

Judge Reagan's amendment was postponed, to come up when the report of the Committee on Private Corporation was considered.

MR. NUGENT spoke against reconsideration of the proposal to extend the time of the Texas & Pacific.

JUDGE REAGAN spoke in favor of reconsideration.

MR. DOHONEY protested against the action of certain members of the Convention in opposition to the best interests of the State, with reference to railroads. He advocated the extension of time to the road. He charged that the Convention would act in bad faith if it refused to reconsider.

MR. KING said he considered the rights of the few settlers who would settle in this reservation as subordinate to the great question of the necessities of the people. He regarded it as one of the greatest questions of State policy that had come before them. He spoke as a delegate not only interested in the welfare of his own people, but with concern for the interests of the entire country. He regarded Texas as the trustee of the South in its position regarding the greatest of modern enterprises. All of the states lying south and immediately north of the thirty-second parallel were looking to Texas in this matter, and were looking to the completion of this great enterprise. The Convention to meet at St. Louis on the twenty-third was a stupendous enterprise of the people of the South,

and of the consolidated sections of the country, to secure the success of that road and to create a highway between the Atlantic and Pacific Oceans. Texas, holding the key to the position, ought not to raise her hand against it. He regarded the building of this road as the greatest enterprise of modern times. The United States had donated \$100,000,000 worth of the public domain, and Texas—owning the only practicable route for the road—had contributed only one-fourth of the public domain that had been granted by the United States to the Union and Texas Pacific railroads. If constructed, tap lines would spread out in all directions like branches from the parent tree. He lived 200 miles south of the proposed line, and it would not reach his people during this generation, unless by the means of tap roads, but it would have the effect of solving the Indian problem, and would do more in that way than a cordon of United States soldiers from the Rio Grande to the Red River. The long line of settlements springing up would be invaluable in its protection, and could not be overestimated. In his opinion, the interests of a few settlers ought to be subordinate to the interests of the State itself.

MR. JOHNSON, of Franklin, said he had no objections to railroads, but wanted them subordinate to the State. That being effected he was willing to help forward their interests as far as possible.

MR. BARNETT said he had come to Austin opposed to railroads, but after their action there, and taking into consideration the fact that they would shorten the time for the completion of the road to El Paso one-half by the extension of the time asked for, he was in favor of the ordinance.

MR. GERMAN opposed reconsideration, and replied to the argument of Mr. Dohoney. He denied that they were acting in bad faith to the Texas & Pacific. It had forfeited all right to consideration by its failure to comply with the requirements of its charter, and ought not to expect relief from them. The Convention, too, had placed a clause in the Constitution requiring all railroads in the State to accept the provisions in the Constitution before they would grant them relief. To pass this ordinance would be to stultify this action. He opposed reconsideration.

MR. McCORMICK said he favored reconsideration.

MR. WEAVER said he favored reconsideration, and favored the ordinance granting additional time to the railroad. The great financial

crash had affected all railroads alike, and it could not be expected that the Texas & Pacific would escape.

MR. DILLARD moved the previous question and was sustained.

The vote adopting Mr. Nugent's amendment was reconsidered by a vote of 39 to 29.

MR. STOCKDALE moved to amend by adding the following to the ordinance: "and whereas said financial panic has had the same paralyzing effect on all other railway construction in this State; therefore, be it further ordained, that all railroad companies in the State are hereby granted twelve months time from the adoption of this Constitution framed by this Convention, to comply with the requirements of their charter, and for the construction of any part, or for the completion of the whole of the works to be done by any railway company, as required by the charter thereof."

JUDGE BALLINGER moved to amend by adding after Mr. Stockdale's amendment, that all railroads connecting with the Texas & Pacific should have all facilities for connecting and transporting freights and passengers that could be afforded by connecting railroads, and that freight and passengers to and from the Gulf coast by roads connecting with the Texas & Pacific should be carried by the latter at the same *pro rata* as to the extreme points of its own or other roads on the Atlantic and Pacific coast.

MR. NUGENT moved to amend Mr. Stockdale's amendment as follows: "It is hereby further ordained that said companies shall file in the office of the Secretary of State a full and complete acceptance of all the provisions of this Constitution applicable to railroads, before the relief herein provided shall take effect."

Mr. Nugent's amendment was adopted by a vote of 39 to 25.

MR. FLANAGAN moved to lay the whole matter on the table, but the House refused by a vote of 34 to 36.

MR. ABERNATHY moved to reconsider the vote refusing to table the ordinances and amendments regarding the Pacific Railroad, and his motion was carried.

The motion to table recurring, a call of the House was moved and carried. Pending the call, other business was taken up.

Revenue and Taxation

MR. BROWN moved to amend by striking out of Section 13 all after the word "therefore" in line 19, and inserting "but in counties

having 10,000, to be determined by the last preceding census of the United States, a collector of taxes shall be elected to hold office for two years, and until his successor shall have been elected and qualified."

Mr. Brown's amendment was adopted.

A number of other amendments were introduced and voted down, lacking a two-thirds majority.

The article was then passed by a vote of 40 to 32.

Mr. Flanagan's motion to lay on the table the ordinance and amendments concerning the Texas & Pacific Railroad was tabled by a vote of 40 to 28.

The article on apportionment was taken up on its third reading.

MR. MOORE moved to amend the provision for the thirty-eighth district by giving Burleson County one representative. It was a Democratic county as it then stood—"Washington and Burleson Counties shall elect one representative"—it was linked with Washington and would be compelled to accept such a representative as Washington would give her.

MR. BRADY: "What do you propose to do with the excess of population in Washington County?"

MR. MOORE: "Let them do without, I suppose."

MR. RENTFRO said that Burleson County had only 1,300 voters, while Washington County had 8,500. He inquired what had become of the local representation they had boasted of. It would be establishing a precedent which might in time come to be ruinous to the Democratic party itself. He asked in common fairness that the excess in Washington County might be allowed one representative.

MR. MOORE appealed to the Convention in behalf of Burleson County. It had been only a short time since a portion was cut off to make the county of Lee, and now it was proposed to consign them to Washington, or in other words, to keep them without representation at all. The intelligent people of that county desired representation, and the intelligent people of Washington County were willing for them to have it. It was for the Convention to decide.

MR. DEMORSE said there were some things which the Democratic majority could not afford to do. It could not afford to tarnish its fair name. He thought they ought to give Burleson County one

representative and Washington County, on account of its excess of population, two.

Pending the question, the House adjourned.

SIXTY-FIFTH DAY

SATURDAY, NOVEMBER 20, 1875¹²²

The pending question was Mr. Moore's amendment to give Burleson County one representative. It was lost by a vote of 20 to 40.

The apportionment article was then passed by a vote of 51 to 11.

Judiciary Article—Third Reading

JUDGE BALLINGER moved to strike out of Section 2, line 24, "more" and insert "less," and after "dollars" the words "which shall not be increased or diminished while they are in office." He spoke of the case of Judge Wheeler, whose last days were embittered by the meagreness of his salary, and whose indigent circumstances had led to his unhappy end. Judge Hemphill was a bachelor and was therefore able to get along on a small salary, while Judge Lipscomb had been made comfortable by a wealthy marriage. He said these things in reply to the argument that their most eminent judges had not received high salaries.

The amendment was lost by a vote of 32 to 42.

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

MR. JOHNSON, of Collin, introduced the following ordinance:

"Be it ordained by the People of Texas in Convention Assembled, That in view of the financial misfortunes now existing, no railroad chartered or holding grants under this State, which has heretofore organized and commenced work in good faith, shall be considered as having lost any of its rights, privileges, or grants, prior to the close of the next session of the Legislature of this State, by virtue of the lapse of time between now and that time; and said Legislature has the power, if deemed compatible with the public interest, to grant such relief in time as is deemed best for the interest of the State; provided, that this ordinance shall not be so construed as to relieve railroad companies from compliance with the condition contained in this article of the Constitution in relation to railroads."

¹²²The proceedings for this day were taken from the *State Gazette* (Austin), November 21, 1875.